71932

Vol. I.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 761.

CITY OF LOUISVILLE, APPELLANT,

vs.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

FILED AUGUST 14, 1911.

(22,837)

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a UNITED STATES OF AMERICA,
Western District of Kentucky,
Sixth Judicial Circuit, ss:

To Cumberland Telephone & Telegraph Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington, D. C., on the 12th day of August next, pursuant to an appeal allowed by the Circuit Court of the United States for the Western District of Kentucky, wherein City of Louisville, Kentucky, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief-Justice of the United States, this 17th day of July, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States of America the one hundred and thirty-sixth.

[Seal 6th Circuit Court, Wes. Dist. Ky., U. S. of America.]

WALTER EVANS, *Judge.*

Service of the within citation is hereby acknowledged this 7th day of August, 1911.

W. L. GRANBERY,
ALEX. P. HUMPHREY,
W. PRATT DALE,
Solicitors for Appellee.

1 Proceedings of the Circuit Court of the United States for the Western District of Kentucky, at a regular term begun and held at the Federal Court Hall, in the City of Louisville, on Monday, March 13th, 1911.

Present: Honorable Walter Evans, sitting as Circuit Judge.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
THE CITY OF LOUISVILLE, KENTUCKY, Defendant.

Be it remembered that heretofore, to-wit, on the 8th day of March, 1909, came the complainant by Wm. L. Granbery and Fairleigh, Straus & Fairleigh, its counsel, and filed in the Clerk's office of our said Court its bill of complaint against the above named defendant.

The bill of complaint above referred to is as follows:

2 UNITED STATES OF AMERICA:

In the United States Circuit Court for the Western District of Kentucky, at Louisville.

In Equity.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
v.
THE CITY OF LOUISVILLE, KENTUCKY.

To the Honorable the Judges of the Circuit Court of the United States in and for the Western District of Kentucky, sitting at Louisville:

The Cumberland Telephone & Telegraph Company, a corporation organized under and pursuant to the laws of the Commonwealth of Kentucky, and having its principal place of business in the city of Louisville, in said State, brings this, its bill of complaint, against the city of Louisville, Kentucky, a municipal corporation created and existing under and pursuant to the laws of the Commonwealth of Kentucky; and,

I.

Thereupon your orator complains and says that on the 8th day of June, 1883, there was duly incorporated under the laws of the Commonwealth of Kentucky a corporation known as the "Cumberland Telephone & Telegraph Company"; that thereafter its charter
3 was amended on December 21, 1883, by increasing its capital stock, and thereafter, on the 14th day of May, 1889, its charter was again amended, and on February 3, 1896, it duly and legally accepted the provisions of the present Constitution of the Commonwealth of Kentucky.

On the 8th day of June, 1883, there was incorporated under the laws of the Commonwealth of Kentucky a corporation called the "Great Southern Telephone & Telegraph Company," which, on August 16, 1897, duly and legally accepted the provisions of the present Constitution of the Commonwealth of Kentucky; and thereafter, on the 4th day of March, 1898, pursuant to the laws of the Commonwealth of Kentucky, said two corporations were duly consolidated under the name of the "Cumberland Telephone & Telegraph Company."

By an Act of the General Assembly of the Commonwealth of Kentucky, approved April 3, 1886, there was created a corporation under the name of "The Ohio Valley Telephone Company," and on January 22, 1900, The Ohio Valley Telephone Company duly and legally accepted the provisions of the present Constitution of the Commonwealth of Kentucky, known as the Constitution of 1891; and thereafter, on January 27, 1900, said The Ohio Valley Telephone Company and the Cumberland Telephone & Telegraph Company were duly and legally consolidated under the name of the "Cumberland Telephone & Telegraph Company." Said consoli-

dated corporation had a capital stock fixed in said Articles of Consolidation at six millions of dollars, and by amendment duly made and filed on January 9, 1903, its capital stock was increased to twenty millions of dollars, and thereafter, to-wit, on the 26th day of September, 1907, its charter was further amended by increasing its capital stock to twenty million, two hundred thousand dollars, and changing its legal domicile from Hopkinsville, Christian County, Kentucky, to Louisville, Jefferson County, Kentucky.

A copy of the charters of the original Cumberland Telephone & Telegraph Company, the Great Southern Telephone & Telegraph Company, and The Ohio Valley Telephone Company, together with the various amendments, and the acceptances of the present Constitution of the Commonwealth of Kentucky, is hereto attached as Exhibit No. 1 hereto, and made a part hereof, but need not be copied in the issuance of process.

4

II.

The charter of The Ohio Valley Telephone Company, by special act of the General Assembly of the Commonwealth of Kentucky, provides in Section five that:

"The said Company may construct, equip and maintain said telephone systems and exchanges, and erect poles and string wires thereon, and operate its telephone lines over, along, or under any highway, street, or alley in the City of Louisville, with and by the consent of the General Council of said city; and it may purchase or lease from any corporation created under the laws of this Commonwealth, on such terms as may be agreed upon, any telephone system or exchange, its poles, wires, apparatus, contracts, licenses, patents, or interests therein, equipments, rights of way, easements and servitudes, in highways, streets and alleys in the City of Louisville, together with all of its properties; and when purchased or leased, shall have the power to maintain and operate the same along, over, or under the highways, streets and alleys in the said City of Louisville; provided, however, that such telephone poles, lines and systems have heretofore been granted the right of way or easements in the highways, streets and alleys in the said City of Louisville by the General Council thereof. And the said Company may also construct, equip and maintain telephone lines along, over, or under the highways, streets, and alleys, and across any water-course within this Commonwealth, so as not to obstruct the same; and said Company may connect its lines with those of any other Company, on such terms as may be agreed upon."

And thereafter, on August 17, 1886, there was approved an ordinance by the legislative department of the city of Louisville, by its General Council, in the words and figures as follows, to-wit:

"An ordinance confirming and ratifying section 9 of an act passed by the General Assembly of the Commonwealth of Kentucky, and approved on the 3rd day of April, 1886, and entitled 'An Act to incorporate The Ohio Valley Telephone Company,' and granting to the said The Ohio Valley Telephone Company the
5 right to construct, equip, operate and maintain telephone systems and exchanges, and to erect poles and string wires thereon; to construct, operate and maintain conduits and manholes; to lay pipes, cables, conductors and wires, and to operate its telephone lines over, along or under any highway, street or alley in the city of Louisville.

"Whereas, The General Assembly of the Commonwealth of the State of Kentucky passed an Act entitled, 'An Act to incorporate The Ohio Valley Telephone Company,' which was approved on the 3rd day of April, 1886, section 5 of which said act is as follows:

"'SEC. 5. The said company may construct, equip and maintain said telephone systems and exchanges, and erect poles and string wires thereon, and operate its telephone lines over, along or under any highway, street or alley in the city of Louisville, with and by the consent of the General Council of said city; and it may purchase or lease from any corporation created under the laws of this Commonwealth, on such terms as may be agreed on, any telephone system or exchange, its poles, wires, apparatus, contracts, licenses, patents or interests therein, equipments, rights of way, easements, servitudes, in the highways, streets and alleys in the city of Louisville, together with all of its properties, and, when purchased or leased, shall have power to maintain and operate the same along, over or under the highways, streets and alleys of the city of Louisville; provided, however, that such telephone poles, lines and systems have heretofore been granted the right of way or easements in the highways, streets and alleys in the said city of Louisville by the General Council thereof. And the said company may also construct, equip and maintain telephone lines along, over or under the highways, streets and alleys, and across any water-course within this Commonwealth, so as not to obstruct the same; and said company may connect its lines with those of any other company on such terms as may be agreed on.'

"Therefore, be it ordained that the said act, in so far as it refers to the constructing, equipping, operating and maintaining telephone systems and exchanges, and erecting poles and stringing wires thereon; to constructing, operating and maintaining conduits and manholes; to laying pipes, cables, conductors and wires, and operating telephone wires over, along or under the highways, streets and alleys in the city of Louisville is hereby ratified and confirmed, and the right is hereby granted and confirmed to the said The Ohio Valley Telephone Company, its successors and assigns, to construct, equip, operate and maintain telephone systems and exchanges, and to erect poles and string wires thereon; to construct, operate and maintain conduits and manholes; to lay pipes, cables, conductors and wires, and operate its telephone lines over, along or under any street, avenue, alley or sidewalk in the city of Louisville, provided—

"First. That the said Telephone Company, its successors and assigns, shall agree to carry on its poles, or through any underground system which it may construct, such wires or conductors as
6 may be necessary for operating the fire and police systems of the said city of Louisville, free of charge to the said city, said wires or conductors to be furnished by the city of Louisville, and to be placed in position at the cost of said city, but under the direction of the said The Ohio Valley Telephone Company, its successors or assigns, and in such manner as not to interfere with the effective operation of the wires or conductors of said The Ohio Valley Telephone Company, its successors or assigns.

"Second. That in each and every case wherein the said The Ohio Valley Telephone Company, its successors or assigns, shall construct any underground conduit, or lay any underground pipes, cables, conductors or wires, in no case shall the city be liable for any injury or damage to any third party which may be caused by the putting down of said conduits, pipes, cables, conductors or wires by the said The Ohio Valley Telephone Company, its successors or assigns; and the said Telephone Company, its successors or assigns, shall protect the city and hold it harmless from any and all damages which may arise from said cause.

"Third. The said Telephone Company, its successors or assigns, shall not at any time open or encumber more of any street, avenue, alley or sidewalk than may be necessary to enable them to perform the work with proper economy and efficiency in the laying of their pipes, cables, conductors or wires, nor shall they permit such opening or encumbrance to remain for a longer period than may be necessary to do the work for which said opening shall have been made, and they shall put up and maintain about said openings and encumbrances such barriers and lights as will effectually prevent the happenings of any accidents by reason of such openings or encumbrances.

"Fourth. In constructing the conduits or in laying their pipes, cables, conductors or wires, the said Telephone Company, its successors or assigns, shall do no permanent injury to any street, avenue, alley or other public place or shade tree, nor shall they unnecessarily disturb or interfere with any sewers, water-pipes or gas pipes now laid in the city or which may be laid at said time.

"Fifth. All said work of opening said streets, alleys, avenues and sidewalks, for the purpose of constructing a conduit, or of laying said pipes, cables, conductors or wires by the said Telephone Company, its successors or assigns, shall be done under the supervision of the City Engineer, and subject to his approval.

"Sixth. Whenever the said Telephone Company, its successors or assigns, shall open ground for the purpose of constructing a conduit, or of laying their pipes, cables, conductors or wires, they shall with all due diligence, after the completion of said work, restore said streets, avenues, alleys and sidewalks so opened, or any sewer, gas pipe or water pipe located thereon to a condition equally as good as when said opening was made, at their own expense and to the satisfaction of the City Engineer; and in case of their failure

or refusal to do so, the City may proceed to do the same, and the said Telephone Company, its successors or assigns, shall be liable for the cost thereof.

"Seventh. As soon as practicable after the approval of this ordinance, and before the said Telephone Company, its successors or assigns, shall be allowed to open any street, avenue, alley or sidewalk for the purpose hereinbefore stated, the said Telephone Company, its successors or assigns, shall execute a bond for the sum of $50,000.00, with good and sufficient security, in favor of the city of Louisville, conditioned that the said Telephone Company, its successors or assigns, shall hold the said city of Louisville,
7 harmless and free of all damages which may be caused by the opening of any street, avenue, alley or sidewalk for the purpose hereinbefore stated, said bond to be renewed from time to time, with such security as the General Council may require.

"Eighth. Nothing in this ordinance shall be construed as to give to said Telephone Company, its successors or assigns, any exclusive right to erect poles or to lay underground conduits, pipes, cables; conductors or wires in the streets, avenues, alleys or sidewalks of the city of Louisville.

"Ninth. That (within thirty days from the passage of this ordinance) the said The Ohio Valley Telephone Company, its successors or assigns, shall formally agree, in writing, to accept the terms of the provisions of this ordinance, and file the said written copy of said agreement and also the aforementioned bond with the Mayor of the city of Louisville, and from and after the date of said acceptance this said ordinance shall take effect and be in force as a contract between the said city of Louisville and the said The Ohio Valley Telephone Company.

L. R. McCLEERY, *C. B. C.*
OLIVER LUCAS, *C. B. A.*
CARY B. BLACKBURN, *P. B. C.*
JAS. C. GILBERT, *P. B. A.*
P. B. REED, *Mayor.*

Approved August 17, 1886."

And thereafter, at a called meting of the directors of The Ohio Valley Telephone Company, held at its office, room No. 9 at 444 West Jefferson Street, Louisville, Kentucky, at twelve o'clock M. August 18, 1886, a motion was unanimously adopted, accepting said ordinance, and the president was directed to prepare a good and sufficient bond for fifty thousand dollars, in compliance with section seven of said ordinance; and the secretary of said company was directed to deliver said bond to the Mayor of the city of Louisville, and also to notify said Mayor of the acceptance by said company, as required by section nine of said ordinance, and to furnish him, the said Mayor, with an official copy of the proceedings of said meeting within thirty days thereafter.

And thereafter, on September 3, 1886, W. H. Newman, secretary of The Ohio Valley Telephone Company, addressed a letter under

8 the corporate seal of the company, to Hon. P. B. Reed, who was at that time the Mayor of the city of Louisville, in the words and figures as follows, to-wit:

"OFFICE OF THE OHIO VALLEY TELEPHONE COMPANY,
ROOM NO. 9, NO. 444 WEST JEFFERSON ST.,
LOUISVILLE, KY., *September 3rd*, 1886.

Hon. P. B. Reed, Mayor of the City of Louisville.

DEAR SIR: I have the honor to officially notify you of this company's acceptance of an ordinance passed by the General Council of this city and approved August 17th, 1886, as per extract from the minutes of a meeting of the Board of Directors of The Ohio Valley Telephone Company held at the office of the Company—Room No. 9, No. 444 West Jefferson St. in the City of Louisville, Ky., at 12 o'clock M., August 18th, 1886, to-wit:

(Extract from Minutes.)

'An ordinance passed by the General Council of the City of Louisville, entitled:

'An Ordinance confirming and ratifying Section Five of an act passed by the General Assembly of the Commonwealth of Kentucky and approved on the 3rd day of April, 1886, and entitled 'An Act to incorporate the Ohio Valley Telephone Company:' and granting to the said The Ohio Valley Telephone Company the right to construct, equip, operate and maintain telephone systems and exchanges and to erect poles and string wires thereon; to construct, operate and maintain conduits and manholes; to lay pipes, cables, conductors and wires and to operate its telephone lines over, along or under any highway, street or alley in the City of Louisville.' Approved August 17th, 1886'—

was then read and the following resolution was unanimously adopted, to-wit:

'Resolved, That this Company hereby accepts the terms and provisions of said ordinance.'

"On motion, the Secretary of the Company was directed to notify you as the Mayor of the City of Louisville of the above official action of the Company under the official seal of said Company as their official act and deed in accepting said ordinance.

"I am further directed by the Board of Directors of this Company, as its Secretary, to deliver to you as the Mayor of the City of Louisville, the bond of this Company for the sum of Fifty Thousand Dollars as required by the provisions of said ordinance, and herewith have the honor to submit same for your approval and acceptance and request your official answer to this communication and enclosure of bond herewith submitted.

Very respectfully,

[SEAL.] W. H. NEWMAN,
Secretary of the Ohio Valley Telephone Company.

9 And accompanying said letter was a bond in the sum of fifty thousand dollars, in words and figures as follows, to-wit:

"Bond of the Ohio Valley Telephone Company to the City of Louisville, in Pursuance of an Ordinance of Said City Approved August 17th, 1886.

"Whereas, the General Council of the City of Louisville enacted an ordinance approved August 17th, 1886, entitled

'An ordinance confirming and ratifying Section 5 of an Act passed by the General Assembly of the Commonwealth of Kentucky and approved on the 3rd day of April, 1886, and entitled 'An Act to incorporate The Ohio Valley Telephone Company:' and granting to the said The Ohio Valley Telephone Company the right to construct, equip, operate and maintain telephone systems and exchanges and to erect poles and string wires thereon; to construct, operate and maintain conduits and manholes; to lay pipes, cables, conductors and wires and to operate its telephone lines over, along or under any highway, street or alley in the City of Louisville.'

"Which said ordinance has been accepted by the said The Ohio Valley Telephone Company as provided therein;

"And whereas, Section Seventh of said ordinance required that said The Ohio Valley Telephone Company shall execute a bond as specified therein, now therefore,

"Know all men by these presents: that in compliance with said Section Seventh of said ordinance, we, the said The Ohio Valley Telephone Company, as principal, and J. B. Speed and James Clark, as sureties, do hereby bind ourselves, our successors, executors, administrators, heirs and assigns to and with the said City of Louisville, that the said The Ohio Valley Telephone Company, its successors and assigns, shall hold the said city of Louisville harmless and free of all damage which may be caused by the opening of any street, avenue, alley or sidewalk for the purpose as provided in said ordinance.

"Provided: That liability under this bond shall not exceed the sum of Fifty Thousand Dollars.

"Witness the hand and seal of said Telephone Company by its President, and the hands of said sureties at Louisville, Ky., this twenty-eighth day of August, 1886.

THE OHIO VALLEY TELEPHONE COMPANY.
By J. B. SPEED, *President.*
J. B. SPEED.
JAMES CLARK.

Approved Sept. 9th, 1886.

(Signed) By OLIVER LUCAS,
Clerk Board of Aldermen.
L. R. McCLEERY,
Clerk Board of Council."

10 And thereafter, on September 4, 1886, Hon. P. B. Reed, Mayor of the city of Louisville, addressed a letter to W. H. Newman, Secretary of The Ohio Valley Telephone Company, in the words and figures as follows, to-wit:

MAYOR'S OFFICE.
LOUISVILLE, KY., *Sept. 4th*, 1886.

W. H. Newman, Esq., Secretary of The Ohio Valley Telephone Company, Louisville, Ky.

DEAR SIR: I have the pleasure to acknowledge receipt of your letter of the 3rd inst., officially notifying me of the acceptance on the part of The Ohio Valley Telephone Company of an ordinance passed by the General Council of this City, entitled: 'An ordinance confirming and ratifying Section Five of an act passed by the General Assembly of the Commonwealth of Kentucky, and approved on the 3rd day of April, 1886, and entitled, 'An act to incorporate the Ohio Valley Telephone Company;' and granting to the said The Ohio Valley Telephone Company the right to construct, equip, operate and maintain telephone systems and exchanges and to erect poles and string wires thereon; to construct, operate and maintain conduits and manholes; to lay pipes, cables, conductors and wires, and to operate its telephone lines over, along or under any highway, street or alley in the city of Louisville.'

Approved August 17th, 1886.

Also to acknowledge the receipt of a bond for Fifty Thousand dollars in favor of the City of Louisville with your company as principal and J. B. Speed and James Clark, as sureties, in compliance with Section Seventh of said ordinance, and to notify you that the said notification of acceptance and bond will be referred to the General Council of this city for approval.

Respectfully,

P. B. REED, *Mayor.*

From that time continuously to January 27, 1900, the said The Ohio Valley Telephone Company operated a telephone exchange in the City of Louisville, and at all times thereafter the city of Louisville and its officials recognized The Ohio Valley Telephone Company as legally and lawfully occupying the streets, alleys and public places of said city of Louisville, with its poles, wires, cables, conduits, and other apparatus and structures, under and pursuant to its said charter hereinabove set out, and said ordinance and official acceptance and ratification thereof; and upon the consolida-

11 tion of The Ohio Valley Telephone Company and the Cumberland Telephone & Telegraph Company, on January 27, 1900, the consolidated company, under the name of the "Cumberland Telephone & Telegraph Company," has continuously to the present time, and is now occupying the streets, alleys and public places of the city of Louisville with its poles, wires, cables, conduits, and other apparatus and structures, and has continuously to the present time, and is now engaged in operating a telephone exchange or plant under the name of the Cumberland Telephone & Telegraph Company, and the city of Louisville has officially and otherwise at all times, until January, 1909, recognized said company as lawfully

and legally occupying the streets, alleys and public places with its structures and operating a telephone plant in said city.

On April 7, 1902, the city of Louisville, through its General Council, adopted an ordinance entitled, "An ordinance requiring the Cumberland Telephone & Telegraph Company to execute bond as required by section seven of the ordinance relating to the rights and duties of The Ohio Valley Telephone Company, its successors and assigns, approved August 17, 1886,"—and in accordance with said ordinance the Cumberland Telephone & Telegraph Company, your orator herein, executed a bond, with the American Bonding & Trust Company as its surety in the penal sum of fifty thousand dollars, payable to the city of Louisville, which bond was in the words and figures as follows, to-wit:

"Bond of the Cumberland Telephone and Telegraph Company, Successor of the Ohio Valley Telephone Company.

"In pursuance of an ordinance of the City of Louisville, approved April 7th, 1902, entitled 'An ordinance requiring the Cumberland Telephone & Telegraph Company to execute bond as required by section seven of the ordinance relating to the rights and duties of the Ohio Valley Telephone Company, its successors and assigns, approved August 17th, 1886.'

"We, the undersigned, Cumberland Telephone & Telegraph Company, a corporation organized and existing under the laws of the State of Kentucky, successor of the Ohio Valley Telephone Company, as principal, and the American Bonding and Trust
12 Company, of Baltimore City, a corporation organized and existing under the laws of the State of Maryland, and authorized to do business in the State of Kentucky, as surety, do hereby bind and obligate ourselves, our successors and assigns, in the sum of fifty thousand dollars ($50,000.00) to and with the city of Louisville, State of Kentucky, that the said Cumberland Telephone & Telegraph Company, its successors and assigns, shall hold the said city of Louisville harmless and free from all damage which may be caused by the opening of any street, avenue, alley or sidewalk for the purpose as provided in said ordinance of August 17th, 1886.

"It is understood and agreed, however, that this bond is executed to cover a term of five (5) years only, but is renewable at the option of the surety herein named.

"In witness whereof, we have herewith affixed our signatures under our respective corporate seals, this first day of May, 1902.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY,
By JAMES E. CALDWELL, *President.*

Attest:
[SEAL.] LELAND HUME, *Secretary.*

THE AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY,
By ERNEST HOEN, Jr., *2nd Vice President.*

Attest:
[SEAL.] EDWIN W. POE,
Assistant Secretary.

And thereafter, on June 7, 1902, the General Council of the city of Louisville passed a resolution in the following words and figures, to-wit:

Resolved by the General Council of the City of Louisville: That the foregoing bond of the Cumberland Telephone & Telegraph Company, successor of the Ohio Valley Telephone Company, principal, and the American Bonding and Trust Company, of Baltimore City, as surety, be, and the same is, hereby adopted and approved, and the said Ohio Valley Telephone Company, together with its sureties, J. B. Speed and James Clark, are hereby released from all liability under their bond to the City of Louisville, dated August 28th, 1886, and approved September 9th, 1886.

CHAS. C. MARTIN, *C. B. C.*
D. W. PARKHILL, *C. B. A.*
F. J. HUMMEL, *P. B. C.*
PAUL B. BARTH, *P. B. A. P. T.*

Approved June 7, 1902.

CHARLES F. GRAINGER, *Mayor.*

And from time to time since June 7, 1902, your orator, the Cumberland Telephone & Telegraph Company, has renewed said bond in favor of the city of Louisville, as often as requested so to do
13 by the proper authorities of said city.

III.

On January 22, 1909, the General Council of the city of Louisville, adopted an ordinance, which, on January 23rd, was adopted by the Board of Councilmen, and on the same day approved by the Mayor of the city of Louisville, in the following language, to-wit:

"An ordinance repealing an ordinance entitled 'An ordinance confirming and ratifying section 5 of an act passed by the General Assembly of the Commonwealth of Kentucky, and approved on the 3rd day of April, 1886, and entitled, 'An Act to incorporate The Ohio Valley Telephone Company,' and granting to the said The Ohio Valley Telephone Company the right to construct, equip and operate and maintain telephone systems and exchanges, and to erect poles and string wires thereon; to construct, operate and maintain conduits and manholes; to lay pipes, cables, conductors and wires, and to operate its telephone lines over, along or under any highway, street or alley in the city of Louisville,' approved August 17, 1886.

"Be it ordained by the General Council of the City of Louisville:

"SECTION 1. That an ordinance entitled 'An ordinance confirming and ratifying section 5 of an act passed by the General Assembly of the Commonwealth of Kentucky, and approved on the 3rd day of April, 1886, and entitled 'An Act to incorporate The Ohio Valley Telephone Company, and granting to the said The Ohio Valley Telephone Company the right to construct, equip and operate and

maintain telephone systems and exchanges, and to erect poles and string wires thereon; to construct, operate and maintain conduits and manholes; to lay pipes, cables, conductors and wires, and to operate its telephone lines over, along or under any highway, street or alley in the city of Louisville,' approved August 17, 1886, be, and the same is, hereby repealed.

"SEC. 2. This ordinance shall take effect from and after its passage.

(Passed by the General Council January 22, 1909.
Passed by the Board of Councilmen January 23, 1909.
Approved by the Mayor on January 23, 1909.)"

And said city authorities and the defendant, the City of Louisville, are now insisting that by virtue of said ordinance last above mentioned, that your orator is without right to occupy the streets, alleys and public places in said City of Louisville with its poles, wires, conduits and other structures, and is unlawfully and illegally
14 conducting a telephone business and operating an exchange in said city. Your orator charges that said ordinance was passed without any notice whatever to your orator of the intention of the City of Louisville to adopt the same, and it was adopted without any just cause, or without assigning any just cause therefor to your orator or any one else; and said city is threatening to, and will, unless restrained by this Honorable Court, interfere with your orator's right to conduct a telephone business in said city, and will, unless restrained by this Honorable Court, seek to deprive your orator of its property in said City of Louisville, and its right to occupy the streets, alleys and public places of said city with its poles, wires, conduits and other structures; and your orator charges that said ordinance seeks to impair, and unless its enforcement is restrained, will impair the obligation of your orator's contract with the City of Louisville, in violation of Section 10 of Article 2 of the Constitution of the United States, which provides:

"No State shall enter into any treaty, alliance or confederacy; grant letters of marque or reprisal; coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

And will also deprive your orator of its property without due process of law, and deny to it the equal protection of the laws, in violation of the fourteenth amendment to the Constitution of the United States, which provides:

"Nor shall any Sate deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

IV.

Your orator further states that it is engaged in the telephone and telegraph business in a territory beginning in Southern Indiana and

Southern Illinois and extending thence southwardly through
15 the States of Kentucky, Tennessee, Mississippi and Louisiana, to the Gulf of Mexico; that on January 1, 1909, it owned and operated its telephone exchanges connected together with 95,164 miles of telephone toll lines; that its gross revenue for the year 1908 was $6,141,817.95, and of that amount it collected in Louisville, both for exchange and long distance service, the sum of $370,373.71. That its capital stock outstanding was on January 1, 1909, and is now, $19,680,150.00; that its bonded debt was then, and is now, $1,000,000.00; that its floating indebtedness was $2,553,264.00; that each dollar of its capital stock and each dollar of its bonded debt and floating indebtedness represents actual cash investment, and no part of its securities were issued at less than par value, and that its securities are absolutely and entirely free from any fictitious over-valuation or over-capitalization; that its securities outstanding represent an actual investment in money, and whatever franchises, rights of way, easements, good will, or other intangible value it has, is not represented in or by any part of its outstanding capital stock and bonded debt, but the same represents actual money invested in constructing and developing its various plants and lines.

Its exchanges are constructed by erecting at a central point in each city a building in which is located a switchboard, and from this board lines of small wire are erected upon poles or in conduits to the business houses or residences of each subscriber, and there connected with the telephone instrument. In this way, each subscriber can signal an operator at the central office and receive connection with any other subscriber. For this character of service a monthly rental is paid, which entitles the subscriber to receive unlimited service from the local exchange.

In the same manner the toll lines are brought into the city attached to the same poles, and connected to the switchboard, and each subscriber to the local exchange is entitled to signal the operator at
the exchange and receive connection over the toll lines of
16 your orator to all other cities and places where its exchanges or lines are located, and there be connected with any other of your orator's subscribers, who, on January 1, 1909, numbered 187,259. The charge for this character of service is, generally speaking, one half of one cent per air mile between the two cities thus connected, for each three minutes of conversation, and one third the initial charge for each additional minute of conversation. This is the exact rate charged non-subscribers who use the toll lines from the central office.

In the City of Louisville your orator has erected four exchanges, called "Main," "West," "East" and "South." These exchanges are so arranged that any two subscribers in the City of Louisville can be at once put into communication. In addition to the four exchanges in the City of Louisville, all of which are considered and treated as one exchange, for its patrons in said city, your orator has erected and operates in Jefferson County, Kentucky, exchanges at Anchorage, Harrod's Creek, Jeffersontown, Pleasure Ridge Park and St. Matthews. It also has erected, owns and operates exchanges

in Jeffersonville and New Albany, Indiana. The telephone patrons of the City of Louisville have access to, without additional charge or compensation, and the right to communicate and hold conversation with any of your orator's subscribers in Jeffersonville, numbering 1,288, and New Albany, numbering 727, and with those to the other exchanges in Jefferson County, Kentucky, paying for and entitled to receive Louisville service as follows:

Anchorage, 42; Harrod's Creek, 42; Jeffersontown, 36; Pleasant Ridge Park, 41, and St. Matthews, 63. Your orator further states that on January 1, 1909, the number of its subscribers to the Louisville Exchange was 9,657. Any one of these subscribers had the right to unlimited connection with any one or more of the other subscribers, upon the payment of the monthly charge; and
17 in addition thereto, had access to and a free communication with said subscribers to the various smaller exchanges in Jefferson County, and to all of your orator's subscribers in Jeffersonville and New Albany, Indiana, as hereinabove set out.

Its rates for service in the City of Louisville, as hereinabove explained, were, on January 1, 1909, and are now the following:

Business.

Within the two mile radius of nearest exchange.

Private metallic	$8.00	per	month
2-station metallic	5.00	"	"
Public pay station (Coin Device) Private	4.00	"	"
"Agent's service free out and in, and divide with any cash deposits for local city calls.)			
City and County telephone within city limits	4.00	"	"

Residence.

Private, within city limits	4.00	"	"
Private, beyond city limits and within three miles of nearest exchange	4.50	"	"
2-station, within city limits	3.00	"	"
2-station, beyond city limits and within three miles of nearest exchange	3.50	"	"
Extension set	1.25	"	"

Country Rates.

Private Metallic.

Business or residence—add to the exchange radial rate 50¢ per month, per mile, or fraction thereof, if subscribers are located beyond the echange radius. Exchange radius for business is two miles—for residence three miles—from nearest Louisville exchange.

4-Party Metallic.

Business or residennce—add to the exchange radical rate 25¢ per month, per mile, or fraction thereof, if the subscriber is located beyond the exchange radius. For exchange radius, see above.

Extension set ..... $1.25 per month

A discount of 50 cents per month is allowed on all rates above enumerated if rental is paid quarterly in advance.

Private line instruments $12.00 per year, per instrument, to which is added mileage charge of $30.00 per mile, per annum.

Extension bells (business or residence)	Net.....	$0.15	per	month
Joint user (business).....	"	1.00	"	"
List (business)	"	.25	"	"
List (residence)	"	.25	"	"
Loud ringing extension gongs.....	"	.25	"	"
Buzzers and Push Buttons.....	"	.25	"	"

18 These rates were in effect during the whole of 1908, and on January 1, 1909, your orator had 758 patrons paying the city of Louisville the $8.00 business rate, and 875 paying the $4.00 residence rate. All the remainder of your orator's patrons in the City of Louisville had some other kinds of service at the various rates hereinabove set out for business and residence purposes.

The gross income derived by your orator from its Louisville exchange for the year 1907 was $366,928.77, this being the gross amount received by your orator for telephone rentals, tolls collected at Louisville for points over your orator's entire system embracing a territory four hundred miles wide by a thousand miles long,—messenger fees, directory advertisements and miscellaneous revenue; and, in the same manner, your orator's gross revenue at its Louisville exchange for the year 1908 was $370,373.71 and of this amount only $311,117.01 was received from telephone rentals, the remainder being received from directory advertisements, messenger fees, miscellaneous revenue and long distance tolls from all points throughout your orator's entire territory.

Your orator further states that it has expended in building said exchange in the city of Louisville, up to January 1, 1909, the sum of $1,700,045.26; that said property has been constructed economically, prudently, honestly and skillfully; that said property has been built with the best business judgment with respect to the present and future interests of the business in said city, and that the same could not have been constructed and cannot be reproduced at the present time for a less amount of money.

Your orator further states that during the year 1908, its total expenses of the Louisville Exchange were as follows:

General:		
Proportion of Gen'l Office Expense	$11,282.22	
Legal	3,268.90	
Uncollectible accounts	3,814.64	
Taxes	19,563.85	
		37,929.61
Operating:		
Salaries and wages	58,002.27	
Rent, light and heat	13,268.56	
Postage, printing & stationery	3,352.25	
Directory	4,439.44	
Advertising and canvassing	5,631.21	
Incidental	4,126.04	
		88,819.76
19 Maintenance:		
Salaries & Wages	$51,498.11	
Rent, light and heat	2,967.27	
Material	11,200.14	
Travelling	6,513.51	
Incidental	7,369.56	
Conduit, pole and roof rent	630.18	
Insurance	3,583.11	
Damage and compensation	1,945.81	
		$85,707.69
Instrument rental		14,270.88
Total expense		$226,727.94

And your orator charges that over and above the ordinary and necessary expenses of maintaining said exchange and structure, there is of necessity a depreciation or deterioration of said plant, which cannot be taken care of as it occurs, but must be provided for out of the receipts of the exchange, so as to provide a fund with which to take care of this decay and depreciation when the various pieces of property comprising the exchange can no longer be used and have to be replaced with raw material; that the switchboard, however carefully it may be maintained and operated will, in the process of time, be so worn and decayed as to necessitate its replacement with a new one. In like manner, the poles, wires, cables and all of the various and many items of property entering into a telephone exchange, must, from time to time, be replaced and renewed after they have served their usefulness; and this renewal is in addition to and beyond the mere current repairs required to maintain the plant in an operating condition. This depreciation must, of necessity, be provided for out of the receipts, year by year, and in order to do this properly your orator, of necessity, is required to take from its gross receipts each year seven and one half per cent of the actual cost of the plant, with which to provide a proper, reasonable and just depreciation fund, less whatever amount has been expended

during that particular year on re-constructing parts of the plant; so that, at the end of each year, before any part of its receipts can be considered profit, there just be deducted seven and one-half per cent of the actual cost of the plant, less whatever amount has been expended during that year on re-constructing the plant. For this reason, the annual amount set aside for depreciation varies,
20 year by year, according as a larger or less amount may have been expended in re-constructing parts of the plant during that year.

Your orator therefore charges that during the year 1908 its gross receipts of the Louisville exchange were $370,373.71; that the expense of operating and maintaining the exchange was $226,727.94. That in its gross receipts there is included $52,769.73 of long distance tolls which were collected in Louisville for the use of the toll lines radiating from Louisville to each of the 518 exchanges owned and operated by your orator, but no part of the cost of said toll lines is included in the capitalization or cost of its Louisville plant; and your orator charges that only fifteen per cent of the long distance tolls should be credited to the Louisville exchange, that being a just, reasonable and fair percentage to allow the exchange for handling long distance tolls in said city; but, if the entire tolls are to be included in the receipts of the exchange, then, of necessity, a proper part of the cost of such toll lines, and the expense of maintaining the same should be added to the value of the plant and the cost of maintaining the same.

V.

On January 1, 1907, your orator adopted a schedule of charges for telephone services in the city of Louisville, herein before set out, which was somewhat higher, in some respects, than the rates theretofore in force. This action of your orator resulted in a protest from the Board of Trade of the City of Louisville against the charges that your orator was proposing to make, and resolutions were adopted, copies of which were furnished your orator by direction of the Board of Directors of the Board of Trade. A reply thereto was made by your orator's president, under date of March 6, 1907, as follows:

"Mr. James F. Buckner, Jr., Superintendent Louisville Board of Trade, Louisville, Kentucky.

"My dear Sir: Your letter of February 27th, addressed to our Superintendent, Mr. George G. Hall, of your city, together with a copy of the resolutions adopted by your Board of Directors, has been referred to this office, and in reply thereto, I have to say, that on a former occasion we endeavored to give your body a full,
21 complete and truthful statements of the conditions confronting us, and connected with our business in your city.

I do not understand from your resolutions that you dispute the facts we presented, or challenge the correctness of our conclusion, but, that you conclude that in view of the fact that another telephone company is operating in your city 'furnishing,' as you say, 'nearly a similar service to about the same number of patrons at from one-

half to two-thirds of the rates charged by us'; that you find similar conditions existing in other cities, and therefore you conclude that we are not warranted in making the charge for our service that we are, but that, on the contrary, the conditions set forth by you should justify us in doing likewise.

As business men I am quite sure that you do not follow this course of reasoning or procedure in your own affairs; you do not price your best and most valuable wares in competition with cheap and inferior wares, nor do you indeed sell your goods at less than cost simply because some rival sees fit to do so, but the whole history of commerce is to the effect that prudent people have always permitted their rivals, who are so foolish as to sell goods *blow* cost, to do so until they are bankrupted and exhausted, and this is precisely our attitude in the matter.

This company was not organized for the purpose of exploiting a stock and bond scheme, but for the sole purpose of meeting the fair, legitimate and proper demands for a telephone service, and paying a fair, proper and legitimate return upon the actual money employed in giving the service. There is not one dollar of inflation or water in the securities of this company, and it is only seeking, and is actually only paying a decent and reasonable return upon the actual cash money that has been invested in the property, wherewith to serve you. This is all that it expects to derive, and this it certainly feels that it is justly entitled to and that it has a perfect — to claim and to strive to get.

We offer you every facility and opportunity for certifying the statements which we made to you, and we respectfully submit that unless it is demonstrated that our business is conducted in an extravagant, reckless and improper manner that we should not be asked to make any less price, but, on the contrary, if it is demonstrated that it is run with prudence and economy and no inflation or return on any capital except that which is absolutely necessary to carry on the business, then there should be no criticism whatever, but, on the contrary, we should be encouraged and our action approved.

"Permit me to state deliberately and emphatically that, no matter what may be said, it is a fact that this company is conducting its entire business along the closest and most economical lines, is capitalized on the very lowest possible basis, and is not guilty of one single, solitary thing that is being promis-nously and indiscriminately charged so freely about corporations generally with regard to stock and bond jobbing, watering, inflation, etc., and it invites a most searching inquiry into and verification of these facts.

"I beg to assure you that we regret exceedingly to find ourselves in the least at variance with your Board. We have made a sincere and earnest effort to develop the telephone business in your entire section of the country, to afford you facilities which should enable you to conduct your business with greater ease and economy;
22 we are still trying striving along these lines, and we confidently hoped and expected that by so doing we would challenge your approbation and merit your confidence and esteem. We

know full well that if you would take the trouble to acquaint yourselves fully and completely with all the facts connected with this business that you would vindicate us promptly and completely.

Yours very truly,

JAMES E. CALDWELL,
President."

Following this correspondence, a personal meeting was held between the Board of Trade and the representative of your orator, which resulted in a contract being entered into on the 18th day of April, 1907, as follows:

"Whereas, The Board of Trade of the City of Louisville, Kentucky, through its Board of Directors, has taken up the question of telephone rates to be charged by the Cumberland Telephone & Telegraph Company in the city of Louisville; and

Whereas, It is the desire of both the Board of Trade and the Telephone Company that the rates charged shall be fair and reasonable, and shall be adjusted in accordance with proper business principles;

"Therefore, It is mutually agreed as follows:

"First. The Board of Trade, through its Board of Directors, has appointed a committee of citizens, consisting of George Gaulbert, Attilla Cox, William R. Belknap, Marion E. Taylor and Logan C. Murray, who, acting as a committee representing the Board of Trade of the city of Louisville, and the Cumberland Telephone & Telegraph Company, shall investigate fully the facts and determine what shall be reasonable and fair rates to be charged telephone users in the city of Louisville by the Cumberland Telephone & Telegraph Company, for a period of three years, beginning the first day of July, 1907; and at the end of this period, at the instance of either the Board of Trade of the City of Louisville, or the Cumberland Telephone & Telegraph Company, another committee of five shall be selected in like manner, who shall determine the rates to be charged for another three years, under like conditions and terms as specified in this contract.

"Second. The Cumberland Telephone & Telegraph Company, hereby binds itself to abide by the report of said committee and agrees to put into effect on the first day of July whatever rates said committee shall determine to be fair and equitable, both to the company and its patrons; and maintain the same for a period of three years; and the Cumberland Telephone & Telegraph Company further agrees and binds itself in the event the rates determined by said committee shall be less than the rates now charged, to refund to its patrons all amounts it may have collected between January 1st and July 1st, 1907, from its patrons in excess of the rates in force on March 31, 1907. And the Directors of the Board of Trade hereby obligate themselves to abide by and recommend whatever rates said committee shall determine to be fair and equitable and agree to use their influence to protect said rates in all reasonable and proper ways during said period of three years.

23 "Third. The Cumberland Telephone & Telegraph Company further agrees that it will afford to said committee all the assistance desired by it in determining what rates shall be charged; and to this end, agrees that all of its books, accounts, vouchers, receipts and other papers shall be freely exhibited to said committee or its representatives, and agrees that no fact or paper of any kind or description in its possession, or under its control, shall be withheld from said committee; but on the contrary, shall be exhibited to said committee or its representatives at all times during the investigation to be made by said committee.

"And it is further agreed that all reasonable and proper opportunity shall be afforded the committee to make its investigation, and the company to submit facts and arguments and full opportunity shall be given to both parties to fully investigate any fact or circumstance that may be developed and which either party may wish to verify or explain,—it being the purpose and intention of this agreement to avoid all technicalities and to ascertain the real truth in justice both to the company and its patrons.

"In witness whereof, this agreement has been signed on this, the 18th day of April, 1907, by the president of the Board of Trade of the City of Louisville, Kentucky, for the directors of said Board of Trade; and by the president of the Cumberland Telephone & Telegraph Company, for and on its behalf.

THE BOARD OF TRADE OF LOUISVILLE, KENTUCKY,
By W. W. HITE, *President.*
CUMBERLAND TELEPHONE & TELEGRAPH COMPANY,
By JAMES E. CALDWELL, *President.*"

Thereafter, on August 16, 1907, the committee appointed by the Directors of the Louisville Board of Trade, made a report as follows:

"LOUISVILLE, KY., *Aug. 16th*, 1907.

To the President and Directors, Louisville Board of Trade.

GENTLEMEN: The undersigned, a special committee appointed by the Board of Trade and accepted by the Cumberland Telephone & Telegraph Company as a committee to investigate as to what constitutes a fair and reasonable rate for the Cumberland Telephone & Telegraph Company to charge for its service in the city of Louisville, now beg to report:

1st. After considering the subject carefully and ascertaining all the facts bearing on it which could be ascertained from trustworthy sources, notably by sixteen meetings held at Board of Trade Rooms, beginning April 3rd, by frequent personal conferences with the officers and more expert employees of the Cumberland Telephone & Telegraph Company, and by a thorough examination of the books and accounts of said Cumberland Telephone & Telegraph Company, at the hands of an expert accountant, selected by the committee, viz.: W. J. Munster of Cincinnati, we find that the average net

yield to said Cumberland Telephone & Telegraph Company from its investment on the city of Louisville, since it acquired ownership of the Louisville property seven years ago, has been but 4¼ per cent per annum.

24 2nd. That the rates for telephone service in the City of Louisville proposed and put into effect by said Cumberland Telephone & Telegraph Company March 1, 1907, are proper and reasonable, because they will not yield to said Cumberland Telephone & Telegraph Company more than a fair and equitable earning on its investments in the city of Louisville.

3rd. The committee further declares that the rate or rates for the various classes of telephone service in the city of Louisville put into effect by said Cumberland Telephone & Telegraph Company March 1, 1907, should be maintained as a rate for such service the three years beginning July 1, 1907.

"This report is predicated on the promise and agreement of the company to give the best possible service to its subscribers and to furnish them at all times with the most approved devices and appliances for the transmission of messages.

Respectfully submitted,

MARION E. TAYLOR, *Chairman.*
WILLIAM R. BELKNAP.
ATTILLA COX.
GEORGE GAULBERT.
LOGAN C. MURRAY."

And thereafter, in November, 1908, another committee was appointed by the Board of Directors of the Board of Trade of Louisville to ascertain whether or not your orator was in fact, charging the rates provided in said schedule, hereinabove set out, and that committee made a report as follows:

"LOUISVILLE, KY., *Dec.* 16, 1908.

President and Directors Louisville Board of Trade.

GENTLEMEN: The special committee provided for by resolution of the Board of Directors, August 26, 1908, to make investigation as to the complaint of Mr. C. M. Bullitt that the Cumberland Telephone & Telegraph Company was unfairly raising its rates for services in this city, and was discriminating in rates amongst its patrons, etc., have to report that they have carefully made inquiry as to the facts and have failed to find a single instance in which said telephone company has charged a rate for any of the various classes of telephone service other than was determined by the old committee of the Board of Trade, (which agreement was to determine the rate for a term of three years) in its report submitted to the Board of Directors of the Board of Trade September 4, 1907, nor have we found any discrimination as between patrons except that the increase in rates allowed by the old committee was not made by the telephone company to apply to all patrons at the same time, for the reason, as stated by the company, that there were outstand-

ing contracts between the company and its patrons which expired at different times, and for the further reason that it was not feasible for the company to at once so alter its rules as to make the new rates apply to all patrons at the same date.

In regard to whether the rates determined upon by the old committee, under the agreement between the Board of Directors and the Cumberland Telephone & Telegraph Company in April, 1907, are fair and reasonable, your committee have only to say that the old committee appears to have made a most thorough investigation of the whole subject, their inquiry extending through five months, during which time they held sixteen meetings; had before them for interrogation officers and employés of the Telephone Company, and others, and the assistance of a high grade, expert accountant employed by the committee, and we have nothing before us on which we can base an opinion that the old committee erred in its conclusion.

Your committee desires to call your attention to the fact that under the agreement with the Telephone Company, the rates fixed by the old committee were to stand for three years from July 1, 1907, and that about one-half of that time has now expired. If at the expiration of the full period of three years it is found that the profits of the Telephone Company, after careful and economical conducting of its business, have been greater than should be allowed, the rates and charges for the future can be intelligently adjusted.

We ask that this report be received and filed and that the committee be discharged.

Respectfully submitted,

MARION E. TAYLOR, *Chairman.*
WILLIAM R. BELKNAP.
LOGAN C. MURRAY.
HARDY BURTON.
CHARLES EARL CURRIE."

On December 30, 1908, the following resolution was adopted by the Board of Trade:

"That the Board of Trade disapprove the action of the Board of Directors in respect to the matter of the rates of the Cumberland Telephone & Telegraph Company, and request the Board of Directors so to advise the Cumberland Telephone & Telegraph Company.

A copy of this resolution was furnished the Mayor of the City of Louisville, and thereupon said agreement with the Louisville Board of Trade was rescinded.

VI.

Your orator further charges that there is now and has been in the City of Louisville since about 1901 another telephone company, operating a telephone exchange in said city; that its maximum rates are for business purposes $4.00, and for residence purposes $2.50 per month; that it has a large number of subscribers, and is actively seeking relief from a provision in its contract with the City of Louisville prohibiting it from increasing its rates without permis-

sion of the city authorities. Its officers have publicly stated that its rates are ruinously low and that it is unable to care for its plant and operate the same upon the rates fixed in its contract with the city. The question of telephone rates has, in this way, been brought to the attention of the public and has created and occasioned a great deal of discussion, both among the citizens and the various
26 business organizations, and the newspapers published in the city of Louisville; and your orator verily believes and charges that many statements are made with respect to the telephone business in Louisville which are wholly untrue and are entirely misleading, but which have resulted in inflaming the public mind resulting in the action of the city officials in undertaking to ruthlessly, wantonly and without any just cause destroy your orator's right to conduct a telephone business in said city and to cause it to lose its large investment in said city.

Your orator further charges that the telephone business is inherently and essentially different from all other known kinds of business. The plant of necessity can never in the nature of things be a finished or completed property. Each new customer requires separate and distinct apparatus, separate and distinct wires to be run from the nearest switchboard to his office or residence and there connected to a separate and distinct telephone instrument. Separate and distinct wiring and a place on the switchboard is necessary for his accommodation and the switchboard must then be connected in such a way that any of the existing subscribers may at once be put into connection with his telephone. This necessitates a continued and constant expenditure of new capital, and as the number of patrons increase, the capital invested must correspondingly increase; nor can the wires formerly serving one patron often be used to serve new patrons, for the reason that the loss of a patron is usually at a different place in the city from the residence or office of the new patron, so that it results in the nature of the business that many wires after being used by patrons but a short time, when they discontinue their patronage cannot be used by new patrons, but new wires must be strung to serve such new patrons.

So long as your orator continues to serve its patrons in the city of Louisville, it must of necessity continue to invest new capital day by day, month by month, and year by year, and must of necessity continue to string new wires, add to its switchboard capacity, and connect up these new subscribers with its old subscribers.

And your orator charges that it has and is now conducting
27 the telephone business in the city of Louisville as prudently, economically and honestly as the ability of its management will permit, and the rates charged by your orator in Louisville are less than the *the* value of the service rendered, and do not afford your orator a reasonable or fair return upon the actual investment, or the actual value of its plant used in giving its patrons service; and of necessity your orator is compelled to conduct its business in Louisville in such a way as will prevent the expense of giving the service necessitating too high a rate, even though it does not yield a fair return upon the investment, for the reason that when the rates

are beyond what your orator's patrons conceive to be a reasonable price, they decline to take the service; and therefore the paramount duty upon the management of your orator's property is to practice every possible economy and make the rates to its subscribers as low as it is possible, and in this way alone can the telephone be continued what it is now commonly called, "a necessity," both to business and residence.

Your orator charges that its affairs and business has from the beginning been conducted honestly, prudently, skillfully and economically; that from time to time serious controversies have arisen with respect to its rates and charges; that it, at all times, and now, not only is willing to but invites a most searching investigation of its affairs and its business, of its capitalization, of its management and of its charges to its patrons, it believes and charges that its business in Louisville has been mis-represented and is wholly misunderstood, and that a full and fair investigation is all that is needed to satisfy its patrons as to the reasonableness and justness of its rates and charges, and that its rates and charges cannot be reduced without ruin to its stockholders and disaster to its patrons, who have come to rely upon your orator's service, and especially its patrons in Louisville, who not only use but require your orator's facilities in conducting their business, since your orator's toll lines and exchanges cover practically the entire trade area of the
27½ city of Louisville, and this development has been made by your orator from time to time with the greatest energy, zeal and ability at the request of its patrons in Louisville who realized the enormous value that would result to them from this development, and your orator made its investment in the full belief that its efforts would be appreciated and would receive the commendation of the business interests of the city of Louisville.

Your orator charges that the amount in dispute far exceeds the sum or value of five thousand dollars, exclusive of interest and costs, and that any interference with your orator's property in the city of Louisville would cause your orator irreparable injury and damage, and that the city authorities of the city of Louisville will, unless restrained, injure, destroy and otherwise interfere with and irreparably damage your orator's property and business in said city.

VII.

Forasmuch as your orator can have no adequate relief except in this court, and to the end therefore that the defendant if it can, show why your orator should not have the relief hereby prayed for, and make answer to the matters hereinbefore stated and charged, your orator prays that your honors grant unto it a writ of subpœna of the United States of America directed to said city of Louisville, Kentucky commanding it on a certain day to appear and answer unto this bill of complaint, and to abide and perform such order and decrees in the premises as to the court shall seem proper and required by the principles of equity and good conscience.

And your orator further prays that a provisional or preliminary injunction issue, restraining the said defendants, its officers, agents

and employés, and all other persons, from any interference with the property of your orator, and any interference with its business in the city of Louisville Kentucky; and that it be restrained and enjoined from taking any action or interfering in any manner with the right of your orator to erect and maintain its poles, wires, conduits, cables and other apparatus in the streets, alleys and public places in the city of Louisville, Kentucky, and from in any manner interfering with or disturbing its vested rights, or from in
28-74 any manner interfering with or seeking to impair the obligation of said contract; and from in any way interfering with or disturbing its business and right to conduct a telephone business in the city of Louisville, Kentucky.

And your orator further prays that upon a final hearing, its right to conduct a telephone business in the City of Louisville, Kentucky, be declared and sustained; and that its rights secured under an act of the legislature of the Commonwealth of Kentucky, and ratified and approved by the city of Louisville, to erect and maintain its poles, wires, cables, conduits and other structures in the streets, alleys and public places of said city, be declared and adjudged a valid and subsisting contract, and that the provisional or preliminary injunction be made perpetual.

And your orator prays for such other, further and general relief as may to equity and good conscience belong.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY,
[L. S.] By JAMES E. CALDWELL, *President.*
FAIRLEIGH, STRAUS & FAIRLEIGH,
WM. L. GRANBERY, *Solicitors.*

UNITED STATES OF AMERICA,
Middle Division of the Middle District of
Tennessee, Davidson County:

Personally appeared before me, the undersigned, James E. Caldwell, who made oath in due form of law that he is the President of the above named complainant, the Cumberland Telephone & Telegraph Company, and that the matters and things stated in the foregoing bill are true, in substance and in fact, as he verily believes.

[L. S.] JAMES E. CALDWELL.

Sworn and subscribed before me this the 6th day of February, 1909.

GEO. R. KNOX, JR.,
Notary Public.

75 Upon which bill of complaint there issued the following subpœna in Chancery:

The President of the United States of America to the City of Louisville, Kentucky, Greeting:

You are hereby commanded to appear before our Circuit Court of the United States of America, for the Western District of Kentucky,

at the Federal Court Hall in the City of Louisville, on the first Monday in April next, to answer a bill in equity exhibited against *it* in our said Court by Cumberland Telephone & Telegraph Company, which you shall in no wise omit, under the penalty of the law.

Witness the Honorable Melville W. Fuller, Chief-Justice of the Supreme Court of the United States of America, and the seal of our said Circuit Court hereto affixed, at the Clerk's office of said court, in Louisville, this 8th day of March, A. D., 1909, and in the 133rd year of our Independence.

Attest:

A. G. RONALD,
C. C. C., W. K. D.,
By HENRY F. CASSIN,
His Deputy.

MEMORANDUM.—The defendant is to enter its appearance in the suit in the Clerk's Office on or before the 5th day of April next, the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

A. G. RONALD, *Clerk.*
By HENRY F. CASSIN,
His Deputy.

Upon which the Marshal made the following return:

"Received the within Spa. in Chancery at Louisville, Ky., March 8, 1909, and executed the same on the City of Louisville, March 10, 1909, by delivering a true copy hereof to James F. Grinstead, Mayor of said city. This March 10, 1909.

G. W. LONG, *U. S. Marshal.*
By W. HARRY AMOS, *D. M.*"

76 And at a term of our said court held for its March Term, 1909, continued and held, to-wit, on March 8th, 1909, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
THE CITY OF LOUISVILLE, KENTUCKY.

This day came the complainant, the Cumberland Telephone and Telegraph Company, and moved the Court to grant a restraining order against the defendant, the City of Louisville, conformable to the prayer of the bill; and now, upon the reading of the bill and the exhibits therewith filed, it is considered that cause exists for the granting of a restraining order. It is therefore ordered that the defendant, The City of Louisville, its officers, attorneys, agents and employés, and each of them, and all other persons, be, and they are hereby,

strictly enjoined and restrained from, in any manner, enforcing or undertaking to enforce against the complainant, the Cumberland Telephone & Telegraph Company, the provisions, or any provision, of an ordinance entitled "An Ordinance fixing the maximum rates to be charged for telephone service in the City of Louisville," passed by the Common Council of the defendant, The City of Louisville, and approved by the Mayor of said city on the 6th day of March, 1909, and from in any way, under color of said ordinance, or any provision thereof, interfering with the property of the said complainant, or with its rates or charges for telephone service in the City of Louisville, until the 29th day of March, 1909, until which time the complainant, the Cumberland Telephone & Telegraph Company, is given within
77 which to move the Court for a preliminary injunction pendente lite. This restraining order shall remain in force until said time, and until said motion for a preliminary injunction shall have been heard and disposed of, and until the further order of this Court.

Upon which restraining order the Marshal made the following return:

"Received the within Restraining Order and one copy at Louisville, Ky., March 11-1909, and executed same at Louisville, Ky., March 13-1909, on the City of Louisville by delivering a true copy hereof to James F. Grinstead, Mayor of the City of Louisville, Ky.

This March 13-1909.

G. W. LONG,
U. S. Marshal,
By W. L. HAZELIP, *D. M.*"

And on another day of said term of said court, continued and held, to-wit, on Monday, March 29th, 1909, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
THE CITY OF LOUISVILLE, KENTUCKY.

This day came the complainant, the Cumberland Telephone & Telegraph Company, by Wm. L. Granbery and Fairleigh, Straus & Fairleigh, its counsel. Came also the defendant, the City of Louisville, by Clayton B. Blakey and Huston Quin, its counsel.

The complainant, the Cumberland Telephone & Telegraph Company, moves the Court to grant a preliminary injunction pendente lite in accordance with the prayer of the bill.

Came again the defendant, the City of Louisville, by its said
78 counsel and filed its answer herein.

Came again the defendant by its said counsel and filed the affidavits of S. M. Wilhite, R. A. Batman, Charles Meriwether, Louis Summers, George T. Wood, Louis Seelbach, W. H. Crumb, H. N. Gifford, George S. Marshall, M. Victor, J. A. Hodges, Mrs. Sue M.

Davis, Mrs. R. L. Brucker, Mrs. M. Riley, Mrs. T. Murphy, Evan S. Rees, Miss A. Black, Miss Mida Staebler, Wm. Ruby, C. F. Wimberly, Jos. Piazza, H. Bachman, Mrs. Jno. Wilhelm, Jno. P. Morton & Co., Harbison & Gathright, Schoppenhorst Bros., International Hardware Co., American Tobacco Co., J. T. S. Brown & Sons, Sunnybrook Distillery, American Machine Co., W. J. Whitesides, Peaslee-Gaulbert Co., Brown, Forman Co., R. E. Wathen & Co., Laib Co., Louisville Paper Co., Bernheim Distilling Co., Schlitz Brewing Company, Bodley & Baskin, Leon Abraham, Christ Klipper, Max Schimpler, Ed. Linden, Jacob Hartshern, Fred Knauer, Simon N. Jones, Flack Bros., W. E. Winkler, Centennial Creamery, J. M. Schoenbaechler, Geo. Aufenkamp, John C. Fisel, G. Ernst, E. G. Randolph, Geo. C. Struber, Frank Zeigler, Jos. Lehman, J. M. Allen, T. Jones, H. Steummler, T. Story, Thos. Lanahan, F. W. Lyon, Dr. J. H. Heuser, Edw. H. Hackett, Jack Marx, Fishback Compressed Air Carpet Cleaning and Manufacturing Company, Val. Blatz Co., Russell & Co., Fernecliff Distilling Co., Jacob Isaacs, M. J. Doll, C. Troxler, Ky. Clothing Co., L. P. Hyman, Edw. H. Marcus, German Insurance Bank, Wm. Schuff & Co., L. H. Harping, Eclipse Vinegar Works, Geo. Schuster, Grab-Webb Co., Louvest Bros., White Mills Distilling Co., Stipulation of Complainant and 1 Exhibit to be read as an affidavit for defendant.

Came again the defendant, the City of Louisville, and moves the Court to modify the restraining order granted herein and to eliminate from said restraining order all that portion of same which restrains any person or persons other than the City of Louisville and its officers from enforcing, or attempting to enforce, against the complainant the provisions of the rate ordinance referred to in Paragraph four of the bill.

Came again the complainant, the Cumberland Telephone & Telegraph Company, by its said counsel and filed its Replication to the answer of the defendant herein.

79 The Answer above referred to is as follows:

UNITED STATES OF AMERICA:

In the United States Circuit Court for the Western District of Kentucky, at Louisville.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
THE CITY OF LOUISVILLE, KENTUCKY, Defendant.

Answer of the City of Louisville to the Bill of Complaint.

I.

The defendant, the City of Louisville, reserving all manner of exceptions that may be had to the uncertainties and imperfections of the bill comes and answers thereto, or to so much thereof as it is advised is material to be answered, and says that it is true, as stated in Paragraph 1 of said Bill of Complaint, that the Cumberland Tele-

phone & Telegraph Company was incorporated under the laws of the Commonwealth of Kentucky, as stated in the bill, and that the amendments to said charter were duly and regularly made as charged in said bill:

Defendant also admits that the Great Southern Telephone & Telegraph Company was incorporated under the laws of the Commonwealth of Kentucky, as charged in the bill, and that said complainant company and said Great Southern Telephone & Telegraph Company were thereafter consolidated, as charged in the bill.

80 Defendant admits that the Ohio Valley Telephone Company was created by an Act of the General Assembly of the Commonwealth of Kentucky, as charged in the bill, and that said company was thereafter consolidated with the complainant company, as charged in the bill.

Defendant admits that an ordinance was approved by the General Council of the City of Louisville on August 17, 1886, as charged in the Bill of Complaint, and that said ordinance is in substance the same as that set out in the Bill of Complaint.

Defendant admits that the Directors of the Ohio Valley Telephone Company accepted said ordinance and gave the bond referred to in the bill, and that said The Ohio Valley Telephone Company furnished the Mayor of the City of Louisville an official copy of the proceedings of said meeting, as charged in the bill.

Defendant admits that Hon. P. B. Reed, Mayor of the City of Louisville, addressed the letter referred to in Paragraph 2 of the bill, dated September 4, 1886, to W. H. Newman, Secretary of The Ohio Valley Telephone Company, as charged in said bill

Defendant admits that continuously from said time to the 27th of January, 1900, said The Ohio Valley Telephone Company operated a telephone exchange in the City of Louisville, and that said The Ohio Valley Telephone Company was recognized by the City of Louisville as legally occupying the streets, alleys and public places of the City of Louisville with its poles, wires, cables and other apparatus, as charged in the bill, and admits that from the consolidation of said The Ohio Valley Telephone Company with complainant company on the 27th day of January, 1900, the said complainant company has been continuously, and is now, occupying the streets, alleys and public places of the City of Louisville with its wires, cables, conduits and other apparatus and structures, and has continuously, and is now, engaged in operating a telephone exchange or plant in the City of Louisville.

Defendant admits that it has at all times until January, 1909, recognized the said company as legally and lawfully occupying the streets and other public places with its structures and operating its plant in the City of Louisville.

81 Defendant admits that on April 7, 1902, the General Council adopted an ordinance requiring the complainant company to execute bond as set out in the bill, and admits that said complainant company did execute bond, as charged in the bill; admits that on June 7, 1902, the General Council passed a resolution approving said bond, as charged in the bill.

Defendant says it has no knowledge or belief as to whether the complainant has renewed said bond, or any bond, in favor of the City of Louisville since April 7, 1902, as often as requested by the proper authorities of the City of Louisville, but demands strict proof of the truth of said charge.

II.

For further answer, defendant says that it is true, as stated in Paragraph 3 of the Bill of Complaint, that the General Council of the City of Louisville did, in the month of January, 1909, adopt an ordinance which was, on January 23, 1909, approved by the Mayor of the City of Louisville, which ordinance repealed an ordinance of the General Council of the City of Louisville approved on the 17th day of August, 1886, as set out in the Bill of Complaint.

Defendant admits, and now insists and charges, that it is true that by virtue of said ordinance approved on January 23, 1909, complainant is without right to occupy the streets, alleys and public places of the city of Louisville with its poles, wires, conduits and other structures, and says that it is true, and charges, that said complainant is unlawfully and illegally conducting a telephone business and operating an exchange in the City of Louisville.

Defendant says that it is not true that said ordinance was passed without any notice to complainant of the intention of the City of Louisville to adopt same; says that it is not true that said ordinance was adopted without any just cause, or without assigning any just cause to the complainant.

82 Defendant denies that it seeks to deprive, or in any manner will deprive, the complainant of its property in the City of Louisville, and denies that said ordinance seeks, or that the defendant in any manner seeks, to impair, or in any manner will impair, the obligation of the complainant's contract with the City of Louisville, or any contract with the City of Louisville, in violation of Section 10 of Article 2 of the Constitution of the United States, or of any other provision of the Constitution of the United States. Defendant says it has no contract with complainant company.

Defendant denies that said ordinance, or any act on the part of the defendant, will deprive complainant of its property without due process of law, or that any such ordinance, or any act on the part of the defendant, will deny to complainant the equal protection of the law, in violation of the Fourteenth Amendment of the Constitution of the United States, or in violation of any provision of the Constitution of the United States.

III.

For further answer, and especially in answer to Paragraph 4 of the bill, defendant says that it is true that in the month of February, 1909, the City of Louisville, through its legislative department, adopted an ordinance entitled, "An Ordinance fixing the maximum rates to be charged for telephone service in the City of Louisville," and admits that said ordinance was approved by the Mayor on the

6th day of March, 1909; admits that said ordinance, as set out in words and figures in said Paragraph 4 of the bill, is in substance a copy of the ordinance so passed.

Defendant admits that the ordinance referred to in Section 4 of the above mentioned ordinance, provided that the maximum telephone rates in the City of Louisville should be $4.00 per month for business telephones and $2.00 per month for residence telephones; and admits that complainant instituted a suit in the United States Circuit Court for the Western District of Kentucky, seeking
83 to enjoin the enforcement of said ordinance, and admits that a temporary injunction was granted in said case.

Defendant admits that the latter part of Section 4 of said ordinance above set out was intended to prevent any increase in rates by the Louisville Home Telephone Company, a corporation conducting a telephone business in the City of Louisville under a contract with the City of Louisville limiting its rates to less than maximum rates provided in the ordinance above set out; but defendant denies that said ordinance was intended to apply exclusively and alone to the complainant.

IV.

For further answer, and especially in answer to Paragraph 5 of said bill, defendant says that it has no knowledge or belief as to the allegation that the complainant's telephone plant in the City of Louisville and its immediate suburbs cost complainant to January 1st, 1909, the sum of $1,700,045.36, and defendant demands strict proof of the truth of said allegation.

Defendant denies that the complainant's telephone plant in the City of Louisville cannot be disconnected or disassociated from that part of the exchange outside of the City Limits of Louisville, Kentucky.

Defendant says that it has no knowledge or belief as to the allegation that complainant has 9,657 subscribers to said exchange on January 1st, 1909, but demands strict proof of the truth of said allegation.

Defendant denies that the revenue derived by said complainant from its said exchange in Louisville, Kentucky, for the year 1908 was only as follows:

84

Exchange service	$311,112.63
Proportion of tolls earned by exchange	7,728.08
Messenger service	655.02
Directory advertisement	3,181.15
Miscellaneous	2,926.66
	$325,603.54

And defendant says that said revenue was largely in excess of the amounts above set out.

Defendant denies that complainant's expenses of conducting its telephone business in the City of Louisville for the year ending December 31, 1908, amounted to $239,710.48.

Defendant says it is not true that the percentage of net revenue derived by said complainant of the cost of said plant is 5.11% ; denies that said 5.11% does not include any depreciation upon the plant; says it has no knowledge or belief as to the allegation that if the rates prescribed by said ordinance referred to in Paragraph 4 are put into effect, it will result in a decrease in the complainant's revenue, based upon present rates, and its present stockholders located inside the corporate limits of the City of Louisville, amounting to $33,-554.00, and at the same time will not decrease in any respect the expenses of conducting said business, but defendant demands strict proof of said allegation.

Defendant says that it is not true that if the rates prescribed in said ordinance, referred to in Paragraph 4, had been in effect during the year 1908, and the number of its subscribers had been the same at the new rates that they were at the rates that the complainant charged, then the gross revenue to said complainant would have been $33,504.00 less than it was, or that said gross revenue would have been at all less than it was as charged in said bill. On the contrary, defendant says that said revenue would have been in excess of $311,-112.63, the amount named in the bill had said rates been in force and charged to all subscribers alike.

85 Defendant says it has no knowledge or belief as to the allegation that the complainant's expenses would not have decreased at all had the rates provided for in the ordinance referred to in Paragraph 4 been in force, but demands strict proof of said allegation.

Defendant denies that if the rates established by said ordinance, referred to in Paragraph 4, had been in force during the year 1908, that the complainant would not have received a net profit of more than 3.08%.

Defendant says it is not true that the said rates prescribed in said ordinance, referred to in Paragraph 4, are confiscatory, and denies that if said rates are enforced, the enforcement thereof will require the complainant to operate its plant in Louisville, Kentucky, without just compensation, and denies that the enforcement of said ordinance would take complainant's property without due process of law.

V.

For further answer to the bill, and especially in answer to Paragraph 6 of said bill, defendant admits that complainant owns and operates exchanges in the various towns named in said bill, and that the same are operated in the manner set out in said bill, and admits that the toll lines are brought into the city and connected with the switch-boards, and that subscribers to said exchanges are entitled to receive connections over the toll lines. Defendant admits that complainant makes a charge for the last named character of service, but defendant says it has no knowledge or belief as to the truth of the allegation that said complainant charges for said character of service one half of one per cent per mile between two cities thus connected for each three minutes of conversation, and one third of the initial

charge for each individual minute of conversation, but demands strict proof of the truth of said allegation.

86 Defendant admits that complainant has erected four exchanges, as charged in the bill; that said exchanges are so arranged that any two subscribers in the City of Louisville can be at once put into communication; admits that there are exchanges operated in the various towns and cities named in the bill, and says it has no knowledge or belief as to the truth of the allegations made in regard to the number of subscribers to said exchanges in said towns, but demands strict proof thereof.

Defendant says it has no knowledge or belief as to the truth of the allegation that any one of the subscribers to the Louisville Exchange on January 1st, 1909, had the right to unlimited connection with any one or more of the other subscribers upon the payment of the monthly charge, or as to whether or not any one of said subscribers had access to and free communication with said subscribers in the various smaller exchanges in Kentucky and Indiana, as charged in the bill, but defendant demands strict proof of said allegation.

Defendant says it has no knowledge or belief as to the allegation, that the rates for service charged by the complainant in the City of Louisville, as explained in said bill, were from March 1st, 1907, or are now, as set out in Paragraph 6 of the bill, to-wit, $8.00 per month for a private metallic business telephone; $5.00 per month for a two-station, metallic business telephone service; $4.00 for a private residence telephone, and $3.00 for a two-station residence telephone, and the other rates named in said paragraph—but defendant demands strict proof of said allegation.

Defendant says it is not true that the rates mentioned in Paragraph 6 of said Bill of Complaint were in effect as to all customers of said telephone company at any time during 1908, or on January 1st, 1909.

Defendant says it has no knowledge or belief as to the allegation that complainant had, at the dates named, only 738 patrons paying the $8.00 business rates, and only 875 patrons paying the $4.00 residence rate, but demands strict proof thereof.

87 Defendant denies that all the remainder of the complainant's patrons in the Louisville Exchange had some other kind of service at the various rates set out in said bill.

Defendant says that it has no knowledge or belief as to the allegation that there is, of necessity, or at all, a depreciation or deterioration of complainant's plant over and above the ordinary and necessary expenses of maintaining said exchange or structure, and which cannot be taken care of as it occurs, but must be provided for out of the receipts of the exchange so as to provide a fund with which to take care of this decay and depreciation when the various pieces of property comprising the exchange can no longer be used and have to be replaced with new material, but demands strict proof of said allegation.

Defendant admits that the switchboards, poles, wires, cables and all of the various and many items of property must, from time to time, be replaced and renewed after they have served their useful-

ness, but denies that such renewal is in addition to or beyond the mere current repairs required to maintain the plant in operating condition.

Defendant says that it is not true that such depreciation referred to in said bill must, of necessity, or at all, be provided for out of the receipts year by year, and says that it is not true that in order to do this properly, complainant, of necessity, or at all, is required to take from its gross receipts each year 7½% of the actual cost of the plant with which to provide a proper, reasonable and just depreciation fund, less whatever amount has been expended during that particular year in reconstructing parts of the plant, and defendant says it is not true that at the end of each year, before any part of its receipts can be considered profit, there must be deducted 7½% of the actual cost of the plant, less whatever amount has been expended during that year on reconstructing the plant.

Defendant says it has no knowledge or belief as to whether the annual amount set aside for depreciation varies year by year.

VI

88 For further answer to the bill, and especially for answer to Paragraph 7 of the bill, defendant admits that on January 1st, 1907, the complainant adopted a schedule of charges higher than the rates theretofore charged. Defendant admits that such action resulted in the protest of the Board of Trade of the City of Louisville, and admits that a letter was written by James E. Caldwell, President, to James F. Buckner, Superintendent, as charged in the bill. Admits that a contract was entered into on the 18th of April, 1907, between the Board of Trade and the complainant, as set out in the said bill; admits that a report was made to the Board of Trade by certain members thereof on August 16, 1907, as set out in said bill, and thereafter another report from another committee was made to said Board of Trade on December 16, 1908; admits that on December 30, 1908, a resolution referred to in said bill was adopted, and that a copy of said resolution was furnished the Mayor of the City of Louisville, and that thereupon the agreement between the Louisville Board of Trade and the Cumberland Telephone & Telegraph Company was rescinded.

Defendant says that it has no knowledge or belief as to the membership of the Board of Trade, but demands strict proof thereof; says it has no knowledge or belief as to whether one member at that meeting stated that the committee appointed by the Board of Trade who had investigated and approved the schedule of rates, set out in the bill as being fair, just and reasonable, had been misled and deceived by the complainant in their investigation, or as to whether there was any just foundation for such statement, or, as to whether it was untrue, but demands strict proof of all of said allegations.

Defendant admits that the members of said committee are men of the highest character and among the most prominent business men of the city, but denies that said men could not be imposed upon; and defendant says that said committee which recommended the making of the contract between said Board of Trade and said

complainant company was imposed upon by said complain-
89 ant company and was deceived by said complainant, and that said committee was induced to recommend said contract and the rates therein named by reason of the deception and false representations on the part of the complainant, and by reason of the fact that statements wholly false and untrue were made by said complainant to said committee relative to the value of its property and the amount of its earning capacity and the receipts and cost of its operations, and defendant says that when said Board of Trade learned that its committee had been imposed upon, and had been deceived by said complainant, it rescinded the action which it had theretofore taken and which is more fully set out in the bill.

VII.

For further answer to the bill, and especially for answer to Paragraph 8 of the bill, defendant admits that there has been in the City of Louisville, since 1901, another telephone company charging the rates referred to in said Section 8; that said telephone company has a large number of subscribers, and that said company is seeking a release from its contract with the City of Louisville; admits that the officers of said company have publicly stated that its rates are ruinously low, and stated that said company is unable to care for its plant and operate the same upon the rates fixed in its contract with the city.

But defendant denies that said statement so made by the officers of said telephone company is true. On the contrary, says that said company is able to care for and operate its plant at the rates fixed in its contract and provide a depreciation fund to take care of the wear and tear of its property, and to pay a reasonable dividend on the value of its property.

Defendant says that said company has, since its inception, operated at a profit, and is now operating at a profit.

90 Defendant says it is not true that the telephone question has been brought to the attention of the public by reason of the desire on the part of the above-mentioned telephone company to increase its rates, but the discussion of said telephone question has been brought about by reason of the arbitrary and dictatorial methods and lack of courtesy used by the complainant company and by the exorbitant charges made by the complainant company to its customers, and by the poor service rendered by the complainant company to its said customers.

Defendant denies that any untrue or misleading statements have resulted in inflaming the public mind and have resulted in the action of the city officials in undertaking to destroy the complainant's right to conduct a telephone business in the City of Louisville, or to cause it to operate its large investment without due compensation.

Defendant says it is not true that the telephone business is inherently and essentially different from all other known kinds of business; says that it is not true that said telephone plant of neces-

sity can never, in the nature of things, be a finished or completed property.

Defendant admits that each new customer requires a separate and distinct wire connected with a separate telephone instrument, separate wiring, and a separate place on the switchboard, but defendant denies that this necessitates a continued and constant expenditure of new capital, and denies that *at* the number of telephones increases the capital invested must correspondingly, or at all, increase; says that it is not true that the wires formerly serving one telephone cannot often be used to serve new telephones; denies that this results in many wires being used by telephones for a short time which cannot thereafter be used for other telephones.

Defendant denies that so long as complainant continues to serve its patrons in Louisville, it must, of necessity, continue to invest new capital, but admits that said company must string new wires, add to its switchboard capacity and connect the new sub-
91 scribers with the old subscribers.

Defendant admits that it is impossible to conduct the telephone business in a city of the size of Louisville without making provisions for the future growth of the business; denies that it takes usually one year to install an equipment or provide for probable increase in subscribers; admits that it is proper and prudent that appellant should provide in advance for anticipated patronage.

Defendant denies that complainant has pursued this policy in good faith, or at all, and defendant admits that the cost of any such added facilities must be added to the cost of the exchange; but denies that the depreciation on the facilities must, of necessity, or at all, be added to the capital and expense account of conducting the business.

Defendant denies that the complainant is conducting its telephone business as prudently and economically and honestly as the ability of its managers will permit; denies that the rates charged are less than the value of the service rendered and do not afford complainant a reasonable or fair return upon the actual investment, or the actual value of its plant.

Defendant says it is not true that the complainant is compelled to conduct its business in such a way as will prevent the expense of giving the service necessitating too high a rate, even though it does not yield a fair return from the investment.

Defendant admits that the paramount duty of the appellant is to practice economy and make the rates to the subscribers as low as possible, but that directly the opposite course has been pursued by said complainant since it began to conduct a telephone business in the City of Louisville.

Defendant denies that the business affairs have, from the beginning, or at all, been conducted honestly, prudently, skillfully and economically; admits that from time to time serious controversies have arisen, not only with respect to the rates and charges
92 made by complainant, but also with respect to the character of service furnished by it.

Defendant says that instead of the charge being true that said

complainant is willing and invites such investigation of the affairs of its business and capitalization,—on the contrary, said complainant, after consenting that this defendant might investigate its property and examine its books and inspect its physical property, and after this defendant had employed an expert in telephone work at a large expense to come to the City of Louisville and make such examination, said complainant declined and refused to allow said expert to make any such examination or inspection, or to examine any of the books of said company, or to inspect any of the property of said company.

Defendant denies that complainant's business in Louisville has been misrepresented, and is wholly, or at all, misunderstood; denies that the rates heretofore charged by said complainant company are reasonable; denies that said rates cannot be reduced without ruin to its stockholders or disaster to its telephones, and denies that the development of the trade area of the City of Louisville has been made by complainant with the greatest energy, zeal and ability at the request of its patrons in Louisville who realized the enormous value that would result from this development.

VIII.

For further answer, and especially for answer to Paragraph 9 of said bill, defendant states that no intelligent investigation of complainant's business, or its rates, was had by the city authorities of the City of Louisville before the passage of said ordinance reducing its rates, as hereinabove set out.

Defendant denies that a comparison of rates in other cities is unjust to the complainant, or misleading.

93 Defendant says that it is not true that there are no two cities in the United States where conditions are sufficiently similar to warrant such comparison; denies that the question of telephone rates is purely and essentially a local one.

Defendant admits that said telephone rates are, to a large extent, controlled by the four factors mentioned in the bill; denies that such comparison with other cities is useless.

Defendant admits that under the rate ordinance referred to in the bill every user of a business telephone may have the same at not exceeding $4.00 per month, and every person using a residence telephone may have the same at not exceeding $2.00 per month; admits there is nothing compelling any patron of the complainant to pay a rate exceeding $4.00 for business telephones, $2.00 for residence telephones, but denies that if the whole of complainant's patrons should elect to take the lower rates, complainant could be compelled to operate its plant at a heavy loss, or at any loss each year, which would result in bankruptcy; and defendant says that in order to get the lowest rates prescribed in said rate ordinance, it is necessary for the patrons to take party lines; that under the rates named by the complainant in its bill as the rates charged by it, every patron could take party lines and obtain a much less rate proportionately than under the rates established by the rate ordinance referred to; but that, as a matter of fact, over 45% of the present

patrons of said company, at the present time, take single lines in preference to party lines, and more than 45% of said patrons will, under the present rate ordinance, continue to take single line telephones and pay therefor the highest rate prescribed in said ordinance.

Defendant denies that the greatest benefit in the rates prescribed over those now in effect is to those patrons best able to pay a fair price, and who have the least cause for complaint as to the present rates.

94 Defendant has no knowledge or belief as to whether the residence or business class now paying the so-called maximum rates are each less than 500, or, as to whether or not such users are the heavy users of telephone service or make use of complainant's telephone service in business and social affairs to a much greater extent than other patrons of the complainant who pay a lower rate, but defendant demands strict proof of said allegations.

Defendant admits that there is a slight reduction in the price charged by complainant to those using the cheaper class of service, but denies that there is a heavy decrease in the price to be paid by the heaviest and most frequent users of complainant's service.

Defendant admits that the underlying and fundamental nature and necessity of the telephone business is to place it within the reach of every one, and admits that rates must be classified with the object in view to reach the multitude, and admits that in the beginning of the business there was a flat rate for business and a flat rate for residence telephones without party lines, but denies that the result was, that only a few desired to use the service or patronize the company. Admits that the large class of people in the community are unwilling to pay high prices for telephone service; admits that experience shows that it was necessary to provide different classes of service; admits that providing different classes of service resulted in an enormous increase in the patrons and an increase in the value of the service; that the telephone is, therefore, of great value to the city; admits that it is necessary to the complainant and to the plant that the rates to be charged for telephone service shall be adequate to operate and maintain the plant and provide a fair return upon the investment, but denies that the telephone company, in the nature of things, can never be finished or completed property; denies that it must continue to grow from time to time; denies that new capital must be procured from the investing public; denies that it is necessary that additional capital be provided from time to time by the issuance and sale of stock; admits that unless the complainant can show a fair and reasonable re-

95 turn, the investing public are unwilling to invest their money in such business.

Defendant admits that the value of the service increases as the number of subscribers increases; admits that as the service increases, the expense of conducting the business increases, but denies that each additional telephone involves additional capital.

IX.

Defendant, for further answer, and especially for answer to Paragraph 10, denies that the rates charged as established by the complainant for telephone service rendered by it to its patrons in Louisville are reasonable rates; denies that said rates yield only a fair, reasonable and just return upon the capital invested. Defendant denies that said rates and charges provided by said rate ordinance are arbitrary and unreasonable, or at all unreasonble, unjust or confiscatory, and denies that if said rates are enforced the same will not yield to the complainant sufficient money to meet the necessary cost of conducting its said business in said city and maintaining its plants and appliances, and will yield no just, fair return upon the large capital invested by it, and denies that the stockholders of complainant will be deprived of a fair and just return and dividend upon their stock; denies that complainant and its stockholders will be deprived of said property without due process of law; denies that the property of said complainant or its stockholders will be taken for public use, or at all taken without just compensation, or contrary to the 14th Amendment of the Constitution of the United States.

Defendant, for further answer, and especially for answer to Paragraph 11 of the bill, admits that said rate ordinance provided that it should be unlawful for any corporation, firm or individual furnishing telephone service to charge therefor amounts exceeding
those fixed in the ordinance, and that any violation of the
96 provisions of said ordinance shall be punished by a fine of
not less than five, nor more than twenty-five dollars, and each charge in excess of the amount fixed shall constitute a separate offense.

Defendant admits that the City of Louisville is threatening and will undertake to enforce said ordinance unless restrained by this Court, and will prosecute complainant or any other company who violates the provisions of said ordinance, and will issue and will cause to be issued numerous warrants against the complainant in case it does violate the provisions of said ordinance, but denies that the complainant will suffer great and irreparable injury, or any injury, unless this defendant is restrained from executing and enforcing said ordinance.

Defendant denies that complainant has no adequate remedy at law for the redress of the injuries which will be inflicted upon it, and denies that any injury will be inflicted upon it or upon its property and business by the enforcement of said ordinance, or by the issuance or suing out of processes of law by defendant for the purpose of enforcing said ordinance; denies that it is necessary, in order to protect the complainant's rights and property, that a court of equity shall interfere.

X.

For further answer, and especially for answer to Paragraph 12 of the bill, defendant admits that the amount in dispute exceeds the value of $5,000.00, exclusive of interest and costs; denies that interference with the complainant's property in the City of Louisville,

or any interference with the rates and charges established by the complainant for the use of its telephone service in said city, will cause complainant irreparable injury and damage, or any injury or damage; denies that the city authorities of the City of Louisville will unless restrained, or at all, injure, destroy or otherwise interfere with and seriously, or at all, damage complainant's business in said city.

97 XI.

For further answer to said Bill of Complaint, defendant says that the complainant company has been conducting and operating a telephone system in the City of Louisville for many years; that its policy since it began to operate such telephone system has been dictatorial, arbitrary and offensive to the citizens of Louisville, and without proper regard to the City of Louisville or its citizens; and instead of furnishing to citizens of Louisville the best service possible, at the lowest price consistent with business principles, complainant has pursued the policy of furnishing to the citizens of Louisville a poor class of service and charged said citizens the very highest rate it could extort from them; that in 1901 the telephone service furnished by said company became so unsatisfactory that certain citizens of Louisville procured from the General Council of the City of Louisville a franchise to operate another telephone system in the City of Louisville; that since the said second telephone company has been operating in the City of Louisville the complainant company has pursued a policy which has given even more dissatisfaction to the citizens of Louisville than its former policy; that the policy so pursued, and now pursued, by said complainant company is in substance as follows:

Said complainant company has a substantial monopoly on all long distance service in and around Louisville on account of its connection with the American Bell Telephone Company. All customers of the complainant company who are compelled, for business reasons, to have long distance connections with customers outside of the City of Louisville are compelled to pay the highest possible price for their telephone service, and the rates charged have been gradually increased on all such customers. To all customers who do not require long distance service, said complainant company will

98 furnish, and does furnish, a telephone of the same character as above mentioned at a much less rate, and, in many instances, furnishes such telephone service for a nominal charge only; that such course has been pursued in order to stifle competition; that the result has been that many customers and citizens of Louisville are charged rates at less than the cost of the service furnished, thereby imposing on the customers of said complainant company who are so situated as to require the service of the complainant's long distance connections the necessity of paying the complainant company's losses in trying to crush out competition.

Defendant says that the situation above detailed became so burdensome to some of the citizens of the City of Louisville that the Mayor and General Council of the City of Louisville attempted, in the year

1908, to remedy the situation by passing an ordinance authorizing the sale of a franchise for a comprehensive system of telephones in the City of Louisville, which it was hoped by the Mayor and General Council of the City of Louisville would result in one comprehensive system of telephones, with the right to charge such uniform rates as would be fair and just to all citizens, and, at the same time, permit the company acquiring such franchise to operate its system of telephones and obtain a fair return on its investment.

Defendant says that said ordinance was prepared by the City Attorney of the City of Louisville upon request of the Mayor; that it was introduced in one of the Boards of its General Council, and passed said Board by practically a unanimous vote, and was favorably reported to the other Board of its General Council, and would have been adopted by said Board and approved by the Mayor but for the fact that the complainant company, through its President and attorneys, appeared before the Mayor of the City of Louisville and before the Board of Aldermen of the City of Louisville and stated to said Mayor and to said Board of Aldermen that the complainant company had a franchise which was irrevocable and irrepealable, and that the City of Louisville was powerless to interfere with the rights of the complainant company in the conduct of its business or otherwise in the City of Louisville, and said officials and attorneys for said company further stated in
99 unequivocal terms to the Mayor and Board of Aldermen of the City of Louisville that it, the said complainant company, would not become a bidder at the sale of such a franchise or in any manner acquire, or attempt to acquire, the franchise which, by said ordinance, was proposed to be sold.

Defendant says that by one of the provisions of said ordinance, viz., Clause 16, it was proposed to repeal the ordinance which was approved on August 17, 1886, referred to in the Bill of Complaint, that said repealing clause of said ordinance was in substance the same as the repealing ordinance referred to in Paragraph 3 of the Bill of Complaint. Defendant files a copy of said proposed ordinance herewith and makes same a part hereof, marked "Exhibit A."

Defendant, therefore, says that inasmuch as the defendant, at the time it first proposed to repeal the ordinance under which the complainant claims its right to conduct its business in the City of Louisville, proposed at the same time to offer for sale a franchise similar in nature to that now exercised by the complainant company, and inasmuch as the complainant refused to become a purchaser, or to acquire the franchise so proposed to be sold, said Board of Aldermen declined to pass the ordinance above mentioned, and, in lieu thereof, passed the ordinance referred to in the Bill of Complaint, being the ordinance referred to in Paragraph 3 of the Bill of Complaint.

Defendant says that in connection with the repealing ordinance, referred to in Paragraph 3 of the complaint, which was recommended to the General Council of the City of Louisville for passage by the Mayor of the City of Louisville, said Mayor sent with the

said ordinance a written recommendation, which recommendation was in part as follows:

"As to the repealing ordinance, it may be said that it is unjust to the Cumberland Telephone Company, to repeal the ordinance under which it obtained its right to do business in the City of Louisville, and not at the same time pass an ordinance authorizing the sale of a similar right or franchise, in order that the Cumberland Telephone Company might have an opportunity to purchase such a similar right or franchise.

100 "In answer to this contention, I have to say that an ordinance repealing the ordinance which granted to the Cumberland Telephone Company its right to do business in the City of Louisville, and at the same time ordering the sale of a similar right or franchise was introduced in the lower board of the General Council, but while that ordinance was pending, and before it was put upon its final passage, the Cumberland Telephone Company, through its President, and through its Attorney, at a public meeting held by the General Council for the purpose of considering the ordinance in question, stated unequivocally that it would, under no circumstances, bid for such a franchise, and that the Cumberland Telephone Company did not care to purchase any similar franchise at this time. It, therefore, seems to me that there is no occasion to pass an ordinance authorizing the sale of such a franchise until it is determined that the City has a right to repeal the ordinance under which the Cumberland is now acting, and I take it for granted that the General Council would at the proper time, upon the request of the Cumberland Telephone Company, offer for sale a franchise which would be fair and just to the Cumberland Telephone Company and its patrons."

Defendant says that it is the purpose of the General Council of the City of Louisville, and of the Mayor of the City of Louisville, to offer for sale a franchise of a nature similar to that heretofore exercised by the complainant company whenever said complainant company desires to purchase such a franchise.

Defendant says, moreover, that under the laws of the State of Kentucky, the City of Louisville can be compelled to offer for sale such franchise of a similar nature, upon the request of the complainant company.

Defendant says, therefore, that said complainant company is operating its telephone system in the City of Louisville, Kentucky, without right and without authority of law; that said complainant is a trespasser in the City of Louisville, and is a wrong-doer, and, therefore, is not entitled to question the rates established by said rate ordinance, referred to in Paragraph 3 of the bill, or to seek or obtain any relief from this Court.

XII.

101 Defendant says that complainant's plant and property used in the City of Louisville in connection with its telephone system, exclusive of real estate and buildings, can be reproduced new throughout, with all modern up-to-date equipment, for

the sum of $1,000,000.00, and that said property as it now stands is not worth more than $800,000.00.

Defendant says that the constructing, maintaining and operating of the telephone system has extended over a period of more than twenty-five years; that telephone systems have been constructed, and are now being operated in practically every city, town and hamlet of the United States which has a population of more than 500 inhabitants; that the construction of the telephone system and the cost of such construction has passed its experimental stage; that there is nothing complicated or abstruse connected with the construction or operation of a telephone system at the present day.

XIII.

Defendant says that complainant operates a system of telephones over a large territory, and has many toll lines and valuable connections with companies operating long distance telephone systems; that the Exchange at Louisville, Kentucky, is one of the largest exchanges in the complainant's system of telephones; that a large portion of the receipts of said complainant company from toll service is derived through and by reason of the Louisville Exchange; that for the year 1908, the complainant derived at least $1,654,699.41 from its toll service; that, according to the Bill of Complaint, only about ½ of 1% of said toll receipts is credited to the Louisville exchange; that the Louisville Exchange earned 7 3-10%
102 of the gross revenue from Exchange service over the entire system; that the Louisville Exchange paid 6 6-10% of the gross operating expenses of the complainant over its entire system; that the Louisville Exchange paid 6 8-10% of the gross cost of maintenance, reconstruction, &c., of the complainant over its entire system; that the Louisville Exchange paid 6% of the gross taxes charged against and paid by said complainant over its entire system; that, according to complainant's valuation of the cost of its property, said cost is 6½% of the entire value of the complainant's property over its entire system.

Defendant says that the Louisville Exchange, instead of being credited with only $7,728.08 as its portion of the toll service, should be credited with at least 6% of the total receipts from toll service over the entire system operated by said complainant company, and that if said Louisville Exchange were so credited for the year 1908, with 6% of the gross receipts from said toll service, then said complainant's receipts for the year 1908, from its property in Louisville, Kentucky, amounted to more than $90,060.00 in excess of the receipts indicated in the Bill of Complaint from said item alone.

XIV.

For further answer, the defendant says that complainant issued on the 1st of January, 1909, a printed Telephone Directory in the City of Louisville; that in said telephone directory there appears in detail the names of subscribers to the complainant's telephone system in the City of Louisville, together with the number of their re-

spective telephones and the class of service furnished by the complainant to each subscriber.

Defendant says that, based on the number of telephone subscribers belonging to each class, as shown by said telephone directory, and assuming that it is true that the complainant company
103 has 9,657 subscribers to its telephone system in the City of Louisville, as charged in its bill, then a mathematical calculation shows that had the rates established in the rate ordinance, referred to in Paragraph 3 of the bill, been in force during the year 1908, complainant would have received more than $400,752.00 for operating its telephone exchange in the City of Louisville, which amount is exclusive of all other items of receipts.

Defendant does not file with its answer said telephone directory as part of its answer for the reason that said telephone directory contains more than 300 pages of closely printed matter, and the cost of copying said directory, if the same became necessary, would be very great.

XV.

Defendant says that the rate ordinance, referred to in Paragraph 4 of the bill, was passed after as thorough and complete investigation as the authorities of the City of Louisville were able to make; that said investigation was based on the reports made by the complainant to the Louisville Board of Trade,—on the published annual and monthly reports made by the complainant, wherein the operations and other facts in connection with the telephone system of said complainant company were detailed, and on the facts gathered from the Telephone Directory issued by the complainant, and on a comparison of the respective charges, operations, property, receipts and operating expenses of the complainant company, and the Louisville Telephone Company.

Defendant says that said rate ordinance was adopted also as a means of forcing the complainant to cease discriminating between its customers and to adopt a policy that would be fair and just to all the citizens of Louisville, instead of permitting said company to pursue a policy of forcing one class of citizens to pay exor-
104 bitant telephone rates and another class of citizens an unreasonably low rate for the same class of telephone service.

Defendant says that if the rates named in said rate ordinance, referred to in Paragraph 4 of the bill, were enforced, and if all subscribers to said complainant company, having the same class of telephone service, and in like condition, were charged according to the rates established by said rate ordinance, then the said complainant company would derive a much larger income from operating its telephone system in Louisville than it now derives from the charges actually made against its subscribers; and that the rates, if so enforced, will permit the complainant to derive an income sufficient to pay its operating and other expenses and maintain its property, provide a sufficient sum to take care of any and all depreciation of its property and earn an income in excess of seven (7%) per cent on the value of the property used by it in connection with its Louisville Exchange.

XVI.

Having thus made full answer to all the matters and things contained in the bill, this defendant prays to be dismissed hence, with its costs in this behalf expended.

CITY OF LOUISVILLE,
By J. F. GRINSTEAD, *Mayor.*

Attest:
S. M. WILHITE, *Comptroller.*

CLAYTON B. BLAKEY,
HUSTON QUIN,
Solicitors.

105 STATE OF KENTUCKY,
County of Jefferson:

James F. Grinstead makes solemn oath and says he is the Mayor and chief executive officer of the City of Louisville, the defendant herein. He says that the foregoing answer is true to the best of his knowledge, and that so much thereof as concerns the acts or deeds of any other person or persons he believes to be true.

J. F. GRINSTEAD.

Subscribed and sworn to before me, by James F. Grinstead, this 27th day of March, 1908. My commission expires on the 11th day of January, 19—.

HUSTON QUIN,
Notary Public, Jefferson County, Kentucky.

106 "EXHIBIT A" WITH ANSWER.

No. —.

Series 1908.

An Ordinance Creating a Franchise for a Comprehensive Telephone System in the City of Louisville and Providing for the Sale Thereof and Repealing Certain Ordinances Granting the Right to Use the Public Ways for Telephone Purposes and Regulating Charges for Telephone Service.

107 No. —. Series 1908.

An Ordinance Creating a Franchise for a Comprehensive Telephone System in the City of Louisville and Providing for the Sale Thereof and Repealing Certain Ordinances Granting the Right to Use the Public Ways for Telephone Purposes and Regulating Charges for Telephone Service.

Be it ordained by the General Council of the City of Louisville:

SEC. 1. That there shall be sold to the highest and best bidder for a term of twenty years, the franchise or privilege to construct,

purchase or otherwise acquire, and to maintain and operate a telephone system for public and private use in the City of Louisville, which franchise or privilege shall include the right of way over, along, under, through and in the streets, avenues, alleys, lanes, parks, squares, bridges and other public places in said city, for the purpose of erecting, constructing, maintaining and operating, whether overhead or underground, poles, wires, manholes, subways and other equipment necessary or convenient for the construction and operation of such telephone system, and the right to extend such system from time to time during the existence of this franchise or privilege herein ordered to be sold; all of which shall be in accordance with the conditions, terms and limitations of this ordinance.

SEC. 2. That it shall be the duty of the Board of Public Works, (as soon as practicable after the passage of this ordinance,) to offer said franchise or privilege for sale at public auction to the highest and best bidder at the front door of the City Hall, on Sixth Street, in the City of Louisville, Kentucky, after having given notice of the time, place and terms of said sale by advertisement for fifteen (15) days in the two daily newspapers elected to do the public advertising of the city, the first publication in each of said papers to contain this ordinance in full, and the subsequent publica-
108 tions need not contain the ordinance in full, but may refer to the first publication for the terms of said ordinance, and said Board shall accept the highest and best bid therefor and report the same to the General Council for its approval, and the General Council shall have the right, for and on behalf of the city, to reject any and all bids for said franchise or privilege, and in case the bid reported by the said Board shall be rejected by the General Council, it shall be the duty of the Board of Public Works to immediately proceed, after advertising as herein provided, to again sell said franchise from time to time in the manner and under the regulations herein provided until a sale of the franchise herein offered shall be made and approved. Said sale shall be for cash, to be paid by the purchaser within fifteen (15) days after the sale has been so approved by the General Council, and upon the payment of the purchase price and the execution and approval of the bond hereinafter required the franchise or privilege provided for herein shall immediately vest in such purchaser and continue for a term of twenty (20) years thereafter.

SEC. 3. That no bid for said franchise or privilege shall be received by the Board of Public Works for less than Twenty Thousand ($20,000) Dollars, nor unless the bidder shall before making his bid deposit with said Board a check for Ten Thousand ($10,000) Dollars, certified to be good by a bank doing business in the City of Louisville, which check shall be payable to the City Treasurer, and in case the bid shall be accepted the proceeds thereof shall be credited upon the amount of the purchase price, and if said bid be not accepted, then said check shall be forthwith returned to the unsuccessful bidder.

SEC. 4. That within ninety (90) days after the approval of said

sale by the General Council the purchaser of said franchise or privilege, if he have not already a system of telephones in operation in the City of Louisville, shall begin in good faith upon the work of constructing said telephone system, and shall thereafter in good faith proceed continuously to the satisfaction of the Board
109 of Public Works with such construction, and in any event such purchaser, his successors or assigns, must have complete and ready for operation in the City of Louisville within two years after the approval of the sale herein provided for, a first-class, modern telephone plant, with an immediate capacity for operating not less than five thousand telephone lines, a party line to count but one, including in said plant underground and aerial lines of the number aforesaid, and an exchange and central energy switch board, ready and equipped for five thousand such lines, with the right to add to such plant from time to time as business may require.

In case of failure to comply with this section of the ordinance the franchise herein ordered to be sold shall ipso facto become null and void; in which event it shall be the duty of the Board of Public Works to proceed, after proper advertisement as herein required, to again advertise and sell said franchise as provided in Section 2 hereof, and so to proceed from time to time until such a system as is herein provided for shall be secured.

SEC. 5. That any person acquiring said franchise or privilege may assign or transfer the same, but only on the express condition that such assignee or transferee shall be bound by all of the terms and conditions of this ordinance.

SEC. 6. That all work upon said telephone system, either in the construction or maintenance, so far as same is in the public highways and places of the City of Louisville, shall be under the supervision of the Board of Public Works and shall be controlled by the provisions of an ordinance of the City of Louisville, entitled, "An ordinance concerning telegraph, telephone and electric light and power wires in the City of Louisville," approved June 18, 1903, so far as applicable and so long as said ordinance continues in force, and the right is reserved to said Board upon reasonable notice to order and require the removal of any pole, and upon the failure of the owner or operator of such system to comply with said
110 order and requirement, said Board shall have the right to require such pole to be removed at the cost of such owner or operator.

All the underground conduits and ducts used in the construction of said plant shall be so erected and constructed as not to interfere with or disturb underground structures, conduits, pipes, sewers, or other property belonging to the City of Louisville, and nothing contained in this ordinance shall preclude the City of Louisville from prosecuting or authorizing any public work of any character; and if any conduits, ducts, poles or other structures of the owner of this franchise shall obstruct or interfere with the prosecution of said public work or improvement, the City shall have the right, if it deems necessary, to require the removal of the same to some other

location, and the same shall be so removed by the purchaser or owner of said franchise or privilege within a reasonable time upon the order of the Board of Public Works; and in case of failure on the part of said owner to comply with any such order, then the said Board may make such removal or change at the cost of said owner.

SEC. 7. That the owner or operator of said franchise shall in its conduits provide, at least, one duct for the use of the City of Louisville in laying and placing the wires for its fire alarm and police patrol system therein, and said ducts shall be for the exclusive use of the City of Louisville for said purposes. And such owner or operator shall also provide space upon its poles for the carrying of such wires, all of which shall be provided without charge to the City of Louisville, and the owner or operator of said franchise shall place the said wires in said conduits and on said poles without cost to the City of Louisville, except for the material, all of which shall be furnished by said city. But the said wires for the exclusive use of the City of Louisville shall be so placed as not to interfere with the effective operation of either said telephone system or said fire alarm and police patrol systems.

111 SEC. 8. That whenever it shall be necessary to disturb the streets, alleys, or sidewalks, or other public ways in the construction, repair, or other appliances of said telephone company, the said streets, alleys, sidewalks, or public ways shall be restored under the supervision of the Board of Public Works to their former good condition, at the expense of the owner or owners of said telephone system, which expense shall include the cost of such supervision, and all rubbish shall be removed from the streets, alleys, sidewalks, or other public ways, where the same have been disturbed, as promptly as possibel.

SEC. 9. That the rents to be charged by the owner or operator of said telephone system during the first ten years of the existence of this franchise shall not exceed the following schedule, namely:

For a single line business telephone not more than Six ($6.00) Dollars per month. For a party line business telephone not more than Three and Fifty-one-hundredths ($3.50) Dollars per month. For a single line residence telephone not more than Three ($3.00) Dollars per month. For a party line residence telephone not more than Two ($2.00) Dollars per month.

That the rents to be charged by the owner or operator of said telephone system during the last ten years of the existence of this franchise shall not exceed the following schedule, namely:

For a single line business telephone not more than Seven ($7.00) Dollars per month. For a party line business telephone not more than Four ($4.00) Dollars per month. For a single line residence telephone not more than Three and Fifty-one-hundredths ($3.50) Dollars per month. For a party line residence telephone not more than Two and Fifty-one-hundredths ($2.50) Dollars per month.

Such owner or operator shall also have the right to establish, maintain and operate public pay stations.

SEC. 10. That the apparatus, instruments, switch boards, ap-

pliances and equipment of said system shall be composed of
112 the most modern and approved type, and all switch boards shall be maintained during the period and existence of this franchise with the best practical equipment and the telephone service shall be first class in all respects and continuous and unlimited for twenty-four hours in every day during the entire life of this franchise, except interruptions from unavoidable causes.

SEC. 11. The owner or operator of said franchise shall provide and furnish for the use of the City of Louisville, free of charge, twelve (12) telephones, to be placed in such public offices or institutions within the City of Louisville as may be designated by resolution of the General Council, and any additional telephones so provided and furnished to the City of Louisville shall be paid for by the City at the rate of twenty-five per cent less than the charge imposed upon other business telephones.

SEC. 12. That when the owner or operator of said franchise or privilege shall have in use within the City of Louisville six thousand instruments (not counting extension telephones) furnishing telephone service to six thousand persons, firms or corporations, then the said owner or owners of said telephone plant or system shall pay to the City of Louisville, in addition to all municipal taxes, the sum of One Dollar per annum for each such additional telephone service or instrument in excess of six thousand, which payments shall be made semi-annually on January 1st and July 1st of each year to the City Treasurer, and it shall be the duty of the owner or operator of said franchise or privilege on the first days of January and July of each year to make a report to the City Comptroller, which shall be in writing and sworn to before the chief officer or general manager of said telephone system, setting forth the number of patrons and the number of such telephone instruments it has in use at the date of each such report.

113 SEC. 13. That the owner or operator of said franchise shall connect the lines of its telephone system, so far as practicable, with any and all telephone lines of other companies operating in the State of Kentucky, on reasonable terms and without discrimination, the owners of such other lines to agree, as a condition of such connection, to receive and transmit on like terms all messages in which the owner or operator of the franchise herein granted may be interested. In case there shall be any disagreement between the owner or operator of the franchise herein provided for and the owner of such other telephone lines as to the terms and conditions upon which such connection shall be made, as to hinder or delay same, then such difference and disagreement shall be promptly submitted to an arbitration committee, to be composed of three freeholders and voters of the State of Kentucky, one of whom shall be named by the owner of said franchise, one by the owner of such other line or lines, and the third by the Mayor of the City of Louisville, and the decision of a majority of said committee as to the terms and conditions upon which said connection ought to be made shall be final and conclusive upon all such parties.

SEC. 14. The purchaser or owner of this franchise or privilege

shall within fifteen (15) days after the approval of said sale by the General Council, execute bond to the City of Louisville, with good and sufficient surety, to be approved by the Board of Public Works in the sum of Thirty Thousand Dollars, conditioned upon the faithful performance and discharge by the owner or operator of this franchise of all the obligations imposed by this ordinance, and that said owner or operator shall restore the sidewalks and pavements of all public ways to their original condition and shall save the City harmless from all loss or damage which may be done to its public ways and other property, or to the person or property of individuals on account of any wrongful act or omission of such owner or operator, and that such owner or operator shall defend all suits and pay all judgments against the City of Louisville arising out of the construction, maintenance or operation of said telephone system. Said bond shall be renewed from time to time as and when re-
114 quired by the City of Louisville, through its Board of Public Works, provided, however, that when said purchaser or owner has completed and ready for operation a telephone plant with such capacity as is required by Section 4 of this ordinance, then the amount of said bond shall be renewed for the sum of Ten Thousand instead of Thirty Thousand Dollars.

SEC. 15. That the franchise or privilege herein provided for shall not be construed as being in any manner exclusive, or as preventing the General Council of the City of Louisville from providing for and causing to be sold other franchises or privileges for conducting a telephone system in the City of Louisville.

If any individual, firm, or corporation now operating a telephone system under any ordinance of the City of Louisville granting a franchise, privilege, or license therefor, shall become the purchaser or owner of the franchise or privilege herein authorized to be sold, such previously granted franchise, privilege or license shall immediately upon the acquisition of the franchise or privilege herein ordered to be sold, become null and void and be forever surrendered to the City of Louisville, and all obligations created by the ordinance granting the same or the acceptance thereof, shall immediately cease and determine, it being the intention to provide by this ordinance a complete and comprehensive telephone system in the City of Louisville.

SEC. 16. That an ordinance, entitled "An ordinance granting to the Ohio Valley Telephone Company permission to lay underground pipes, cable conductors and wires," approved January 26, 1884, be, and the same is hereby, repealed; and also an ordinance entitled "An ordinance confirming and ratifying Section 5 of an act passed by the General Assembly of the Commonwealth of Kentucky, and approved on the 3rd day of April, 1886, and entitled 'An Act to incorporate The Ohio Valley Telephone Company,' and granting to the said The Ohio Valley Telephone Company the right to construct, equip, operate and maintain telephone systems and exchanges,
115 and to erect poles and string wires thereon; to construct, operate and maintain conduits and manholes; to lay pipes, cables, conductors, and wires, and to operate its telephone lines over, along,

or under any highway, street, or alley in the city of Louisville," approved August 17, 1886, be, and the same is hereby, repealed; and also an ordinance entitled "An ordinance regulating the charges for telephone service in the City of Louisville," approved November 12, 1906, be, and the same is hereby, repealed.

SEC. 17. Should said franchise or privilege be purchased by any individual, firm, or corporation now operating a telephone system in the City of Louisville, such purchaser may use his or its conduits, subways, manholes, wires, poles and other properties constituting such existing telephone system as now established in operating the franchise or privilege created and sold under this ordinance.

SEC. 18. This ordinance shall take effect from and after its passage.

—— ——, *C. B. C.*
—— ——, *C. B. A.*
—— ——, *P. B. C.*
—— ——, *P. B. A.*
—— ——, *Mayor.*

Approved:
—— ——,

116 The Replication above referred to is as follows:

Circuit Court of the United States for the Sixth Circuit and Western District of Kentucky.

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant, against.
THE CITY OF LOUISVILLE, KENTUCKY, Defendant.

Replication.

The Replication of the Above-named Complainant to the Answer of the Above-named Defendant.

This replicant, saving and reserving to *himself* all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant, for replication thereunto sayeth that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this Honorable

Court shall direct, and humbly — as in in and by *his* said bill *he* has already prayed.

W. L. GRANBERY,
FAIRLEIGH, STRAUS & FAIRLEIGH,
Solicitors for Complainant.

117 And on another day of said term of said court, continued and held, to-wit, on March 31, 1909, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
CITY OF LOUISVILLE.

This day came the complainant by David W. Fairleigh, its counsel, and came also the defendant, the City of Louisville, Ky., by Clayton B. Blakey, the City Attorney; and the Complainant tendered, and with leave of the Court filed, the affidavit of said David W. Fairleigh, and thereupon moved the Court for leave to withdraw its replication herein and file the amendment to its bill of complaint which was then tendered. The defendant objected to both of said motions, but the Court, upon consideration thereof, sustained the said motions, and said replication was withdrawn, and it is ordered, adjudged and decreed by the Court that said amended bill be, and it is, now filed.

By agreement of parties it is ordered that the allegations of said amended bill shall stand controverted, as though denied by an answer under oath, and the defendant not desiring to further answer, it is ordered that the complainant's replication heretofore filed and withdrawn, be now re-filed, so that this cause stands at issue.

And the complainant's motion for a preliminary injunction pendente lite, in accordance with the prayer of the bill, coming on to be heard, the complainant read as an affidavit the original bill and amended bill, the affidavits of George G. Hall, W. K. Boardman, Nos. 1 and 2 and H. Blair Smith. The complainant also read the following parts of the printed report of the Chicago Telephone Commission filed with the affidavit of H. Blair Smith, viz: the last nine lines on page 47, and the first thirteen lines on page 48; the last seven lines on page 49, and the first four lines on page 50, the following sentence on page 52, viz: "Revenue estimates are
118 based upon expenses and general knowledge of the requirements of the telephone users, and cannot be accurately estimated in advance;" and table No. 2, embracing the whole page 58. No other parts of said printed report were read by the complainant. The complainant also read the following part of the stenographic report of the proceedings before the Revision Committee of the Common Council of the City of Louisville, held on December 19th, 1908, filed with affidavit No. 1 of W. K. Boardman, viz: the address of Helm Bruce, Esquire, pages 33 to 40 both inclusive. No other parts of said stenographic report were read.

The defendant read upon the hearing of said motion its answer and the affidavits of F. W. Lyon, J. H. Heuser, Edward H. Hackett, Jack Marx, C. C. Fishback Co., Val. Blatz Co., Russell & Co., Ferncliff Dist. Co., Jacob Isaacs, M. J. Doll, C. Troxler, Ky. Clothing Co., L. P. Hyman, Edward H. Marcus, German Insurance Bank, Wm. Schuff Co., S. H. Harper, Eclipse Vinegar Works, Geo. Schuster, Jno. P. Morton & Co., Harbison & Gathright, Schoppenhorst Bros., International Hardware Co., American Tobacco Co., J. T. S. Brown & Sons., Sunnybrook Distillery Co., American Machine Co., W. J. Whitesides, Peaslee-Gaulbert Co., Brown-Forman & Co., R. E. Wathen & Co., Laib Co., Louisville Paper Co., Bernheim Distilling Co., Schlitz Brewing Co., Bodley & Baskin, George L. Marshall, Leon Abraham, Christ Klippel, Max Schimpeler, Ed. Linden, Jacob Hartshern, Fred Knauer, Simon N. Jones, Flack Bros., W. E. Winkler, J. M. Schoenbaechler, Geo. Aufenkamp, John C. Fisel, G. Ernst, E. G. Randolph, Geo. O. Stauber, S. M. Wilhite, R. A. Batman, H. N. Gifford, W. H. Crumb, George T. Wood, Charles Meriwether, Louis Summers, M. Victor, J. H. Hodges, Mrs. Sue M. Davis, Mrs. R. L. Brucker, Mrs. M. Riley, Mrs. T. Murphy, Evan S. Rees, Miss A. Black, Miss Mida Staebler, Wm. Ruby, C. F. Wimberly, Jos. Piazza, H. Bachman, Mrs. John Wilhelm, Graf-Webb Co., Longest Bros., White Mills Dist. Co., Frank Ziegler, Jos. Lehman, J. M. Allen, T. J. Jones, H. Steumpler, T. Story, Thos. Lanahan, Louis Seelbach. The defendant also read the following parts of the printed report of the Chicago Telephone Commission, filed with the affidavit of H. Blair Smith, viz: beginning at line 8 on page 740 and ending on line 20, and beginning in line 1 on page
119 94, and ending in line 26 on same page; and beginning on line 32 on page 109, and ending in line 34 on same page, and Table No. 6 on page 114 and Table No. 18 on page 118.

After hearing argument of counsel for the complainant and for the defendant, the said motion of the complainant for a preliminary injunction in accordance with the prayer of the bill was submitted for judgment thereon.

The Amended Bill above referred to is as follows:

120 Circuit Court of the United States for the Sixth Circuit and Western District of Kentucky.

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

Amended Bill.

Amendment to the Original Bill of Complaint in the Above-entitled Cause, Made Pursuant to an Order of Court Dated March 31st, A. O. 1909.

The complainant, the Cumberland Telephone & Telegraph Company, amends the original bill herein as follows:

Insert after the words and figures "the sum of $1,700,045.26" in the sixth line of paragraph V of the original bill; on the seventeenth page thereof, the following words and figures, to-wit:

"and complainant's said telephone plant in the said City of "Louisville was then, and is now, fairly and reasonably worth the "sum of $1,700,045.26, and the fair and reasonable value of said "telephone plant was then, and is now, the sum of $1,700,045.26."

WM. L. GRANBERY,
FAIRLEIGH, STRAUS & FAIRLEIGH,
Counsel for Complainant.

121 And on April 2, 1909, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

The complainant, came by its counsel of record, and the defendant also came by its counsel, and the complainant moved the Court to refer the cause to a Master, and there being no objection thereto by the defendant, upon consideration thereof, it is ordered, adjudged and decreed by the Court that this cause (including the pleadings, exhibits and issues therein) be, and the same is, referred to Henry Burnett, Esq., who is hereby appointed the Special Master of the Court for that purpose, and who will, under and pursuant to the equity rules and any agreements that the parties may make, promptly proceed to take such testimony as may be offered by the parties upon the issues herein involved. He will particularly take testimony thereon and report his conclusions upon the following matters, namely:

1. The cost to the complainant of its plant and property in the City of Louisville, Kentucky, and in doing this he will state generally the basis of his estimate thereof.

122 2. The fair valuation of the plant and property of the complainant employed in its business in said city of March 6th, 1909, and also its value at the date upon which he may file his report herein. In doing this he will state generally the basis of his estimates.

3. The gross earnings and the net earnings of the complainant upon its plant and property employed in its business in said city for the years 1905, 1906, 1907 and 1908, stating separately as to each of said years, and giving the percentage of net income in each year; and whether said percentage is inclusive or exclusive of any allowance for depreciation of property and plant or claims for damages for personal or other injuries.

4th. The said Special Master is directed to make an estimate upon the testimony and state his conclusions therefrom as to what would be the reasonably probable gross, and the reasonably probable net income of the complainant from its said plant and property employed in its business in said city for the current year and the year 1910, if the rates of telephone charges fixed by the ordinance enacted by the legislative body of defendant, and approved by the Mayor March 6th, 1909, should be put into operation and effect.

5th. He will ascertain and report from the testimony what would be a fair amount or proportion of annual income to be set aside as a substantial provision and allowance for depreciation of complainant's plant and property employed in its business in said city, and the basis of his estimates thereof.

6th. He will ascertain and report whether the reasonably probable income from complainant's plant and property employed in its business in said city will, within the next few years, amount to a fair annual return upon the reasonable value thereof if the provisions of the ordinance approved March 6th, 1909, are put into operation.

7th. He will, from the testimony, ascertain and report whether the average net income or return from reasonably safe investments in business enterprises in said city, approximately re-

123 sembling that of the complainant, is above or below 6 per cent, upon the reasonable value of the plant or property from which said income is derived.

8th. He will further ascertain and report from the testimony whether the reasonably probable net income of complainant from its plant and property employed in its business in said city, after making all proper allowance for cost of operation, claims for damages, repairs and depreciation, would, during the years 1909 and 1910, come up to or exceed the said average income upon such other business enterprises if said ordinance should be put in operation, and he will state in his report the results of his estimates and the basis thereof.

9th. He will also, from the testimony, report his conclusions and the basis thereof as to the reasonably probable extension and increase of the complainant's business in said city within the present

and next succeeding year, and the reasonably probable extent and effect thereof, both upon its gross and upon its net income.

10th. He will also ascertain and report as to any particular advantages, if any, for the steady and reliable earning of income the complainant may have in said city, and also as to any peculiar disadvantages or risks, if any, which it encounters, or may encounter, therein which, with reasonable probability, may affect or offset such advantages, and the extent thereof; and,

11th. The Special Master will also report his conclusions upon such other facts as the developments of the case at the hearing before him may appear to be important to a determination of the issues made by the pleadings.

The said Special Master will hold meetings in the City of Louisville, Kentucky, and in the City of Nashville, Tennessee, and in such other place or places as he may determine to be needful, and he will rport in writing his findings and conclusions with all convenient speed.

124 And on another day of said term of said court, continued and held, to-wit, on June 15th, 1909, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
CITY OF LOUISVILLE, KENTUCKY.

This day came the complainant by James F. Fairleigh, its counsel. Came also the defendant, the City of Louisville, by Clayton B. Blakey and Huston Quin, its counsel, and filed a notice, duly executed upon James F. Fairleigh, counsel for complainant.

And comes the defendant, City of Louisville, Kentucky, by its counsel, and moves the Court to dissolve the restraining order heretofore issued in this cause, and for grounds for its motion states that great and irreparable damage is being done to this defendant in permitting and allowing the said restraining order to be or to remain in force and effect, and in support of this motion files the affidavit of James F. Grinstead, Mayor of the defendant, City of Louisville, Kentucky.

It is ordered that said motion be set for hearing June 21st, 1909.

And on Tuesday, June 22, 1909, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
CITY OF LOUISVILLE, KENTUCKY.

125 This day came the complainant by Fairleigh, Straus & Fairleigh, its counsel. Came also the defendant, the City of Louisville, Kentucky, by Clayton B. Blakey and Huston

Quin, its counsel. Came also A. Engelhard & Son Company by W. O. Harris, its counsel.

This cause coming on to be heard upon the motion of the defendant to dissolve the restraining order heretofore issued herein, as also upon the motion of A. Engelhard & Sons Company to file a bill of intervention herein, and said motions having been argued by counsel, and the Court not being sufficiently advised thereof, takes time.

And on June 29, 1909, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
CITY OF LOUISVILLE, KENTUCKY.

The Court being now sufficiently advised of the motion made on the 15th inst. to dissolve and set aside the temporary restraining order entered herein on the 8th day of March, 1909, is of opinion that said motion should be, and accordingly it is, overruled. The restraining oder by its terms was to continue in force until the Court should determine the questions arising upon the motion for an injunction pendente lite. The Court has not as yet had time and opportunity to determine those matters, and, besides, it had assumed from what had occurred in the case and at the bar that by the time the questions connected with the temporary injunction could be finally settled, the whole case could be better heard upon full presentation of all the testimony and the report of the Master, and it was thought that this would be more desirable than its settlement upon ex parte affidavits. Moreover, the Court particularly desired the guidance of the Circuit Court of Appeals, as it might be afforded by its decision of the case pending there of the same complainant against the City of Owensboro.

126 And on June 30, 1909, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
CITY OF LOUISVILLE, KENTUCKY.

This day came the complainant by Fairleigh, Straus & Fairleigh, its counsel. Came the defendant, City of Louisville, by Clayton B. Blakey and Huston Quin, its counsel, and without waiving its objection to the granting of the restraining order herein, or its objections to the granting of the temporary injunction, but still insisting that said restraining order should be set aside, and solely because of the fact that said restraining order is allowed to remain in force over the objection of this defendant, now moves the Court for an order requiring complainant to pay into court and impound all sums re-

ceived by it from the operation of its telephone system in the City of Louisville in excess of the rates established by the ordinance as set out in the Bill of Complaint and the answer herein, the same to be held by a receiver or some one to be appointed by this Court until the further order of this Court; and to modify said restraining order to that extent, and in support of said motion, filed the affidavits of James F. Grinstead and Clayton B. Blakey herein.

It is ordered by the Court that said motion be set for hearing July 9th, 1909.

127 And on another day of said term of said court, continued and held, to-wit, on July 9th, 1909, the following proceedings were had:

No. 7194

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

This day came the complainant by Fairleigh, Straus & Fairleigh, its counsel. Came also the defendant by Clayton B. Blakey, its counsel, and filed the affidavit of H. Blair Smith herein.

This cause coming on to be heard upon the defendant's motion, heretofore entered herein, to require the complainant to pay into court and impound all sums received by it from the operation of its telephone system in the City of Louisville in excess of the rates established by the ordinance as set out in the bill of complaint and the answer herein, and to modify the restraining order to that extent, and having been argued by counsel, and the Court not being sufficiently advised thereof takes time.

128 And at another term of our said Court held for its October Term, 1910, continued and held, to-wit, on November 17th, 1910, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

This day came Henry Burnett, the Special Master herein, and returned into court his report in writing, accompanied by the testimony taken and 594 exhibits.

It is ordered that said report, said te-timony and each of said exhibits be filed, and pursuant to Equity Rule 83 it is ordered that said report do lie over for thirty days, and within that time all parties in interest may file exceptions thereto. The action is set for hearing on January 4th, 1911, upon all exceptions which may be filed in due season to said report.

It is further ordered that said Special Master shall, within two

weeks, file a statement of the particulars of his claim for compensation for his services in the execution of the order of reference herein and for any expenses incurred by him in doing said work, and if there shall be any objections to said claim they shall be filed in writing within two weeks after the filing of the statement of the Special Master. If any objections thereto are filed, they will also be set for hearing on January 4th, 1911.

Report of Special Master, above referred to, is as follows:

129 United States Circuit Court, Sixth Circuit, Western District of Kentucky.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY of LOUISVILLE, Defendant.

Report and Findings of the Special Master.

As Special Master herein, I respectfully present this, my Report and Findings, as directed by the orders of this Honorable Court, made and entered on the Second day of April, 1909, in the above styled case.

The evidence taken and produced before me on behalf of Complainant is contained in the depositions of the following witnesses: H. Blair Smith, James E. Caldwell, E. D. Green, George Wilkinson, J. E. Jagoe, Leland Hume, H. Blair Smith and E. M. Fisher. The Joint Report of Wilkinson and Farnham.

On behalf of Defendant, the evidence consisted of the depositions of the following: Wm. H. Crumb, H. N. Gifford, Hardy Burton, John H. Brand, J. E. Settle, Isaac Hilliard, H. B. Warren, S. D. Levings, W. C. Polk, report of D. C. Jackson, Norton E.
130 Westlake, Cainsey R. Johnston, James T. Daniels, J. W. Hart, Reuben G. Trail, Howard P. Yeager, Alice C. Everett, T. D. Webb, George M. Welsh and Robert Frewin.

The depositions of William Kavanaugh, H. W. Ritterhoff and Charles M. Peale were not considered by me. Exceptions were filed to these depositions by Complainant upon the ground that the witnesses refused to answer questions on cross-examination. I sustained the exceptions, and Defendant entered its exceptions to my ruling.

I considered the reports of the accountants, George Wilkinson and E. W. Farnham, rather as briefs on their respective sides, than as evidence.

I am directed to find:

I.

"The Cost to Complainant of its plant and property in the City of Louisville, Kentucky, and in doing this, he will state generally the basis of his estimate thereof."

In 1899, the Ohio Valley Telegraph & Telephone Company owned and operated a telephone plant in the City of Louisville, New Albany and Jeffersonville, Indiana, and in seven small towns in Kentucky,

and also a series of toll lines, all connected with the Louisville Exchange. Its capital stock was 5,494 shares of $100.00 each, amounting at par to $549,400.00.

Complainant acquired all of these exchanges and all the property of the Ohio Valley Company in the following manner:

In the month of June, 1899, it purchased 702 shares of the capital stock of the Ohio Valley Company, and paid therefor $140.00 per share $98,280.00

131 Subsequently it purchased 2,855 shares at $141.00 per share $402,555.00

There were left, of the total issue of the capital stock of the Ohio Valley Company, 1,937 shares, and these were acquired by complainant by exchanging an equal number of its own shares of stock for the 1,937 shares of the Ohio Valley Company.

It is urged that these purchases of the Ohio Valley Company's stock fixed the market value thereof in June, 1899, at $141.00 per share. Based upon that assumption, Complainant insists that the value of its 1,937 shares which it exchanged at par for the Ohio Valley Company's shares, should have the added value of $41.00 per share, to-wit 79,979.91

That is to say, Complainant contends that it has actually paid out for 1,937 shares of the Ohio Valley Company's stock in exchange, the equivalent of $193,700.00, and in addition thereto, the approximate premium thereon, amounting to 79,979.91

I am unable to accept this specious reasoning. The evidence shows that prior to 1900, and during each of the years succeeding, up to 1908 inclusive, the Complainant Company sold its shares of capital stock in various large amounts, but the price at which such stock was sold was invariably at par.

I find, therefore, that the 1,937 shares of capital stock of Complainant Company were exchanged for an equal number of shares of the Ohio Valley Company, and that the amount expressed in dollars thus expended was 193,700.00

It thus appears that the total paid out by

132 Complainant Company for all of the capital stock of the Ohio Valley Company was $694,535.00

The Ohio Valley Company, at the time of these purchases, owned and operated, besides the Louisville Exchange, and in connection therewith, nine smaller exchanges and a number of toll lines leading out of Louisville, all connected with the Louisville Exchange. The construction cost of these toll lines was ascertained by the Joint Report of Wilkinson & Farnham to have been 125,406.80

If we deduct this amount from the total cost of the entire capital stock of the Ohio Valley Company, we find that the actual cost of all the exchanges of the Ohio Valley Telephone Company was..... 569,128.20

In arriving at the cost of the Louisville Exchange, it appears that an arbitrary basis of 80.4 per cent of the total cost of all the exchanges was fixed by Complainant.

Without determining the absolute correctness of this calculation, I accept it, and I find that the cost of the Louisville plant on this basis, as of the first of January, 1900, was..... 457,579.07

The cost of the real estate in Louisville, which was acquired from the Ohio Valley Company, and which was necessary for the proper conduct of its business, as of date January 1, 1900, was..... 108,034.50

Total $565,613.57

It may elucidate and strengthen the correctness of the above findings, by calling attention to the fact that the books of the Ohio Valley Company show,
133 as of December 31, 1899, that the total construction of all its exchanges cost that company $638,196.74
Deducting the cost of toll lines..... 125,406.80

We have $512,789.94

This being the book cost of the entire plant as of December 31, 1899, as shown by the books of the Ohio Valley Company.

These figures do not include the real estate, to-wit 108,034.50

Total $620,824.44

If we were to apply the same process to the above figures as to those on the preceding page, we would find the total book cost of the plant or exchange in Louisville 412,283.11

This last amount being 80.4 per cent of $512,789.94.

Add cost of real estate..... 108,034.44

We have a total cost on this basis of..... $520,317.55

It is insisted by Complainant that to the book cost of the Ohio Valley Company's plant, as it appears on Complainant's books, to-wit..... 638,196.74

There should be added..... 135,505.70

The basis of this claim is that during the period of 1890 to 1899 inclusive, the Ohio Valley Company had, from its earnings credited annually to its Construction Account, in the aggregate..... 135,505.70

It is urged that this aggregate amount was charged off from Construction ostensibly to cover depreciation of plant during the period named, but that depreciation had been completely guarded
134 against annually by an expenditure of an average amount of nearly ten per cent of the book cost of the plant during the years from 1890 to 1899 inclusive, and that therefore it was unnecessary and improvident to credit the Construction Account with this sum of $135,505.70.

It is impossible at this time—at least from this record—to ascertain the reasons or motives of the Ohio Valley Company's management in making these entries of credits. It is not probable that the entries would have been made, unless the reasons therefor were of a compelling nature. No officer of the Ohio Valley Company has testified about the matter, except Capt. Gifford, Treasurer of the Company, and he says the credits were made to Construction to cover depreciation. If that be true, and there is no contradiction in the record, then I find that the credit must remain and should not be disturbed.

I find that the cost of the Ohio Valley's plant in Louisville, not including toll lines nor real estate, was $457,579.07

The Joint Report of the two experts shows that, according to the books of the Complainant Company, the additions to the Louisville plant or exchange from 1900 to 1908, both inclusive, amounted to..... 1,023,545.34

Which would make a total of..... ...$1,481,124.41

I have been embarrassed by the conflict in the evidence as to the correctness or propriety of charging items of cost to what the accountants call the Construction Account.
135 The principal witness of Complainant as to these questions was Mr. Blair Smith, the company's auditor. The witness did not, and of necessity could not, testify from personal knowledge as to a great many items of such cost as to which he was interrogated. His answers to very many of such inquiries were that bills or vouchers, showing certain cost of materials and labor, were sent to him at the Nashville office, accompanied by a memorandum or notation made by a clerk in the Louisville office, and that acting upon the verity of such notations, he entered the several amounts as a proper charge to the Construction Account.

It is not clear to my mind that this is the best evidence of the correctness of such charges. I have not felt justified in rejecting such evidence, but I have carefully considered all the evidence produced which tended to discredit any and all such entries.

The great mass of the evidence, and the hundreds of detailed matters touching the correctness of charges that constitute the Con-

struction Account, forbid any attempt to treat them singly. In fairness to both parties to this litigation, I am forced to treat these matters in a general way, and to arrive at what I consider a fair and equitable estimate of what I believe to be erroneous charges to this account.

I have decided on this plan of estimating the amount of erroneous charges to the Construction Account for two reasons:

First: The evidence on the point fails in many instances to disclose the amount of what are alleged to be erroneous charges, but merely discloses what is said to be an incorrect theory.

Second: In the case of City of Knoxville vs. Knoxville Water Company, 212 U. S., 16, we find the following:

136 "The jurisdiction which is invoked here ought, as has been said, to be exercised only in clearest cases. If a company of this kind chooses to decline to observe an ordinance of this nature and prefers rather to go into court with the claim that the ordinance is unconstitutional, it must be prepared to show to the satisfaction of the court that the ordinance would necessarily be so confiscatory in its effect as to violate the Constitution of the United States."

With the foregoing reasons as my guides, I have examined with great care certain phases of the evidence in respect of the cost of the Louisville Exchange.

Many vouchers were produced at the hearing, covering the wages of men employed in and near Louisville in connection with the aerial work, including toll lines. These vouchers show that certain wages and salaries had been expended on the aerial lines, and also on underground lines connected with the Louisville Exchange. A small proportion of these outlays was charged to Maintenance or Reconstruction, while the bulk of the outlays is charged to Construction.

The evidence offered by Complainant is that the wages and salaries were used in construction, because they are charged to that account. No witness was introduced who pretended to have personal knowledge as to any of these items.

It may be proper to mention in this connection that Complainant generally kept three accounts to take care of the above referred to three departments, to-wit: Maintenance, Reconstruction and Construction.

The evidence tends to show that in nearly every instance, the wages of the employes shown in the vouchers we are considering, were charged almost wholly to Construction, and no evidence of the correctness of such charges was offered, except that the vouchers bore a notation to that effect.

137 It is inconceivable that so little of these wages was properly chargeable to Maintenance or Reconstruction from 1900 to 1908. The aggregate amount of these vouchers was not shown in evidence.

The evidence shows that Complainant kept a Supply Department, from which it issued, on requisition, all kinds of general supplies, other than switchboard sections and other large parts. Materials

of all kinds are purchased by Complainant at wholesale (Smiths' Depo., p. 255), and stored in a warehouse for use of the Louisville Exchange and adjacent exchanges. The Complainant uniformly charged on all supplies furnished to the Louisville Exchange a premium of ten per cent over and above original cost.

One witness, Mr. Warren, testifies that from 1900 to 1908, both inclusive, the supplies thus furnished, according to the books of Complainant, amounted to $518,000.00. I do not find this statement of Mr. Warren to be altogether accurate, but it is fair to assume that it is an approximation.

If, therefore, this ten per cent added charge on supplies be improper and unfair to the exchange, the amount of such an overcharge would be in the neighborhood of $50,000.00.

Vouchers from the Supply Department were called for but not produced by the company's auditor, the reason being given that he had no control over the Supply Department. (Smith's Deposition P. 320.)

The evidence shows that the vouchers for supplies were sent into the Nashville office from the Louisville office, accompanied by a notation as to how the amounts were to be charged—whether to Maintenance, Reconstruction or Construction. But the evidence is most unsatisfactory as to whether the supplies were accurately distributed in the books of account. Vouchers from the Supply
138 Department showed totals only, and the amounts were entered on the books in accordance with the notations of the Supply Department clerks.

Mr. Smith, on page 256 of this deposition, says as to the added charge of ten per cent for supplies, that it was to cover freight, drayage, rentals, etc.

I find that this charge on all supplies furnished is at least a burden on the business in Louisville, and should not be allowed. The company in the first instance must have paid freight and drayage on all supplies furnished. The company doubtless received the usual trade discount for cash. As to how the freight and drayage were charged, or the cash discount credited, the record is silent. I do not doubt that proper and correct entries were made on the company's books as to the rent of the supplies warehouse. This is doubtless charged to expense of supplies.

The amount of this ten per cent added charge, like the items of wages, is a matter of conjecture, but it is obviously a substantial amount, extending from 1900 to 1908, both inclusive. At the argument, counsel for Complainant admitted that the items of drayage, freight, rental, etc., are charged primarily to Supply Expense, but that ultimately they are charged to the operation of the exchange.

I find, therefore, that this added charge of ten per cent on the cost of supplies furnished to the Louisville Exchange, must be disallowed. The aggregate amount of such added charge is not, under the evidence, susceptible of definite ascertainment, and must necessarily be estimated.

Again, it appears from the evidence that for several years all the apparatus for installing a subscriber's station, including labor, were

charged to construction, and that in addition thereto an arbitrary charge of $10.00 for each instrument installed was made to construction. (Smith's Deposition, p. 307.)

139 Finally, say in 1907—The evidence is very indefinite—both plans were abandoned. The explanation given by Mr. Smith, the Auditor, and by Mr. Caldwell, President of the Complainant, as to the correctness of this ten dollar charge on each instrument gained, is unsatisfactory. They say that if the company installed one thousand instruments in a given month, and took out two hundred instruments, the company has obviously gained eight hundred instruments. On the number of instruments thus gained, the company entered a charge to Construction of $10.00 for each instrument, making a total of $8,000.00. I find that this method of charges ought not to be sanctioned.

There is a sharply defined difference in the evidence as to the cost of the conduit system in Louisville, somewhat due to the varying opinions as to the sizes of the wires used in the cables, and consequently the amount of copper contained, as well as the mode of construction.

The witnesses who testified as to the conduit system seemed to be equally expert, but they differ so widely, and they appear to be so convinced of the correctness of their opinions, that I am unable to reconcile them.

There are many individual items charged to Construction which are challenged by the Defendant. The largest one is an item of $26,000.00 charged to Construction on account of five sections of switchboard, which Defendant says were shipped away from Louisville after having been installed in the main exchange. Mr. Smith says he has an impression that some parts of the main switchboard were removed from Louisville. At the argument, Complainant contended that these five sections were removed to the West Exchange in Louisville. To rebut this, it is contended by Defendant that vouchers were exhibited by the company's Auditor, which show that the five sections of switchboard in the West Exchange was only $17,000, and that amount was paid by Complainant in addi-

140 tion to the disputed item of $26,000.00, and that both amounts appear as parts of Construction Account.

I have gone over this evidence carefully, and while the facts brought out in evidence are not satisfying, yet, as the expert accountants who examined the books make no mention of this alleged discrepancy, I am disposed not to disturb the account as to the two items last above mentioned.

Again, the evidence shows that there are many toll lines leading out of Louisville. These lines are devoted to what are commonly called "long distance messages." No separate account is kept showing the cost of operation of the toll lines. (Smith's Deposition, p. 201.) The maintenance and reconstruction of the toll lines, and in some, if not in every instance, original cost of additions to the Toll Department, were charged to Construction, Louisville Exchange. (Smith's Deposition, pp. 258, 259.)

In January, 1900, and in December, 1901, toll switchboards and

keyboard equipment, etc., were purchased for the Toll Department, and the cost was all charged to Construction Account of the Exchange. (Smith's Deposition, pp. 260, 266.)

Mr. Smith, Auditor, and Mr. Caldwell, President of Complainant, state that because of the toll lines and their easy accessibility to the Louisville subscribers, the value of the service to the subscribers is greatly enhanced.

I have considered the practice of the Complainant to charge to Construction Account additions to the toll equipment in the several exchanges in Louisville, and further, that the maintenance and reconstruction of toll lines were charged to the Louisville Exchange. The amounts of the erroneous charges to Construction Account from which we must find the cost of the Louisville Plant or Exchange, is necessarily problematical, and under the evidence in this
141 record, it is not susceptible of definite ascertainment. I am compelled, therefore, to make an estimate of the proper amount to be deducted from Construction Account, having due regard to the interests of both parties to this controversy, and I am of the opinion that a fair and most conservative estimate of what has been charged to the Construction Account under a mistaken theory is, at the very best, $100,000.00, which must be deducted from $1,481,124.41.

I find, therefore, that the cost of the Louisville Exchange, including toll lines, but excluding real estate, is $1,506,531.21

II.

"The fair valuation of the plant and property of the Complainant employed in its business in said city as of March 6, 1909, and also its value at the date upon which he may file his report herein. In doing this he will state generally the basis of his estimates."

Witnesses who testified as to the value of Complainant's plant were H. Blair Smith, Auditor of the company; J. E. Jagoe, Assistant Superintendent of Complainant's plant, and the witnesses who testified on this subject on behalf of the Defendant were W. C. Polk, Wm. H. Crumb, S. D. Levings, and in addition to these, Complainant and Defendant referred frequently to the units of valuation of such properties as adopted by Prof. Jackson.

The disagreements between these various witnesses are startling. The valuations of the plant by these witnesses are as follows:

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Smith's total	$1,688,511.94
Jagoe's total	1,793,540.30
Polk's total	1,085,637.00
Crumb's total	975,000.00
Levings' total	1,000,000.00
Prof. Jackson's total, estimated according to the units adopted by him	1,779,413.18

Messrs. Polk, Crumb and Levings are experts introduced by the Defendant. Messrs. Smith and Jagoe are officials of the Complainant Company.

However truthful these witnesses may be (and I do not question their honesty of purpose), they are all more or less biased consciously or unconsciously. It is impossible for me to reconcile these totals one with the other. It may be true that Crumb's information as to the physical plant in Louisville was, on cross-examination, shown to be defective. This may be true as to the testimony of Levings. Mr. Polk shows in his deposition that while he may have fallen into some errors as to the quantities that constitute the Louisville Exchange, yet his experience in building plants in different parts of the country, and particularly his experience in building the Home Telephone Company's plant in the City of Louisville, entitles his testimony to consideration.

Mr. Smith speaks of and argues from the book cost of the plant, and his totals closely approximate the book cost as testified to by him.

Mr. Jagoe has gone into great detail and gives items, quantities and costs, and it is obvious that he is also largely influenced by the book cost of the Louisville Exchange. In addition to that he has added very frankly large amounts which he describes as "cost of supervision" and "overhead charges." For instance, in speaking of the value of the underground cable, he adds as "overhead charges" and "supervision," $57,505.27. In speaking of the value of
143 the aerial cable system, he adds as "supervision" and "overhead charges," $89,563.98. In speaking of the value of 4,960 miles of wire and the stringing of said wire, being No. 10 and No. 14, he adds for "overhead charges" and "supervision," about $10,000.00. And in speaking of the switchboards, he values same at $309,000.00, but says that of this amount there are due to "supervision" and "overhead charges" $21,462.39, or, in other words, seven per cent. On page 64 of Mr. Jagoe's deposition he is asked what supervision is necessary. Answer: "General expenses and engineering and supervision of the officers of the company." He further admits that these general expenses are every year charged to the expense of the company.

On pages 64 and 65, he says in substance, that the salaries of said officers, which is to say, totals of General Expenses, are prorated each year among the different accounts, to-wit, Maintenance, Reconstruction and Construction, in certain proportions named by him.

In order to show further the differences in opinions of the expert witnesses, it appears that Mr. Jagoe values the aerial cables at	$431,953.35
Underground cables at	288,942.50
Making a total of	720,895.85
Polk values these two items at	384,440.00
Showing a difference of	$336,455.85

Each witness undertakes to sustain his totals by elaborate details.

As stated above, the value of the plant as found by Mr. Jagoe, when reduced by the items of "overhead charges" and "supervision," amount to just a
144 little less than the figures given by Mr. Smith.

Mr. Jagoe's figures reduced as above indicated would be $1,625,008.66
Which is about 63,000.00
less than Mr. Smith's.

Again, Mr. Jagoe and Mr. Polk approximately agree in their estimate of the number of duct feet in the conduit system. Mr. Jagoe says there are in conduit feet 438,803
Mr. Polk says there are in conduit feet 436,890

The difference between the witnesses as to the cost of reproduction is so large, that I find myself unwilling to adopt the figures of either. Both of these witnesses are in the highest degree competent to pass upon this question, and my endeavor has been to reconcile their statements, if possible. Being unable to do so, I have concluded, so far as the value of the conduit system is concerned, to fix the cost of reproducing the conduit system at $.294 per duct foot, this being an average cost fixed by Messrs. Jagoe and Polk.

I have adopted Mr. Jagoe's estimate of the number of duct feet, and upon that basis, the cost of reproducing the 438,803 duct feet, at $.294 per duct foot, with $7,500.00 added as the cost of iron pipe found by Mr. Polk, would be $1,132,821.70
Instead of the amount as fixed by Mr. Jagoe 170,382.81

Making a difference of $37,561.11
Which amount should be taken from Mr. Jagoe's total, leaving as his estimate of the value of the plant $1,587,447.55

These figures include a large amount of what the witnesses denominate "surplus equipment." This surplus is found in the
145 aerial system, in the conduit system and in the exchange switchboards.

The evidence shows, and so I find, that it is not prudent or wise for a telephone plant like the one in Louisville, to be constructed merely to meet the immediate demands of the public; that such a plant should be built with an eye to the future, and that there should be a surplus equipment in every department sufficient to meet the demands of a period of several years, so that the wants of the new subscribers may be supplied on short notice. The evidence shows that there are more poles in the county outside of Louisville connected with the exchange or intended for the Louisville Exchange, than the present business of Complainant demands, but, as stated above, I am unwilling to condemn or to eliminate from the company's plant this surplus equipment.

Another matter was insisted upon at the argument and is referred to in the testimony that requires mention: It is stated that the blue prints of the Complainant show one or more "proposed" aerial lines, and that such lines have not been constructed, but are embraced in the estimate of the value of plant as if they actually existed. The evidence on this point is conflicting, and I have concluded not to disturb this item, although I am constrained to say that the evidence for Complainant on the question is not as clear and convincing as it might have been.

It is frankly stated by Mr. Jagoe that in all the construction, maintenance and reconstruction of the plant, "overhead charges" and "supervision" have played a part in swelling the totals. To what extent this bookkeeping device has been resorted to the evidence fails to show, except in the few concrete instances mentioned by this witness, as stated above.

I have discussed the above details of Mr. Jagoe's estimates
146 of the value of the plant in order to show that even his figures are not convincing.

I have found that the cost of the plant was, excluding toll lines and real estate.....$1,381,124.41

It does not appear in evidence that in this total there is included "overhead charges" or "supervision" to any great extent.

If I am correct as to the original cost, then it is not possible that the value of the plant at this date is in excess of the cost.

The witnesses are asked "what kind of depreciation has occurred in the plant," and in this way it was sought to obtain its true value. The witnesses for Complainant all agree that the plant has been kept up in excellent condition, and on account of the care that has been exercised in respect of the maintenance and reconstruction, the value of the plant is approximately equal to its cost price. Witnesses for the Defendant, however, state that the depreciation from the cost price has been about twenty or twenty-five per cent.

The plant in Louisville was begun and finished about the year 1890, and has therefore been in operation for about twenty years. The evidence shows that a great many of the parts of the exchange or plant will become useless in one year, and as to these parts, the testimony is that they have been maintained or reconstructed. Other parts of the plant will last a number of years, varying according to the character of material. All these parts, however, have been well cared for, and for all practical purposes, the Louisville Exchange in all its parts, performs well the functions of a new plant, and is nearly equal physically to a new plant.

But in spite of all this, it is a matter of common knowledge that poles and wires and instruments and switchboards and all the
147 apparatus connected with a telephone system, under the incorrigible law of nature, begin to depreciate the very day they are installed; and this depreciation continues from day to day and from month to month until the parts require replacement. Under the evidence poles will become worn out on an average in about ten years, and it is reasonable to suppose at this date there are

not many poles in the system that were in use in 1890—new poles having taken their place from time to time as the exigencies of the service demanded.

The evidence shows that the underground or conduit system will last unimpaired indefinitely, as some of the witnesses put it, more than fifty years. The conduit system was installed by the Ohio Valley Company some years before 1900, and it has required very little expense for maintenance or reconstruction since it was acquired by Complainant. About fifteen per cent has been added since 1899.

The estimates of the witnesses as to present value are irreconcilable. It may be conceded that the opportunities of some of the witnesses for accurate knowledge on the subject are superior to those of others. This assumption is undoubtedly true. I would not be fair in assuming that either of the witnesses is guilty of knowingly making misleading statements.

Convinced as I am that my findings as to the cost of the plant is correct, I am, for the reasons stated, persuaded that the value of the plant as of March 6th, 1909, all features of depreciation considered, ought to be and is.....$1,381,124.41
Less depreciation of ten per cent..... 138,112.44

Leaves $1,243,011.97

This does not embrace real estate nor toll lines nor working capital, if any should be allowed.

148 The value of plant, after considering depreciation, I find to be.....$1,243,011.97
Value of toll lines and equipment..... 125,406.80
Less depreciation of ten per cent..... 12,540.68

Net value $112,866.12

I find therefore that the total value of the exchange, including the toll lines, but excluding real estate, as of March 6, 1909.....$1,355,878.09

There is some evidence—though vague and unsatisfactory—(See Smith's Deposition, p. —) that some additions to construction of toll lines have been made since 1900, but the only special line mentioned is one from Louisville to Nashville. This entire line cannot be considered as a part of the Louisville Exchange construction. Its cost is said to have been $40,000.00, but all of this cannot be charged to Louisville toll lines. Half of it at least must belong to Nashville, and there are other exchanges tapped by it between the termini, such as Bowling Green, Elizabethtown, Franklin and Edgefield.

I see no reason to doubt that the value of the plant as of the First of November, 1910, is not of much less value than I have found it to be as of date March 6, 1909.

If Complainant in the past twenty months has maintained and reconstructed its plant as carefully and as elaborately as it did during 1905, 1906, 1907 and 1908, the plant ought to be worth approximately as much now as it was on March 6, 1909.

149 III.

"The gross earnings and the net earnings of the Complainant upon its plant and property employed in its business in said City for the years 1905, 1906, 1907, and 1908, stating separately as to each of said years, and giving the percentage of net income in each year, and whether said percentage is inclusive or exclusive of any allowance for depreciation of property and plant or claims for damages for personal or other injuries."

Operating Expenses of the Complainant in Conducting its Business in the City of Louisville During 1905, 1906, 1907 *and* 1908, *According to Complainant's Books.*

	1905.	1906.	1907.	1908.
1. General Expenses (pro rated)	$11,205.34	$11,270.15	$11,226.76	$9,531.29
2. General Expenses (Direct)	29,271.49	35,948.37	34,826.91	32,545.46
Total	$40,476.83	$47,218.52	$46,053.67	$42,076.75
3. Operating Expenses	84,264.54	80,738.06	79,661.04	75,440.28
4. Maintenance	49,819.14	52,796.93	65,616.31	54,705.91
5. Reconstruction	41,051.02	40,626.07	41,895.10	31,450.07
6. Instrument Expense	11,559.76	12,518.70	13,372.49	13,722.52

Total Operating Expenses.

Year 1905	$227,171.29
Year 1906	$233,898.28
Year 1907	$246,598.61
Year 1908	$217,395.53

The classified gross earnings of Complainant for the years 1905 to 1908, both inclusive, as they appear on its books, are as follows:

	1905.	1906.	1907.	1908.
1. Exchange Service	$264,675.13	$280,076.12	$297,501.14	$307,431.55
2. Proposition of Toll Earnings	6,539.92	7,064.91	8,030.15	7,632.11
3. From Telegraph Companies	983.88	1,018.12	939.48	761.79

4. From American Telegraph & Telephone Company.	$2,865.29	$3,427.09	$3,864.17	$3,272.37
5. Private Line Rentals	1,342.01	1,079.92	1,153.91	.....
6. Pole Service and Attachments	953.11	1,096.28	1,177.75	1,229.99
7. List Advertisements	751.83	2,497.25	2,984.22	3,151.59
8. Telegraph Drops	215.49	976.40	2,110.61	2,130.55
9. Messenger Fees	862.02	812.40	769.15	658.30
10. Removals and Miscellaneous	1,001.12	680.53	3,278.70	2,682.97
Gross Total	$280,189.80	$298,729.02	$321,809.28	$328,951.52
Deduct bad debts	10,366.42	4,230.58	2,050.77	3,113.22

Total Gross Earnings of Complainant as Placed to the Credit of Louisville Exchange.

Year 1905	$269,823.38
Year 1906	$294,498.44
Year 1907	$319,758.51
Year 1908	$325,838.30

In 1908 "Private Rentals were reported from the Exchange and included in $307,431.85 'Exchange Service.'"

In the above list of classified gross earnings of Complainant the first item which was called to my attention is No. 2, "Proportion of Toll Earnings." There is in the record much evidence which was directed to the Toll Line operations of Complainant Company in the City of Louisville. The object of this testimony was to determine whether or not the Louisville Exchange receives its proper proportion of the Toll Earnings which originated in Louisville. The amount of such earnings which is allotted to the Louisville Exchange is fifteen per cent of the total of outgoing messages. The salaries of toll line clerks and operators, as well as wages of those engaged in the maintenance and repair of toll lines, are charged to Expense Account and Construction Account respectively, of the Louisville Exchange. (Smith's Deposition, p. 420.)

151 The Exchange in Louisville is operated as a whole, and the toll lines are embraced in the operation. There are no pole lines leading out of Louisville which carry toll lines exclusively. (Smith's Deposition, p. 536.) Hence it is that the maintenance and repairs of all pole lines leading out of Louisville, whether such lines carry toll lines or not, are charged to the Louisville Exchange. It appears further that the equipment of the Toll Department, such as switchboards and toll trunks, have been charged to Construction Account of the Louisville Exchange. (Smith's Deposition, pp. 258, 259, 265, 266 and 270.)

The last items mentioned, equipment of Toll Lines Department, are probably included in the total cost of toll lines of the Ohio Valley Company as reported by the accountants. This amount was a little more than $125,000.00. But be that as it may, the evidence shows that the salaries of employés who perform duties in the Toll Department, as well as the wages and salaries of laborers and others who are engaged in maintaining and reconstructing the toll lines, which bear toll wires in connection with exchange wires, are all charged to and paid by the Louisville Exchange.

In accordance with what is alleged to be a general custom among telephone companies which operate toll lines in connection with an exchange, the Complainant allots to the Louisville Exchange fifteen per cent of the toll revenues which originate in the City of Louisville, and pays over the remaining eighty-five per cent to the general company for its general purposes. I have been very much perplexed by this state of affairs, as disclosed in the evidence. Custom of trade among merchants has generally received the sanction of the courts. The reason of this is obvious, because merchants trade with each other at arm's length, and what is generally done under such circumstances ought to be and is generally upheld by the courts. But the custom here testified to is a very different

152 thing from the custom of merchants. The parent company manages and controls its subsidiary department as it deems best. The subsidiary department occupies no position of independence, and, in fact, does not and cannot raise a protest. And when it appears, as in this record, that the Louisville Exchange is required to pay all, or nearly all, of the operating expense of the Toll Line Department and in return is given compensation that is

utterly insufficient to pay the expenses it is required to pay, such a custom does not and ought not to appeal to the judicial mind.

Mr. Caldwell and Mr. Smith emphasize the fact that the toll line connections are arranged for the convenience of the subscribers, so that at a moment's notice any subscriber in Louisville may connect with the Long Distance Department, and that this accessibility is an important factor in determining what are reasonable or unreasonable rates to be charged the subscribers.

This argument would be plausible if the Toll Service and its conveniences were furnished by a stranger company, in which case the fair and reasonable distribution of the revenues and the proper allotment of the cost of operation would be regulated and controlled by a solemn contract between independent parties. But Complainant is the owner of the toll lines. It operates them and is entitled to receive and does receive the revenue. It is also the owner of the Louisville Exchange. The question then is whether or not the division of toll line revenues, as set out above, is fair and reasonable under existing conditions.

The Toll Department and all its apparatus and employés are located in the Main Exchange Building of Complainant. No part of the rent nor taxes nor insurance on this building, nor any part of the insurance on the toll switchboards and equipment are charged to the Toll Department, but all of same are charged to and paid by the Louisville Exchange out of its earnings. The salaries
153 of toll clerks and messengers are also paid by the Exchange. Nor is any part of the salaries of the Private Branch Exchange Operators paid by the Toll Department, but these also are all charged to the Exchange.

It is shown by Mr. Warren on pages 506 and 507 that a claim for personal injuries, amounting to $1,500.00, was paid in 1905 to a toll operator who was injured while engaged in the Toll Department, and that this amount was charged to and paid by the Louisville Exchange.

I find that for the years 1905, 1906, 1907 and 1908 the Louisville Exchange has been charged with and paid out as salaries for toll operators, toll chief and telegraph operators, toll clerks and messengers, the following amounts:

1905	$11,661.80
1906	13,126.89
1907	13,126.97
1908	9,680.10

For the same years the fifteen per cent of the earnings of the Toll Department has been credited or paid to the Louisville Exchange as follows:

1905	$6,539.92
1906	7,064.91
1907	8,030.15
1908	7,632.11

These items standing alone show a large loss to the Louisville Exchange by reason of the Toll Department. In addition to the above, I find that the Complainant charges up against the Louisville Exchange the rent of all its exchanges, and in addition thereto requires the Exchange to pay the taxes and insurance and repairs on said structures.

It is vigorously insisted by the City, and with much plausibility, that the Toll Department should be charged with its propor-
154 tion of the general expenses of the Exchange, with printing, stationery, with legal expenses, with advertising, incidentals (operating), traveling expenses and incidentals (repairs), but in view of my findings as to the Toll Department, I will not disturb the last named accounts.

There is another branch of this question that requires notice. It appears that the maintenance repairs and maintenance reconstruction of toll lines and the toll equipment are paid by the Louisville Exchange. What the cost of the labor and materials for these purposes amounts to, I have been unable to ascertain from the record. That it is a substantial sum may be assumed.

The mode of conducting a great business like the one I am considering ought not to be lightly or inconsiderately interfered with, but as to the matters now under consideration, the evidence is of such a character that one is forced to the conclusion that the toll line of revenues ought not to be segregated from the exchange revenues.

If the toll business ought to be treated as claimed by Complainant, that is, as a separate and distinct department of Complainant's business, then in fairness it ought to be required to pay all the expenses of its operation, and the Exchange ought to be fairly compensated for its services in aid of the toll line business; but very nearly the entire burden of conducting the toll business has been imposed on the Exchange.

The proper relation of the Toll Department to the Louisville Exchange is a most important factor in determining the revenue belonging to the Exchange, as well as arriving at the proper cost of operating the Exchange. The officers of Complainant, and their witness, Wilkinson, in their testimony, have assumed the
155 correctness of the methods of conducting the toll business as above outlined. From what has been said, it is obvious that the Exchange in Louisville would be more remunerative if the Toll Department were not in existence, unless there be merit in the contention that the existence of the toll lines has a direct tendency to attract and increase the number of subscribers. I am not disposed to attach importance to this last suggestion.

It is further true that the Toll Department could not be as profitably conducted, unless it were intimately connected as it is with an exchange. The Complainant owns and controls both departments. Complainant has introduced testimony which shows that the Toll Department, as it is operated, is very profitable, while the Exchange is unremunerative. This condition, as appears from the evidence, is brought about, as I have shown, by the arbitrary allotment of

all operating expenses of the Toll Department to the Exchange, and by setting aside only fifteen per cent of its revenue to the Exchange, and by passing eighty-five per cent thereof to the general surplus or reserve fund of Complainant.

While there are some employés of Complainant whose duties are confined to the Toll Department in Louisville, there are many others whose duties are divided between the exchange operations and those of the Toll Department. As already stated, the two departments are located in the same building, and the business of each is intimately and almost inseparably connected with that of the other.

The Exchange is required to pay the total rent of the main building in Louisville where the Toll Department has its headquarters; and, in addition, is required to pay the taxes and insurance and incidental expenses of maintaining the building. I do not find any fault with the requirement that the Exchange should be charged with a fair rental of the various exchange buildings. The
156 evidence shows that the Louisville Exchanges during the years 1905, 1906, 1907 and 1908 were required to pay an average of 8.0675 per cent of the book value of the main exchange as rent. This rent, while somewhat in excess of what similar real estate ordinarily pays in Louisville, might not be deemed exorbitant. But in addition to the above, Complainant requires the exchange to bear all the cost of taxes, insurance and maintenance. The rent, taxes and insurance charged to the Exchange aggregate an amount equal to 9.91 per cent of the book value of the real estate for each of the four years named.

If the rent and taxes were paid by Complainant out of its general fund, the average rent on the book value of the main exchange would be 6.227 per cent, which is slightly in excess of the customary rental values in Louisville for the years named.

Under the system of management of its properties in Louisville, Complainant treats the Toll Department as an independent entity, separate from the Exchange. It also treats its real estate in Louisville (all of which is a necessary adjunct) as a separate and independent department. The practical result of this system or method is that the net revenue arising from the operations of the Toll Department, the Exchange and the Real Estate Department, amounts in the aggregate to a considerable sum and is most profitable and remunerative to Complainant.

It appears from Complainant's books that under the existing methods, while the Toll Department and Real Estate Department yield a handsome net revenue, the Exchange in Louisville is not earning a fair annual return on the cost of the plant.

It is clearly inequitable that the Exchange be charged with the taxes or the insurance on the buildings of Complainant; and it is equally clear that the Exchange should not be charged with the cost of operating and conducting the Toll Department.

157 There is evidence in the record which tends to show that the cost of operating the Toll Department and the taxes and insurance on the buildings belonging to Complainant, ought to be

shared by the Toll Department and the Exchange in proportion to the revenue received by each, and this percentage is figured out to be 16¼ per cent to be paid by the Toll Department and the remainder by the Exchange. But I am not disposed to accept this tentative solution of the problem.

The Toll Department, which handles long distance messages, is so intimately connected with the Exchange and its operations that it is difficult to segregate them; the operators are largely engaged in handling both local and long distance business; the pole lines leading out of the Exchange carry both toll lines and exchange lines; the maintenance of these pole lines is borne by the Exchange, and nearly all of the cost of operating the toll business is borne by the Exchange; the Toll Department occupies a part of the Main Exchange Building, yet it pays no rent nor insurance nor taxes nor cost of repairs or maintenance. In addition, Mr. Smith, the Auditor of Complainant, pages, 258, 265 and 266, frankly states that the cost of construction or reconstruction of the toll switchboard was paid for by the Exchange and charged to Construction Account of Exchange.

I fail to see any just reason for separating the earnings of the Toll Department from the earnings of the Exchange. If all the toll earnings be given to the Exchange and the expense of toll operations and the taxes and insurance be paid out of Exchange earnings, the result will not affect the net cash receipts of Complainant.

I have given this matter much thought and consideration, and I am satisfied that the arbitrary division of the toll revenues at Louisville between the Complainant and the Exchange, under
158 all the existing conditions above enumerated, is unjust and inequitable and should not be approved.

It is, perhaps, not unnatural in this controversy that Complainant should, by all plausible means, undertake to increase its Expense Account and decrease its Revenue Account. This effort on its part involves no moral problem, but is purely and simply a question of business propriety. It is more strictly a matter of bookkeeping.

Therefore, if the various expense items above enumerated growing out of the Toll business are allowed to stand, as they appear on the books of Complainant, as charges against the Exchange, the Exchange in return should be credited with the net toll revenues for the four years of 1905, 1906, 1907 and 1908.

The Joint Report of the accountants shows that, according to the books of Complainant, the total gross earnings of Complainant, as placed to the credit of the Louisville Exchange, were as follows:

1905	$269,823.38
1906	294,498.44
1907	319,758.51
1908	325,838.30

The above amounts include fifteen per cent of the toll earnings which are set out supra. In their separate reports, the accountants differ as to the net toll receipts at Louisville for each of the years

under consideration. I have attempted to reconcile these differences, but the effort has been unsatisfactory, chiefly because the accountants have pursued different methods of analysis. For instance, the city's accountants have considered and embraced the incoming toll messages as well as the outgoing, and have surcharged the accounts in a few instances, and thus they show that the Toll Department's receipts were greater each year than appear on Complainant's books.

159 The accountant for Complainant accepts the Complainant's books as correct. In order to avoid sundry technicalities, I give Complainant the benefit of the doubt, and I have accepted these accounts as they appear on its books.

The net Toll receipts, after deducting fifteen per cent, which were credited to the Exchange or Complainant's books, were as follows:

1905	$37,059.53
1906	40,034.58
1907	45,504.16
1908	43,248.70

With these amounts added to the total gross earnings of Complainant, as shown above, it appears that the total gross earnings were as follows:

1905	$306,882.91
1906	334,533.02
1907	365,262.67
1908	369,087.00

Having ascertained the gross earnings of Complainant in Louisville, it becomes necessary to determine the amount of Operating Expenses, in order to ascertain the net earnings, and thus establish the percentage of such earnings for the years 1905, 1906, 1907 and 1908.

The Joint Report shows that the Operating Expenses for each year, according to the books of Complainant, were classified as follows:

First: General Expenses (prorated).
Second: General Expenses (direct).
Third: Operating Expenses.
Fourth: Maintenance.
Fifth: Reconstruction.

160 General Expenses consist of the pro rata proportion of Executive Management Expenses at Complainant's principal office at Nashville, which include general officers' salaries and those of their assistants, and salaries and wages of clerical force, rent, light and heat at principal offices, traveling expenses of officers and incidental expenses.

The Joint Report shows the amount of such prorated general expense for each year as they appear on Complainant's books, as follows:

1905	$11,205.34
1906	11,270.15
1907	11,226.76
1908	9,531.29

The accountants employed by the city find fault with these totals and insist that some of the items which are embraced in the totals of General Expenses—prorated—should have been charged to the Toll Department; and that some of them should be charged to the Supply Department, and some to Expense of Real Estate.

As to the objection first stated, my conclusion as to the proper disposition of the Toll earnings logically places the expenses of that Department as a proper charge against the Exchange earnings.

Those items which are claimed to be chargeable to the Supply Department amount, on an average to $830.45 for each of the four years above named. There is much reason for criticizing the operations of the Supply Department, as has been shown heretofore in this Report. But as the elucidation of this alleged error is difficult, and by no means satisfactory, and as the amount in dispute is not large, I have not felt justified in sustaining the point raised.

161 I find, therefore, the item "Prorate of General Office Expenses" correct, as stated supra.

The next item of General Expenses—direct—and pro rata of General Account, which includes postage, printing and stationery, directory expenses, taxes and legal expenses, as claimed by Complainant, amount to the following:

1905	$29,271.49
1906	35,948.37
1907	34,826.91
1908	32,545.46

For reasons already assigned, I find that the taxes charged to the Exchange for the years 1905, 1906, 1907 and 1908 should be disallowed. The rent charged to the Exchange is, under the evidence, at a reasonable and customary rate; but it, in addition thereto, the taxes and insurance are added, the charge against the Exchange becomes excessive. I speak now of the Main Exchange only. I do not make any change in the accounts relative to the other three exchanges.

The taxes which I find should be deducted from the General Expense Account are as follows:

1905	$1,118.97
1906	1,059.91
1907	1,077.72
1908	1,032.15

Thus I find the General Expenses of the Louisville Exchange for the four years were as follows:

1905	$29,271.49
	1,118.97
	$28,152.52

162

1906	$35,948.37
	1,059.91
	$34,888.46
1907	$34,826.91
	1,077.72
	$33,749.19
1908	$32,545.46
	1,032.46
	$31,513.00

The accountants in the case agree as to the total of the next item, to-wit, Operating Expenses, but they differ as to its proper distribution.

The totals of this item for the four years are as follows:

1905	$84,264.54
1906	80,738.06
1907	79,661.04
1908	75,440.28

The city insists that the Toll Department should be charged with its proportion of these totals, to-wit:

1905	$16,517.88
1906	18,247.44
1907	17,630.18
1908	14,533.13
Total	$66,960.63

These charges against the Exchange should clearly be made against the Toll Department, if the latter be treated as an independent department, as I have shown *supra*. But, as I have already disposed of this question, it is unnecessary to go critically into any investigation of the correctness of these figures.

163 In regular order, the next items of expense are Maintenance repairs. "The charges under this heading are for the current repairs, mending breaks, tightening wires, rectifying 'trouble,' and generally maintaining the property in first-class running order." (Wilkinson's Separate Report, p. 44.) "These expenses include salaries and wages of foremen, linemen, electricians and troublemen, materials for repairs of plant, and for replacement of parts which

wear out in less than a year; traveling expenses and keep of teams, repairs to wagons and vehicles, coal, conduit and roof rent, fire insurance on plant, payments for damages to persons and property and miscellaneous expenses incident to maintaining the telephone plant in good working condition."

The accountants for Complainant and Defendant respectively, differ as to what should be a proper distribution of these maintenance expenses. For instance, a certain proportion of the traveling expenses of the officers and employés; a certain proportion of the insurance on the Main Exchange, and a personal injury compromise claim, and a certain proportion of incidentals, it is insisted, should be charged to the Toll Department.

These items, for the four years stated, amount in the aggregate, as follows:

1905	$2,267.95
1906	867.13
1907	1,148.36
1908	630.44
Total	$4,913.88

But, for reasons stated *supra*, these items must stand, as the revenue from the Toll Department is credited to the Exchange.

The other objections I disallow, so that the maintenance for the four years must stand as follows:

164

1905	$49,819.14
1906	52,796.93
1907	65,614.31
1908	54,705.91

The next item of expense to be considered is entitled Maintenance Reconstruction. This is a subdivision of Maintenance. (See Wilkinson's reply to Farnham, p. 10.) The items making up this account are mainly salaries and wages, materials and traveling expenses. Why this separate account should have been kept I cannot understand from the evidence. The witnesses on behalf of Complainant admit that the two accounts, Maintenance and Maintenance Reconstruction, are practically one and the same. Mr. Caldwell says the distinction between them is shadowy. Indeed, prior to 1905, no separate Reconstruction Account was kept by Complainant. From 1905 to 1907, inclusive, such an account was kept, but in 1908 was again discontinued and was merged into the Maintenance Account.

The amount of this account, Maintenance Reconstruction, for the four years is as follows:

1905	$41,051.02
1906	40,626.07
1907	41,895.10
1908	31,450.07

The account for 1908 is estimated.

I see no reason to disallow these items.

The next item, "Instrument Expense," seems to be agreed to by both accountants, and this amounts to the following:

1905	$11,559.76
1906	12,518.70
1907	13,372.49
1908	13,722.52

165 I therefore find that the total Operating Expenses of Complainant for the four years, including the accounts last above considered, were as follows:

1905	$226,052.32
1906	232,838.37
1907	245,520.89
1908	216,363.07

If the operating expenses of Complainant be deducted from the gross revenues as I have found them, the net income for each year will be found as follows:

1905.	Gross revenues	$306,882.91
	Operating expenses	225,052.32
	Net income	$80,830.59
1906.	Gross revenues	$334,533.02
	Operating expenses	232,838.37
	Net income	$101,694.65
1907.	Gross revenues	$365,262.67
	Operating expenses	245,520.89
	Net income	$119,741.78
1908.	Gross revenues	$369,087.00
	Operating expenses	216,363.07
	Net income	$152,723.93

On page 22 of this Report, I have placed the value of Complainant's plant, as of March 6, 1909, including toll lines, after deducting ten per cent as a proper allowance for depreciation, at $1,355,878.09

This does not include real estate or working capital.

In order to ascertain the percentage of the net earnings for each of the four years, it is necessary to ascertain what the value
166 of Complainant's plant was at the end of each year from 1905 to 1908, inclusive.

It appears from the Joint Report, page 3, that the total amount expended for Construction Account of the plant, stated by years, was as follows, according to Complainant's books:

1905	$60,691.21
1906	89,125.15
1907	20,770.42
1908, taken out	4,351.83

At the end of the years last named, the value of Complainant's plant, including Toll Department, was:

1905	$1,355,878.09
Deduct Construction Account for 1906 and 1907	109,895.57
Value of plant at the end of 1905	$1,245,982.52
1906	$1,355,878.09
Deducting amount expended in 1907 for Construction	20,770.42
Value of plant at the end of 1906	$1,335,107.67
1907, Value of plant at the end of year	$1,355,878.09
1908	$1,355,878.09
Amount of error in Construction Account taken out	4,351.83
Value of plant at end of 1908	$1,351,526.26

I have found, in answer to Interrogatory No. 5 (see page 53) that a proper allowance for depreciation will be seven per cent of the value of the plant for each of the years, 1905, 1906, 1907 and 1908, and for subsequent years.

167 In order, therefore, to make my finding as to the net profit and the percentages thereof, I must show under this division the amount of such depreciation found and how it will affect the net earnings.

The value of the plant has been found supra as of the years 1905, 1906, 1907 and 1908, and the seven per cent depreciation allowed for each of said years is found as follows:

1905	$86,818.77
1906	93,457.53
1907	94,914.66
1908	94,606.83

The amount of depreciation allowed for the four years gives an annual average of $92,449.45

The amount actually expended by Complainant for Maintenance and Reconstruction for each of said years is as follows:

1905	$90,870.36
1906	93,423.00
1907	107,511.41
1908	86,155.98

These amounts show an annual average outlay for Maintenance and Reconstruction of $94,490.19

The average annual excess of expenditures over allowance for depreciation is 2,050.74

An analysis of the above figures leads me to believe that in a period of ten or fifteen years the allowance of seven per cent for depreciation will be ample. An expenditure for maintenance in one year of an amount in excess of seven per cent will probably be followed in the next year by a requirement of a less amount.

But in ascertaining the percentage of net earnings to the
168 value of the plant, it is proper to deduct from the Net Earnings as found above, the average excess of the Maintenance Expense over the average allowance for depreciation.

The Net Earnings were as follows:

1905	$80,830.59
Deduct excess of expenditures as above	2,050.74
Leaving Net Earnigs	78,779.85
1906, Net Earnings	$101,694.65
Deduct excess of expenditures over depreciation	2,050.74
Leaves Net Earnings	$99,643.91
1907, Net Earnings	$119,741.78
Deduct excess of expenditures over depreciation allowance	2,050.74
Net Earnings	$117,691.04
1908, Net Earnings	$152,723.93
Deduct excess of expenditures over depreciation allowance	2,050.74
Net Earnings	$150,673.19

The percentage of Net Earnings to the value of Complainant's plant, for the four years, was as follows:

1905	6.32 per cent
1906	7.46 per cent
1907	8.68 per cent
1908	11.14 per cent

The above percentages are inclusive of allowance for depreciation of property and plant and claims for damages for personal or other injuries.

IV.

169 "The said Special Master is directed to make an estimate upon the testimony, and state his conclusions therefrom as to what would be the reasonably probable gross and the reasonably probable net income of the Complainant from its said plant and property employed in its business in said city for the current year, and the year 1910, if the rates of telephone charges fixed by the ordinance enacted by the legislative body of Defendant and approved by the Mayor on March 6, 1909, should be put into operation and effect."

The accountants, in their Joint Report, agree that if the ordinance rates be put into operation, the loss in revenue to Complainant annually would probably be $49,721.76. From what subsequently appears in their Joint Report, this loss is based upon the hypothesis that this loss will result if there should not be an increase or decrease in the number of subscribers.

The accountants then agree on the following statement:

"Against this probable loss of $49,721.76 a year, will probably be an increase in gross earnings in respect of the natural growth of the business and the increased number of subscribers due to the lowering of rates upon the enforcement of the ordinance. What this increase will amount to, we cannot definitely determine."

It must be borne in mind that the practical effect of the ordinance rates has not been tried. Complainant comes into a Court of Equity and seeks by injunction, to prevent the operation of the proposed rates, upon the ground that their enforcement would be confiscatory of its property.

In Knoxville vs. Water Works, 212 U. S., 16, the Court says:

"It must be prepared to show to the satisfaction of the Court that the ordinance would necessarily be so confiscatory in its
170 effect as to violate the Constitution of the United States."

In their separate reports, the two accountants widely differ as to what will be the net results, if the rate ordinance be put in operation. The accountant of Complainant very adroitly argues, and furnishes figures in support of his contention, that the net loss to Complainant, if the ordinance rates be adopted, would be, in 1910 (1911) $18,852.97, and that this net loss would probably decrease annually thereafter.

The accountant of the city does not go into detail as to calculations to the same extent as does Complainant's accountant, but states that the net increase in earnings would be:

In 1910 (1911)	$14,972.40
And would be in 1911 (1912)	21,441.82

The reasoning of both accountants on this subject is speculative and hypothetical. Both admit that the lowering of rates will produce an increase in the number of subscribers, and consequently in gross earnings. They also agree that an increase in the number of subscribers will entail an increase in Operating Expenses. One

says this increase in expenses will be nominal; the other says it will be substantial.

It is impossible to foresee whether the expected increase in subscribers will be in respect of business phones or residence phones. This uncertainty must necessarily affect the expected gross revenue. And, to a certain extent, this uncertainty will affect the operating expenses, and consequently the net revenue.

Complainant's accountant shows from the books that the operating expenses vary in a sort of ratio to the number of subscribers. He says in 1906 there were 5,956 subscribers, and the operating expenses were $80,738.06. In 1908, he says, there were 5,158 subscribers—800 less than in 1906—and the operating expenses
171 that year were $75,440.28. He argues, therefore, that a loss of about 800 subscribers shows a decrease in operating expenses of about $5,300.00. This calculation shows an annual saving in expenses of about $6.50 for each subscriber lost.

The statement of this contention shows it is an unreliable basis of calculation. No account is taken of the other Operating Expenses, and they would have to be analyzed before the above figures could be safely relied upon.

Again, Complainant's accountant assumes that many subscribers who are not content with party lines, will take a private line, and that this probable condition would result in little net increase of revenue.

The views of the two accountants are irreconcilable as to the net results of a lowering of rates. But they do agree that the primary result of the lowering of rates would be an increase in the number of subscribers, and that the operating expenses would thereby be increased, but to what extent there is uncertainty.

It is obvious that the increase in the number of subscribers is deemed desirable by Complainant. The evidence throughout this record shows that Complainant's efforts are mainly directed to this end, and I am persuaded that every such increase must be remunerative to Complainant. After a certain increase in the number of subscribers is reached—say one hundred—it becomes necessary, in the proper conduct of the business, to add two additional operators to the company's force; in addition, a small annual percentage of other expenses becomes necessary, such as additional wiring and maintenance. These items must be considered. Complainant's accountant produces a computation showing that if the ordinance rates be enforced, it is fair to estimate that there will be a natural
172 increase of 483 subscribers the first year, which would probably require 800 stations; and that the taking on of the 483 new subscribers would be at a net loss to Complainant for the year 1910 (1911) of $1,294.00. I cannot accept this result as reasonably probable.

The suggestions of Defendant's accountant on this subject are not satisfactory. Neither accountant seems to have considered all the essential elements of this extremely hypothetical question. For instance, Complainant insists that new wiring would be a necessary expense of putting on the new subscribers. This item appears to

have been heretofore charged uniformly to Construction Account. The charge for Maintenance or Maintenance Reconstruction for the first year would be nominal, and after the second year it would probably be a negligible quantity, in view of the reasonable expectancy that the increase in new subscribers would be continuous.

Defendant, on the other hand, suggests that the salaries and wages of additional operators and Main Office clerks would be merely nominal, as compared with the gross revenue to be received from the new subscribers.

Without discussing this question further, I find that if the ordinance rates be enforced, there will be an increase in the number of telephone subscribers; but the number of such new subscribers is problematical. The new subscribers will probably be of two classes:

(*a*) Those secured as the result of the natural growth and extension of business;

(*b*) Those who may be induced to become subscribers as the direct result of a lowering of the rates.

It appears in evidence that many persons cancelled their subscriptions in 1908 when the rates were raised. It is reasonable to expect very many of these to renew their subscriptions.

It is not possible for me to do more than to express my
173 opinion as to how large will be the increase in the number of new subscribers, in case the ordinance rates shall be enforced, nor as to whether the new subscribers will require business phones or residence phones. All the witnesses who speak of this subject express the opinion that there would be a substantial increase in the company's business. But only two witnesses went further and hazarded a guess as to the probable number or as to the probable financial results.

I am of the opinion that the first year after the new rates shall be in force, say 1911, the net decrease to the company in revenue will probably amount to $30,000.00 below what the Net Earnings have been found to be under present rates in 1908.

In 1912, I am of the opinion that the gain to the company will probably be large and continuous, and that it will probably overcome the decrease in net revenue entirely. In other words, I believe that in 1912, the net income of Complainant under the ordinance rates would be equal, if not greater, than those for 1908, as given supra under present rates.

In the above findings I have assumed that the net earnings of the company have remained in 1910 as I have found them to be in 1908. But it is not unreasonable to suppose that they were greater in 1910 than they were in 1908 or 1909.

But adopting the net earnings of 1908, as I have found them, under the present ordinance.....	$150,673.19
And deducting what will be the probable loss in 1911 if the ordinance rates be enforced as stated above...	30,000.00
The net earnings of the company for the year 1911 under the ordinance rates will probably be..	$120,673.19

If the value of the plant be assumed to
174 be in 1911.....$1,400,000.00
The net earnings as shown without considering any increase, would yield to the Complainant net..8.60 per cent on the then value of the plant.

V.

"He will ascertain and report from the testimony what would be a fair amount or proportion of annual income to set aside as a substantial provision and allowance for depreciation of Complainant's plant and property employed in its business in said city and the basis of his estimate thereof."

The evidence as to depreciation presents a diversity of views as to what proportion of the annual income of Complainant should be set aside as a provision and allowance to cover depreciation of plant and property employed in Louisville by Complainant.

The general officers of Complainant say that the annual allowance for depreciation should be ten per cent of the value of plant and property. Mr. Smith, the Auditor of the Complainant, fixes seven and a half per cent as the proper amount, and complainant's accountant says seven per cent will be sufficient. They all admit that the annual outlay for Maintenance and reconstruction must be deducted from the Depreciation Fund.

In taking up this question, it is a noteworthy fact that no amount has ever been set aside for depreciation by Complainant. The reason alleged is that the earnings of the company have not been sufficient to provide such an outlay. It is insisted by Complainant that in those years when its earnings were not sufficiently large to enable it to set aside a fund to cover depreciation, the deficit
175 should be taken care of out of the earnings of subsequent years. This deficit, it is claimed, represents incomplete depreciation.

Before discussing the actual figures as disclosed by the evidence, I may say that this claim of Complainant is disposed of by the Circuit Court of the United States in Knoxville vs. Water Company, 212 U. S., 13, 14, where the Court says:

"Before coming to the question of profit at all, the company is entitled to earn a sufficient sum annually to provide not only for current repairs, but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste without making provision out of earnings for its replacement."

On page 14 the Court says further:

"If, however, a company fails to perform this plain duty and to exact sufficient returns to keep the investment unimpaired, whether this is the result of unwarranted dividends upon over issue of securities, or of omission to exact proper prices for the output, the fault is its own.

When, therefore, a public regulation of its prices comes under question, the true value of the property then employed for the purpose of earning a return cannot be enhanced by a consideration

of the errors in management which have been committed in the past."

While this record does not show that unwarranted dividends have been paid out of earnings, it is claimed by Complainant that the company failed to earn a sufficient amount to cover the annual depreciation of its plant and property in 1905, 1906, 1907 and 1908, and therefore the Court must allow it to apply, out of future earnings, a sum equal to the deficits of former years, as compensation for the incomplete depreciation. In other words, Complainant contends that in 1905, 1906, 1907 and 1908 its earnings at the then existing rates were sufficient to take care of all operating expenses, taxes and insurance, maintenance and reconstruction, but not enough to cover the incomplete depreciation of plant; that the depreciation is not always annual, but, in a long period of
176 time, the plant will require rebuilding or replacement, and it is necessary to begin and lay aside a fund each year, which fund, at the end of a period, will provide the amount necessary to overcome depreciation.

I have considered all of the evidence in the record, and I am satisfied that a fund to cover depreciation of plant is necessary, and this fund should come out of earnings. It has been shown that some parts of the plant begin to depreciate the moment they are put into use, while other parts last unimpaired for years. The poles will last, on an average, ten years or longer. The wires are shorter lived. The conduit system is of long life—fifty years and longer. The switchboards, under the evidence, last many years. They are composed of separate parts or sections, and by replacing an impaired part of section, the life of the switchboard is extended indefinitely. The only hazard in respect of switchboards is the discovery and introduction of a better pattern. The evidence shows that the switchboards in Louisville are of the best and most approved type as to efficiency and lasting qualities. Thus it is obvious that the percentage of depreciation of the various parts of the plant and property is not subject to a general law or rule. To establish an average is beyond my power, as the evidence does not aid me in this regard.

I will now direct attention to what the Complainant has actually done with reference to depreciation since 1905.

Its books show, as appears in the Joint Report of the accountants, that in 1905, 1906, 1907 and 1908, Complainant expended in repairs or Maintenance and Reconstruction in Louisville, not including real estate	$ 377,960.55
This gives an average per year of	94,490.14
On the value of the plant, as I have found it, as of March 6, 1909, to-wit	1,355,878.09
177 The above expenditure is, each year, on an average	7.046 per cent
In addition to this expenditure, it is insisted by Complainant, that for the four years supra, there remains an "unexpended portion of Reconstruction Reserve to be charged against future earnings"	$301,640.45

This amount is an average per year of.....	75,410.11
This claim each year is an average of.....	5.62 per cent
These two amounts added together make.....	$679,601.00
Or an annual percentage for depreciation of over.....	12 per cent

The statement of the above figures are startling, when the evidence discloses that the Home Telephone plant in Louisville, which is, in many respects, similar to Complainant's plant, was built anew for about $1,000,000.00. Witnesses for Complainant all testify in substance that the company's plant in Louisville is in nearly perfect condition in all respects.

It may be mentioned in passing, that during January, February, and to the 6th of March, 1909, Complainant spent only $191.65 for Maintenance and Reconstruction. This fact may fairly be accounted for by assuming that no greater outlay was required for such purpose.

I think it is reasonable and fair to assume that the amounts actually expended by Complainant during 1905, 1906, 1907 and 1908, and to March 6, 1909—made, as they were, when this or similar litigation was not contemplated—indicate more clearly than opinions of witnesses what expenditures were necessary to properly repair, maintain and reconstruct the plant. The plant was acquired in 1899, and Complainant took care of and maintained the plant up to 1905 just as it has done since that time.

178 In that part of the report where the cost of the plant was considered, reference was made to a questionable entry in the books of the Ohio Valley Company. It appeared that that company paid dividends on its capital stock, maintained and reconstructed its plant from year to year out of exchange earnings during a period of eight or nine years. At the end of each fiscal year the Ohio Valley Company wrote off from its "Construction" Account, and passed to "Depreciation" an amount aggregating $135,505.70.

Complainant attacks these bookkeeping entries vigorously, and in its Construction Account, it has reversed the entries made by the Ohio Valley Company supra, and that aggregate item of $135,505.70 appears as an integral part of the cost of Complainant's plant immediately after it was purchased from the Ohio Valley Company in 1899.

As to the correctness of this addition of $135,505.70 to Construction Account, and therefore to the Cost Account of the plant, its expert accountant, Mr. Wilkinson, on page 13 of his report, says: "No such charge for depreciation was called for at all. The amount actually expended by the Ohio Valley Telephone Company upon the up-keep of its telephone plant, was ample to provide for all reconstruction."

This argument, when applied to the claim of Complainant for an additional allowance out of earnings for "incomplete depreciation" over and above the annual outlay for Maintenance and Reconstruction, is conclusive. In further support of the justness of my position, I may refer again to the testimony of Complainant's witnesses, who say that the physical condition of the plant is first-class

in every respect. (Wilkinson's Report, p. 26.) (Smith & Caldwell.)

Again, the claim for depreciation is made on supplies, amounting to an average of $37,711.79 for the years 1905, 1906,
179 1907 and 1908, and it is also claimed that this Depreciation Fund should be based on the cash working capital used by Complainant amounting on an average for each of the four years to $28,597.45.

The claim to this extent ought not to be allowed.

I wish to say further, that the claim for an annual depreciation of seven per cent on the conduit system and the switchboards, is, in my opinion, not sustained by the evidence. If the value of the conduit system and of the switchboards and of supplies and of cash, be taken from the total value of the plant, it will appear that the amount actually expended each year for Maintenance and Reconstruction is substantially more than seven and a half per cent claimed by the company's officers as proper.

I do not intend by the foregoing to hold that there is no depreciation as to the conduit system and as to the switchboards. All I intend is that the depreciation as to these items ought not to be on a basis of seven and a half per cent per annum.

In view of the foregoing, I find that the fair and reasonable amount or proportion of annual income of Complainant that should be set aside as a substantial provision and allowance for depreciation of Complainant's plant and property employed in its business in Louisville, and including everything except cash working capital and supplies, would be an amount equal to seven per cent of the value of the plant, as above limited, and that the amount expended annually for Maintenance and Reconstruction of the plant should be deducted from the seven per cent fund.

180 VI.

"He will ascertain and report whether the reasonable probable increase from Complainant's plant and property employed in its business in said city will, within the next few years, amount to a fair annual return upon the reasonable value thereof if the provisions of the ordinance approved March 6, 1909, are put into operation."

I have heretofore found the value of Complainant's plant, the gross and net earnings for 1905, 1906, 1907 and 1908, and the total operating expenses for each of said years, and the percentage of net earnings to the reasonable value of Complainant's plant. I have found what will be a proper allowance each year for depreciation of plant, and I have found what will be the probable net loss to Complainant the first year and second year, should the ordinance rates be enforced; and, basing my calculation on what I find to be the net earnings of 1908, and assuming that the earnings are the same in 1909 and 1910 as they were in 1908, and assuming further that the probable value of the plant in 1911 will be increased from $1,351,878.09 to $1,400,000.00, I find that the probable net income of Complainant

For 1911 will be.....$ 120,373.19
Which would be.....8.60 per cent
of the then value of the plant.

I have found that in 1912 it is probable that the net earnings of the plant under ordinance rates will be equal to the net earnings in 1908 under operation of the present rates. The net earnings would then be ten per cent on a valuation of $1,500,000.00.

My reasons for so finding are, that the increase in the num-
181 ber of subscribers in 1911 and 1912, should the ordinance rates be enforced, will be large, and that the increase in net earnings thereby will more than offset the loss of earnings that will be caused by the lowering of rates.

I answer the sixth question, therefore, by saying that in my opinion the reasonably probable income from Complainant's plant and property employed in its business in said city will, within the next few years, amount to a fair annual return upon the reasonable value thereof, if the provisions of the ordinance approved March 6, 1909, are put into operation.

VII.

"He will, from the testimony, ascertain and report whether the average net income or return from reasonably safe investments in business enterprises in said city approximately resembling that of Complainant, is above or below six per cent upon the reasonable value of the plant or property from which said income is derived."

The evidence adduced in this question shows that there is only one telephone company doing business in the City of Louisville besides Complainant, that is the Home Telephone Company. Its stock and bonds were mainly given to the contractors who built the plant. Some of the bonds and some of the stock were sold to the public. The company has paid four dividends of one per cent each within a given period of eighteen months. It has paid no dividends recently. Its stock has no market value, and its five per cent bonds in the latter part of 1909 were offered at $69.75, but there were few purchasers.

The Louisville Gas Company pays five per cent dividends on its capital stock, and its shares sell at about $95.00. It earns about seven per cent on the money invested.

182 The Kentucky Heating Company pays three per cent dividends on its common stock and five per cent on its preferred stock. Its common stock, in 1909, was worth, on the market, about $64.00, and its preferred stock $90.00.

The Louisville Lighting Company paid four per cent dividends for four or five years.

The Louisville Traction Company pays four per cent dividends on its common stock, and its market value, in 1909, was $94.00 and its highest price was $147.00. It earns a fraction under five per cent on its common stock.

The Bank of Kentucky pays eight per cent dividends and usually adds to its surplus fund every year.

The Union National Bank pays ten per cent dividends and adds to its surplus fund every year.

In 1909 the Fidelity Trust Company paid twelve per cent dividend.

It may be permissible to classify all public utility companies—such as traction companies, water companies, gas companies and lighting companies—with telephone companies. It is doubtful whether banks should be placed in such a class. But certainly manufacturing and industrial companies are not in the same class with telephone companies.

But, it is insisted that unusual risks and hazards attend the telephone business, and that on account of these hazards, a greater return on the money invested should be permitted by the rate-regulating powers. It is urged that new capital must be continually put into this business, so that its lines and operations may be commensurate with the growth of the cities where they are located; that otherwise, the business must come to a standstill, and new companies will enter the field and take the new business offered and perhaps the
183 old business. It is urged that eight per cent or perhaps ten per cent on the money invested would, therefore, be a fair return.

For the reasons given in my answers to former questions, I find that the average net income, or return, from reasonably safe investments in business enterprises in Louisville approximately resembling that of Complainant, is below six per cent upon the reasonable value of the plant or property from which said income is derived.

If banks should be included in the same class with telephone companies, then I find that the net average income of all such companies is above six per cent per annum in Louisville.

VIII.

"He will further ascertain and report from the testimony whether the reasonably probable net income of Complainant from its plant and property employed in its business in said city, after making all proper allowances for cost of operation, claims for damages, repairs and depreciation, would, during the years 1909 and 1910, come up to or exceed the said average income upon such other business enterprises if said ordinance should be put into operation, and he will state in his report the results of his estimates and the basis thereof."

For the reasons contained in my report supra, I find from the testimony that the reasonably probable net income of Complainant from its plant and property employed in its business in Louisville, after making all proper allowances for cost of operation, claims for damages, repairs and depreciations, would, during the years 1911 and 1912, exceed the average net income upon such other business enterprises if the ordinance of March 6, 1909, should be put into operation.

184 My answer to the seventh question supra contains the basis of my answer to the eighth question.

IX.

"He will also, from the testimony, report his conclusions and the basis thereof as to the reasonably probable extension and increase of the Complainant's business in said city within the present and next succeeding year, and the reasonably probable extent and effect thereof both upon its gross and upon its net income."

The evidence shows that the Complainant Company has thus far constructed its plant with a view to and with the expectation of a substantial increase in the number of subscribers. This policy, under the evidence, I find is wise and prudent, and ought to be approved. The business centers are not apt to be changed. They are generally stable and practically permanent. On the other hand, the residence centers frequently change, and this necessitates a change in telephone lines, and a prudent company will construct its plant so as to be prepared for such changes.

Complainant has laid its conduit system and erected its pole lines and properly equipped same so as to be in a position to take care of more than two thousand new subscribers without delay. The existence of such surplus plant has been criticised by Defendant's expert—not as to the fact of said surplus, but only as to its extent. But I am of the opinion that such surplus as is shown and as stated above, is not unwise or improper.

Should the ordinance rates be enforced, the wisdom of Complainant's foresight in providing its surplus plant will be amply justified.

I do not doubt that by the lowering of the company's rates, independently of the natural growth of its plant, the number of
185 subscribers will be largely increased, and such increase will begin immediately after the lower rates are put into operation. There is no evidence as to whether the number of subscribers has increased naturally or decreased since March 6, 1909. I assume that there has not been any substantial decrease. I have already stated that I think an increase in the number of subscribers will be remunerative to Complainant. The fact that surplus plant already exists sufficient to take care of more than two thousand new subscribers, removes any doubt on this subject that may have existed. The probable extent of such increase in the number of subscribers, as well as the increase in net earnings to be caused thereby, is problematical. But, considering the statements of all the witnesses, I am of the opinion that if the lower rates should be enforced in 1911, that by the end of 1912, the probable loss in revenue of about $49,000.00, would not only be wiped out, but a substantial increase in net earnings would result, without a corresponding increase in expenditure.

The main increase in subscribers may naturally be expected in the residential sections of the city, as well as in the suburban districts, where much of the surplus pole lines already exist. In the business sections, I take it, there will be smaller increases. If my hypothesis be justified by the actual results, that is, that the main increase will be in the residence 'phones, the evidence shows that there will be a less frequent use of such new instruments than there would be of new 'phones in business houses, and consequently the extra help as

to operators would probably not be as large as if the main increase in subscribers were in business houses.

I am, by no means, satisfied from the evidence, that the increase in the number of subscribers will, on an average, increase the cost of operation per telephone or station. In other words, if the company now has nine thousand subscribers, and two thousand additional subscribers be taken on, I do not believe that the cost per
186 station for eleven thousand subscribers will be as great as it is for nine thousand subscribers.

I find, under all the evidence, that the necessary result of an increase in the number of subscribers will be an increase in the gross revenues of Complainant in the next two years; and further, that the net revenues will also be increased, and that this ratio of increase will be continuous.

X.

"He will also ascertain and report as to any peculiar advantages, if any, for the steady and reliable earning of income the Complainant may have in said city, and also as to any peculiar disadvantages or risks, if any, which it encounters or may encounter therein, which with reasonable probability may affect or offset such advantages, and the extent thereof."

In answering this question, I will state that as to the advantages or disadvantages of Complainant for steady and reliable earning of income, there is not much evidence in the record on either side of the question.

The company's plant is well located. It is in excellent physical condition, and it is a remunerative business. If we compare it with the Home Telephone Company as to its earning power, it is obvious that it occupies much the superior position in this: It has extensive toll lines that connect with similar lines extending over the entire United States. Connection with these long distance lines may be had promptly by subscribers, and this, I consider, a most valuable asset, and in my opinion it will in the future, as in the past, materially aid Complainant in its efforts to secure new subscribers.

I find in the evidence no peculiar disadvantages that now affect the earning power of Complainant, or that are likely to do so in the future.

187 **XI.**

"The special master will also report his conclusions upon such other facts as the development of the case at the hearings before him may appear to be important to a determination of the issues made by the pleadings."

I may say in conclusion, that the expert witnesses in this case have testified as to the value of this plant in such a way as to confuse a Solomon. Men who, by their knowledge and experience, are equally qualified to express valuable opinions as to what it would cost to reproduce a plant similar in all respects to Complainant's plant, differ in their estimates as much as between $600,000 and $700,000. But on cross-examination as to the cost of construction,

they fail to sustain their opinions by such evidence as a court would ordinarily allow to go to a jury. Several hundred thousand dollars of construction work on Complainant's plant is rested solely upon the Auditor's statement that vouchers representing in the aggregate these large sums were approved by him and were entered on the company's books as proper charges against construction, while he admits at the same time that these book entries, and the distribution of the sums they represented were based solely upon a notation on the vouchers made by some unknown foreman or gang boss to the effect that the work had been done—that it had cost the amount stated in the vouchers, and that the work was for Construction account. The witness did not have personal knowledge of a single feature of any of such vouchers.

The Construction Account, for a number of years, consisting largely of items similar to those just above referred to, contains a very large amount of charges in the aggregate. I was impressed by the idea that it would not be surprising if errors as to the proper distribution of these vouchers had occurred by reason of the carelessness or ignorance of the agents of Complainant who made notations on the vouchers. I have carefully considered the evidence to the effect that the totals of these vouchers were actually paid, and for that reason I have not disturbed the accounts as they appear in the company's books.

188

I have ignored the Supplies Account and the working cash capital in making my estimate of the value of the plant, as well as in making a proper allowance for depreciation. The supplies are bought and paid for by Complainant, and when needed by the Louisville or neighboring exchanges, they are retailed to them, and the exchanges pay the Complainant the cost price and an additional ten per cent, and also pay the ordinary expenses of the Supply Department. The cash working capital is furnished by Complainant, and the exchange reimburses Complainant for all the money it uses. The evidence does not show whether interest is charged against the exchange or not.

There is no evidence in the record tending to show that the plant in Louisville is subject to any disadvantages that do not equally apply to all the other plants of Complainant extending over several States. The trend of the testimony is that very small net earnings are derived from the operation of the Louisville plant, while the Complainant pays regular dividends on its stock every six months, and its stock commands a premium of between forty and fifty per cent in the market. No satisfactory explanation of these conditions is offered.

The service rendered by Complainant is good, and the physical condition of its plant is excellent.

I have not seriously considered the testimony offered touching the operations of plants outside of Louisville, because the conditions were obviously different, and the rates there charged and the cost of operation were not necessarily nor directly pertinent to the inquiries I was engaged in.

Respectfully submitted,

HENRY BURNETT,
Special Master.

189 And on another day of said term of said Court, continued and held, to-wit, on November 25th, 1910, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

This day came Henry Burnett, Special Master, and filed his report as to expenses and allowances herein.

The Report above referred to is as follows:

190 United States Circuit Court, Sixth Circuit and Western District of Kentucky.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

Report of Special Master as to Expenses and Allowance.

Henry Burnett, Special Master herein, respectfully reports that since his appointment in April, 1909, he has incurred expenses necessary for the proper execution of the order of Court as follows:

Traveling expenses, three trips to Nashville Tenn., and one trip to New York City	$168.90
Telegrams—August, 1909	3.25
Stenographic report of arguments of counsel (Clarence Walker's bill attached)	126.00
Stenographer's bill, transcribing report of Special Master and two copies for Solicitors, (Joseph Longstreet's bill attached)	48.00
	$346.15

Shortly after his appointment the taking of depositions began and continued from time to time for seven or eight months, and they consist of about 2,500 pages of expert testimony, replete with figures and computations.

He was not present at taking of all the depositions, but he was frequently required to rule on the admissibility of testimony, exceptions to depositions and as to the mode of adducing the evidence, and as to various other matters.

191 He attended in Nashville three times and in New York City once, and frequently in Louisville.

After the testimony was completed he began the reading and abstracting of the evidence, and he has analyzed the joint report of the expert accountants and the separate reports of same experts,

and compared same with the theories and computations of other expert accountants. He undertook to reconcile the wide differences in theories and calculations presented by the various expert witnesses. He studied the distribution of expenses and earnings as found in the books of account of complainant, and as favored by expert accountants, and attempted to reconcile the conflicting theories.

This required more than seven months of steady, laborious work.

That the actual preparation of the report, already filed, required more than two months of time and involved much labor and thought.

In view of the importance and magnitude of the interests involved in this litigation, and considering the labor performed—both mental and physical and the time consumed—he asks the Court to allow him, in addition to his expenses, Eight thousand dollars ($8,000.00)

Respectfully submitted,

HENRY BURNETT.
Special Master.

192 And on another day of said term of said court, continued and held, to-wit, on December 7th, 1910, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

This day came the complainant by Alex. P. Humphrey, W. L. Granbery and W. Pratt Dale, its counsel, and filed exceptions to the report of the Special Master as to expenses and allowances herein.

The exceptions above referred to are as follows:

193 Circuit Court of the United States, Sixth Circuit, Western District of Kentucky.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

Exceptions of Complainant to Special Master's Report.

Complainant excepts to the report of the Special Master as to expenses and allowances for the following reasons:

Plaintiff excepts to the Court allowing the Master the amount of compensation claimed by him, to-wit, $8,000.00, because it is excessive.

This exception is filed so that the matter may not pass beyond the control of the Court until exceptions to the report have been filed and the case considered by the Court on the report and exceptions and record.

After the Court has heard the cause and considered the report and exceptions, complainant will make no objection to the Court fixing whatever compensation may be deemed proper by the Court.

Respectfully submitted,

ALEX. P. HUMPHREY,
W. L. GRANBERY,
W. PRATT DALE,
Solicitors for Complainant.

194 And on another day of said term of said court, continued and held, to-wit, on December 10th, 1910, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

This day came Henry Burnett, Special Master, and filed a supplemental report and findings, together with one exhibit.

The Supplemental Report and findings above referred to are as follows:

195 United States Circuit Court, Sixth Circuit, Western District of Kentucky.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

Supplemental Report and Findings of the Special Master.

Since filing my report herein on November 17, 1910, my attention has been called to some matters that are deemed important, which I desire now to submit as a Supplemental Report.

Complainant began its testimony in this cause by introducing as a witness Mr. H. Blair Smith, Auditor of Complainant; and at the conclusion of his direct examination, counsel for defendant moved "the Master for an order permitting defendant, through its accountants, to examine said books, records and accounts of complainant, and for an order directing and requiring complainant to make a full and complete exhibit, and show all its books and records to defendant's accountants."

This motion was objected to by complainant, and the objections were sustained and the motion was disallowed.

Thereafter, at a conference between the Special Master and counsel representing both litigants, complainant's counsel submitted two propositions: One was, that the Special Master should select an expert accountant who should examine the books and records of the complainant company and make a report directly to the Special

Master, and that this report should be treated as evidence in
196 the cause by both parties.

The alternative proposition was, that each party to the litigation should select an accountant, and that the two accountants thus selected should make a joint examination of the books and records of the complainant company, and should make a joint report to the Special Master upon all matters that they could agree upon, and as to all matters they could not agree upon, that each was to file a separate report.

The defendant's counsel agreed to the latter proposition. It was then stated by the Special Master in the presence of counsel for both parties, that whatever these accountants should jointly agree upon, should be accepted as final by the Master, and no proof should be permitted to vary or contradict such joint findings. As I understood it, this statement was accepted by both parties.

Thereupon, complainant selected Mr. George Wilkinson as its accountant, and defendant selected the Mutual Audit Company as its accountant. During the progress of the work of these joint accountants in examining the books and records of complainant, a conference was held in Nashville, Tenn., where the records were kept, at which were present counsel representing both litigants, representatives of both accountants, and the Special Master. This conference was held on June 7, 1909, and in this conference the Special Master stated:

"Here are two auditors, by agreement of parties, allowed access to the books of the Complainant Company; and it is agreed that these auditors, after a thorough examination of all the papers connected with the case, shall make a joint report, so far as they may be able to agree, upon any and every proposition. That report, so far as it is the joint report of the two auditors, must be accepted by both litigants, by the Special Master, and by the Court, as true; and I take it that no proof ought to be allowed from any extraneous source as to the correctness of that joint report.

"Now, as to such matters as these two auditors are unable to agree upon, the Court's order is, that each auditor shall then, as to such matters, make a separate report to the Master, and that separate report should contain the reasons in detail of each auditor for his findings. As to these separate reports, if there be any, certainly each party to the litigation would be not only permitted, but it would be their duty, to produce other testimony, if accessible, so as to enable the Special Master and the Court to decide which of these Special Reports is true."

197 Then the order was further extended, directing the accountants to file with the Special Master their working papers and memoranda, and that same should be arranged in an orderly and systematic way with any remarks or indices that they may see fit, so as to identify the papers hereafter.

Further, the accountants were directed to submit, one to the other, the results of their examination, and to state frankly in their reports their reasons, one to the other, for any position that they might take, in order that the report, when made, shall be, if possible, the

joint result of the labors of the accountants; and that when they came to make a separate report, if such should be the case, that each accountant should fully state in his separate report his reasons for disagreement, and, furthermore his reasons in support of his said report. The accountants were further directed to file with the Special Master a statement that they had not withheld any working papers, memoranda, data or figures obtained by them in their investigation.

I append hereto a typewritten copy of my directions to the expert accountants, which is made a part hereof, marked Exhibit No. 1.

Thereafter the accountants did submit to me a joint report, and each submitted a separate report, all of which have been filed by me as a part of my original report herein.

When the evidence was nearly completed, at a conference before me, at which counsel for both parties to this action were present, after considerable argument, I made the following statement:

"It was my distinct understanding when that agreement was made, that whatever the two experts reported jointly should be accepted as a finality by the Commissioner. Now, I have not seen the report; I have not read a line of any of this testimony, neither have I read either of the reports. If their report on the proposition as to the cost of the Ohio Valley Company, or whatever name it was, appears by the books to be so and so, and they appear to leave that matter open, then I would take it that neither party would be bound by that sort of a report. That is the same question that is up here about these depositions. But wherever they report a fact, ascertained by a physical examination of the vouchers, papers and books of the Company, I have always understood it, and so stated to counsel several times, that that would relieve the Commissioner of any investigation as to those points agreed upon by the accountants.

* * * I have not read the report. I don't know how they
198 have worded it. I don't know how they have expressed it. I do not know a single point they have agreed upon. I I don't know anything about it."

Counsel for Complainant then stated:

"Of course, I don't ask your Honor to rule now on questions that may arise as to whether they have reported certain facts or whether they have not. Of course, that is the chance I will have to take in preparing my rebuttal proof, as to whether this joint report does cover certain things or not; but the ruling that I wanted is, what your Honor has indicated, that that was the agreement, and that is the one that is to be enforced."

Upon an examination of the joint report, I find that the expert accountants agreed, and so reported, what the books of the complainant showed as to the cost of complainant's plant, and as to the expenditures for construction, as to the gross earnings and as to operating expenses. The report specifically states as to the foregoing matters as follows:

"The foregoing joint report shows the money charged as the cost of the plant at Louisville, the gross amount credited to the Louisville

Exchange as earnings, and the operating expenses charged as appertaining thereto, as recorded on the books of the Cumberland Telephone & Telegraph Company. It is not an agreement that the said accounts are properly distributed or charged as we believe they should be, therefore the right is reserved by each of the undersigned to make such individual report and statement relative thereto as each may feel justified in doing."

The only fact reported by the accountants, to which both agreed, was, as to what would be the probable loss in earnings the first year after the ordinance rates should be put into operation. Their finding was that such loss would be $49,721.76. This fact I adopted in my report, and my calculations are all based thereon.

In accepting the above figures as true, I was not unmindful of the fact that complainant, in its Bill of Complaint, on page 16, made the following charge:

"If the rates prescribed by said ordinance are put into effect, it will result in a decrease in your orator's revenue, based upon the present rates and present subscribers located within the corporate limits of the City of Louisville, amounting to $33,504.00."

Neither was I unmindful of the statement occurring in the deposition of Mr. H. Blair Smith, Auditor of complainant com-
199 pany wherein he stated that such loss would amount to $39,192.00.

(See Smith's deposition, p. 44.)

Saving and excepting the above loss in revenue to be caused by the enforcement of the ordinance rates, I do not consider that the joint report found any fact, except as to what the books of complainant showed. Of course, such a finding ought not to be binding on either party as an ultimate fact.

It is stated in my original report that the depositions of H. W. Ritterhoff and Charles H. Peale were not considered by me. This was an error. Exceptions were filed to the deposition of William Kavanaugh by complainant, and those exceptions were sustained by me, but these exceptions did not tend to the depositions of Ritterhoff and Peale.

I desire further to state that the complainant filed exceptions to the depositions of Charles Meriwether, S. M. Wilhite and Chas. E. Archer, and I sustained said exceptions and suppressed those depositions. The reasons for my ruling are given in a paper hereto attached as part hereof.

I desire further to state that a stipulation was filed in this case by the parties, showing what rates the Louisville Home Telephone Company was authorized to charge for telephone service in the City of Louisville during the years 1907 and 1908, and this stipulation is filed with the papers in the case and returned by me to the office of the Clerk.

The original deposition- of W. C. Polk, W. H. Kessler, Charles E. Archer, Charles Meriwether, S. M. Wilhite, Charles Meriwether recalled, and James F. Grinstead, have been mislaid, and by agreement of counsel on both sides, a carbon copy of the above named depositions is herewith returned; and it is further agreed by counsel

that said copies of the depositions may be read and considered as the depositions of said witnesses.

A written stipulation by counsel on both sides of this controversy, that a copy of D. C. Jackson's report to the Massachusetts
200 Highway Commission might be filed and read on the hearing of this case, is among the papers returned by me to the Clerk's office, and same was considered by me so far as I deemed it relevant.

All of which is

Respectfully submitted,

HENRY BURNETT,
Special Master.

201 "EXHIBIT NO. 1."

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
CITY OF LOUISVILLE.

Pending in the United States Circuit Court at Louisville.

To the Mutual Audit Company and Wilkinson, Reckitt, Williams & Company, accountants selected respectively by the defendant and the plaintiff in the above entitled cause to make an investigation of the books and accounts of the plaintiff Company with reference to its Louisville Exchange:

First. You are directed to agree, if possible, upon the scope of the investigation and the points to be covered in your report. If, at any time, you are unable to agree upon any one or more points to be covered by your report, you will submit the matter, in writing, to the Master Commissioner, each giving the reasons for and against such point or points.

Second. After your investigation shall have been concluded, you will make a joint report, as far as you can do so, and each accountant shall submit to the other, in writing, the proposed report with respect to such points as they differ on, and the other accountant shall have the right to state in writing his reasons for not concurring therein, and the joint report, together with the separate report of each accountant, together with the reply, or objections thereto, by the other, shall be properly identified by both accountants, and the same transmitted, under one cover, to the Master Commissioner.

Third. All working papers, memoranda and other mate-
202 rial, figures, or facts gathered by the accountants during the investigation, shall be properly marked for identification, properly indexed and signed by both accountants, and shall be sealed and delivered, by express or otherwise, to the Master Commissioner at the same time that your report is submitted.

And neither accountant, nor any of their assistants, shall be permitted to withdraw any working papers, memoranda, data, figures or other information obtained by them in this investigation, and each accountant and their assistants shall make oath in due form that they have not withheld, kept, or have in their possession or keeping, or withdrawn or taken from the office of the plaintiff Company, any fact, figure, memoranda of any kind, but that all such working papers, memoranda, etc., have been duly filed with the Master Commissioner.

The above instructions are issued on this, the — day of June, 1909.

203 And on December 17th, 1910, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

This day came the complainant, the Cumberland Telephone & Telegraph Company, by Humphrey & Humphrey, W. Pratt Dale and William L. Granbery, its counsel, and filed exceptions to the report of the Special Master filed November 17, 1910.

Came also the defendant, the City of Louisville, by C. B. Blakey, its counsel, and filed exceptions to the report and findings of the Special Master, filed November 17th, 1910.

204 CUMBERLAND TELEPHONE & TELEGRAPH CO.
vs.
CITY OF LOUISVILLE.

Exceptions of the Complainant to the Report of the Special Master. Filed Nov. 17, 1910.

The Master was directed to report:

I.

"The cost to Complainant of its plant and property in the City of Louisville, Kentucky, and in doing this he will state generally the basis of his estimate thereof."

The Master reported that the Complainant acquired the properties of the Ohio Valley Telephone Company in 1899, and that this acquisition was made in the following manner:

Complainant purchased in June, 1899, 702 shares of the capital stock of the Ohio Valley Company at $140.00 per share, and 2,855 shares at $141.00 per share, making a total paid for 3,557 shares of $500,855.00. This is correct, and not excepted to.

There were left outstanding 1,937 shares of the Ohio Valley Telephone Company's stock which was acquired by Complainant issuing a like number of its own shares to the holders of the shares of the Ohio Valley Company. The Master reports that this additional 1,937 shares only cost Complainant the par value of its stock, to-wit: $193,700.00, whereas Complainant insists that this stock cost it $79,417.00 additional.

205 "A."

Complainant excepts to the disallowance of this item of $79,417.00, premium on 1,937 shares of the Ohio Valley Telephone Company's stock, for the following reasons:

Complainant's stock was selling in the open market at about $141.00 per share (a share in Complainant company and in the Ohio Valley Company each being $100.00 par value). See deposition of Caldwell, pages 579 and 580.

It is insisted by Complainant that since its shares were selling for a premium of $41.00 in the open market, and it purchased a large number of shares of the Ohio Valley Company at a premium of $41.00 per share, that in determining the cost to Complainant of the shares acquired by exchanging a like number of its own shares, this premium of $41.00 per share must be allowed, since it is apparent that if Complainant had sold 1,937 shares of its own stock it would have received $79,417.00 more than its par value, and if it had purchased for cash the 1,937 shares of the Ohio Valley Company's stock it would have paid therefor $79,417.00 more than its par value.

Again, if Complainant acquired 1,937 shares of Ohio Valley Company's stock at par, it received property which was worth $79,417.00 more in the open markets of the country than was paid for it, and it gave for these 1,937 shares property that was worth $79,417.00 more than its par value.

The Master refers to the issuance by Complainant of its stock from a period back of 1900 to 1908 at par. In other words, his statement is that all the stock sold by Complainant from a period back of 1900 to 1908 was upon a par basis. In this matter the Master is only partially correct.

206 It is true that the new issues of stock during all that period have been issued to existing stockholders pro rata at par (see first deposition of H. Blair Smith, p. 377), but this was not in any sense determinative or indicative of the real value, or market value, of Complainant's stock. Under well settled principles of law, corporations, in all increases of capital stock, are required to issue such increases to its existing stockholders pro rata. This is a right existing shareholders have to acquire their proportion of each new increase of stock. It is a right attaching to the ownership of stock, and such stockholders have the right to take and pay for their pro rata shares of new issues of stock.

It thus appears that the Master, conceding that the Ohio Valley Company's stock was worth in the open markets of the country a premium of $41.00 per share, holds that because of the manner in which Complainant acquired 1,937 shares, its value decreased $41.00

per share, or a total of $79,417.00, when any other purchaser would have paid therefor a premium of $79,417.00; and Complainant itself could immediately, after acquiring these shares, have sold them for a premium of $79,417.00.

So that we insist that the Master was in error in not allowing this item of $79,417.00 as a part of the purchase price of the property of the Ohio Valley Telephone Company.

"B."

The Master assumes, and treats, the entire properties of the Ohio Valley Telephone Company as worth on January 1, 1900, the exact amount Complainant paid for its shares of stock in June preceding, less the premium of $79,417.00 on the 1,937 shares as above stated. Complainant excepts to this finding of the Master for the following reasons:

It is well settled that the market value of the share capital
207 of a corporation does not necessarily represent the value of the corporate assets. The stock simply represents the equity of the shareholders in the corporate assets. Creditors have a first claim upon the assets, and it is only after paying creditors that the shareholders are entitled to any part of such assets. Therefore, where the shares have a market value, the value of the corporate assets is to be measured by the market value of the shares, plus the indebtedness of the company, and this principle has been entirely overlooked by the Master in ascertaining the cost to Complainant of the property of the Ohio Valley Telephone Company.

As found by the Master, the shares of stock of the Ohio Valley Telephone Company were acquired by Complainant in June, 1899, and as soon as this stock was acquired new officers of the Ohio Valley Company were elected, and the property operated as an independent corporation until January 1, 1900, when it was consolidated with the Cumberland Telephone & Telegraph Company—both being Kentucky corporations—and the consolidating company, under the name of the Cumberland Telephone & Telegraph Company, took over the assets of the two consolidating companies, and assumed all their liabilities. (Charter of the company, exhibit to the original bill.)

From June, 1899, when the new management of the Ohio Valley Company took charge, until January 1, 1900, when the consolidation took place, all of the earnings of the Ohio Valley Company, and a large amount of borrowed money, was used in building up the properties of the Ohio Valley Telephone Company, so that on January 1, 1900, the situation was wholly different from that of June preceding, and the value of the assets of the Ohio Valley Company on January 1, 1900, was greater than in June preceding.

Eliminating every disputed item in the accounts, the following were the liabilities of the Ohio Valley Telephone Company in
208 June, 1899, when the new management took charge, and those subsequently incurred prior to January 1, 1900:

Liabilities.

In June, 1899, the Ohio Valley Company had outstanding bonds (H. Blair Smith's first dep., p. 85.)	$16,000.00
Taxes accrued and unpaid (H. Blair Smith's first dep., p. 103.)	4,000.00
Interest accrued and unpaid (H. Blair Smith's first dep., p. 103.)	7,770.00
Switchboard royalty accrued and unpaid (H. Blair Smith's first dep., p. 103.)	2,404.59
Bills payable, January 1, 1900 (H. Blair Smith's first dep., p. 105.)	221.005.09
Miscellaneous accounts payable (H. Blair Smith's first dep., p. 129.)	63,755.16
Special account December 31, 1899 (H. Blair Smith's first dep., p. 103.)	38,875.16
Or a total liability of	$353,810.00

As against these liabilities the Ohio Valley Telephone Company had acquired real estate and current assets, as follows:

Assets.

Real estate (H. Blair Smith's first dep., p. 145.)	$115,765.46
Accounts receivable (H. Blair Smith's first dep., p. 147.)	9,198.01
Supplies on hand (H. Blair Smith's first dep., p. 147.)	37,299.59
L. K. Webb, Auditor (H. Blair Smith's first dep., p. 147.)	30,215.18
209 Cash on hand (H. Blair Smith's first dep., p. 147.)	$288.81
Or a total of	$192,767.05
Excess of liabilities	161,042.95

This excess of liabilities, of course, was money expended in developing the properties of the Ohio Valley Telephone Company, and was the added cost above the market value of its shares of stock.

If, therefore, we add the amount paid for the shares of stock, including the premium of $11.00 on the 1,937 shares, we have a total cost of the property of the Ohio Valley Telephone Company, on January 1, 1900, of $935,014.95, exclusive of real estate.

These assets and liabilities are not only given by the company's Auditor, Mr. H. Blair Smith, but are set forth in the report of the Mutual Audit Company, on behalf of the City of Louisville, in exhibit one.

This, it will be recalled, is the total cost of the plants, exchanges and toll lines, excluding real estate, of the Ohio Valley Telephone Company as of January 1, 1900, when this property was taken over by the Complainant. It only remains to determine how this cost should be separated so as to ascertain the cost of the exchange in the City of Louisville.

The Ohio Valley Company owned and operated nine exchanges, including the one in the City of Louisville, and also had toll lines connecting these exchanges.

The Master has ascertained (which we accept) that the toll lines cost Complainant $125,106.80

This item deducted from the entire cost of the
210 exchange and toll lines of the Ohio Valley Company, as of that date, leaves the cost of exchange properties $809,608.15

It is conceded by the Master that 80.4 per cent of the exchange properties of the Ohio Valley Telephone Company was in the Louisville Exchange, and there is no dispute anywhere in the record as to this fact. Therefore, in order to ascertain the cost to Complainant of the Ohio Valley exchange in the City of Louisville on January 1, 1900, excluding the real estate and toll lines, we have 80.4 per cent of $809,608.15, or.. 650,924.95

The cost of real estate in Louisville as found by the Master (and everyone agrees that it is correct) is..... 108,034.50

Making a total cost of the Louisville Exchange and real estate of $758,959.45

(*a*) Complainant, on January 1, 1900, took over the Louisville Exchange, exclusive of real estate and toll lines, at a cost value of $678,354.69

Exhibit 2 of H. Blair Smith's first deposition.

Mr. Smith testifies that this was, in his opinion, the actual cost to the Complainant company of the Louisville Exchange, as of January 1, 1900.

H. Blair Smith's first dep., p. 22.

Mr. Caldwell, the President of the company, also testifies that the purpose of the company was to take over the Louisville Exchange and put it on the books at exactly what it had cost, and was worth, and this was done... 678,354.69

Caldwell's first dep., p. 580.

211 (*b*) Wilkinson, Complainant's expert accountant, examined the books of the Ohio Valley Company, and states the cost to the Complainant of the Louisville Exchange, exclusive of real estate, on January 1, 1900, to be.....$678,354.69

See report of Wilkinson, pp. 5 to 16.

In other words, Mr. Wilkinson sustains the company's books, and testimony of Mr. Smith, the company's Auditor, and Mr. Caldwell, the company's President.

The Mutual Audit Company experts made no examination of the books of the Ohio Valley Company.

Dep. of Warren, p. 363.

(*c*) The Mutual Audit Company, the expert for the city, reaches the conclusion that the exchange cost the company, on January 1, 1900, exclusive of real estate and toll lines..... 487,900.86

Report of Mutual Audit Co., exhibit No. 4.

This conclusion cannot be accepted, since it is manifestly erroneous and full of the most glaring errors:

They disallow the premium on the 1,937 shares of stock purchased by an exchange of a like number of Complainant's shares, $79,417.00. They prorate a part of the premium paid for the remainder of the stock of the Ohio Valley Company on the real estate in Louisville, amounting to $21,233.25, when it clearly appears that the main exchange building was purchased by the Ohio Valley Telephone Company on June 3, 1899, for $100,000.00 and this purchase was a separate transaction, and after the sale of stock.

See Caldwell's dep., pp. 581 and 626½.

212 When the sale and purchase of the Ohio Valley Company's stock took place, the only real estate owned by the company was $15,765.46. Of this, $8,034.50 was located in Louisville. The remainder, $7,730.96, in New Albany. (Wilkinson's report, p. 9.) The Master had found the total real estate in Louisville to have been on that date $108,034.50. Thus verifying the statement that the only real estate owned by the Ohio Valley Company in Louisville at the time the stock was sold, was $8,034.50. Supplies on hand are allowed a bonus on the stock value of $6,850.37. Of course supplies were not entitled to any part of the premium paid for stock, since they are staple articles that carry their own cost value. This makes manifest errors in the figures of the Mutual Audit Company of more than $100,000.00.

Mutual Audit Co.'s exhibit 3-A.

It therefore appears that the Master fixes the cost of the Louisville Exchange, exclusive of real estate and toll lines, as of January 1, 1900, at (p. 6) $457,579.07

This is less than any witness places the cost, and it cannot be ascertained from the record how such a conclusion was arrived at.

a. The President of the Complainant says that it cost, and was worth 678,354.69

b. The Auditor of Complainant says it cost the sum of .. 678,354.69

c. Wilkinson, the expert accountant, says it cost Complainant 678,354.69

d. The Mutual Audit Company's report of cost is not to be accepted.

An analysis of the evidence shows, as above set out on pp. 74-75, that the exchange cost on January 1, 1900, was at least the sum of 650,924.95

213 Complainant, therefore, insists that the Master is in error in fixing the cost of the Louisville Exchange, exclusive of real estate and toll lines, at only $457,579.07, and insists that the cost is shown to be $678,354.69, and certainly not less than the sum of .. 650,924.95

"C."

Whatever may be found to have been the cost of the Louisville Exchange as of January 1, 1900, exclusive of real estate and toll lines, there is no dispute but that there was added as additional construction to December 31, 1905, the sum of $1,023,545.24. From this amount the Master deducts $100,000.00, and to this part of the report Complainant excepts.

There should have been no deduction by the Master, because there is no evidence showing that any amount was erroneously charged to construction.

Notwithstanding the many criticisms of the Master as to this added construction, his disallowance of $100,000.00 is based upon the following, as far as can be ascertained from his report:

1st The "wages of men employed in and near Louisville in connection with aerial work, including toll lines."

2nd. The small amount of wages charged to maintenance or reconstruction.

3rd. The addition of 10% to invoice price of materials, to cover freight, drayage, rentals, etc. This the Master estimates to be at least $50,000.00.

4th. The charge of $10.00 per station on each station gained to cover the cost of labor and material in making such installation.

5th. The cost of toll line equipment, and maintenance and reconstruction of toll lines.

After discussing each of these five objections to the added construction since January 1, 1900, the Master deducts the sum of $100,000.00 (page 15).

214 An examination of the record will show that as to each of these five subjects the Master was in error in deducting anything from this added construction account.

Under this heading of the Court's instructions, the Master is only undertaking to report the cost of the exchange to December 31, 1908.

In doing this he confuses construction with maintenance and reconstruction. Whether maintenance and reconstruction of toll lines was charged to maintenance and reconstruction of exchange, or vice versa, is wholly immaterial under this heading, when the sole inquiry is the cost to Complainant of its exchange property in Louisville.

The first criticism of the Master, as above stated, relates to wages of men employed in connection with aerial work, including toll lines. On page 10 of his report he states:

"Many vouchers were produced at the hearing, covering the wages of men employed in and near Louisville in connection with the aerial work, including toll lines. These vouchers show that certain wages and salaries had been expended on the aerial lines, and also on the underground lines connected with the Louisville exchange. A small proportion of these outlays was charged to maintenance or reconstruction, while the bulk of the outlays is charged to construction."

And on page 10 of his report, he says:

"The evidence tends to show that in nearly every instance the wages of employés shown in the vouchers we are considering were charged almost wholly to construction, and no evidence of the correctness of such charges was offered except that the vouchers bore a notation to that effect.

It is inconceivable that so little of these wages was properly chargeable to maintenance or reconstruction from 1900 to 1908. The aggregate amount of these vouchers was not shown in evidence."

It is confidently asserted that in these statements the Master is clearly in error, and for the following reasons:

215 The only pay-roll vouchers to which the slightest criticism has been offered (except those where errors were found and eliminated by the accountants for both parties) were for the years 1900 and 1901. These pay-rolls were investigated in the cross-examination of Complainant's Auditor.

First dep. of H. Blair Smith, pp. 196 to 255.

While the examination showed that no just or fair exception could be taken to them, other facts in the record show conclusively that they were reasonable, fair and just.

It will be recalled that in 1900 the company gained 1,352 new subscribers, and in 1901 gained 2,007 new subscribers.

Exhibit No. 3, H. Blair Smith's first dep.

During the same years there was added to construction in 1900, $166,775.23, and in 1901, $178,549.14.

Joint Report of Accountants, p. 3.

During the year 1900, Complainant expended on maintenance and reconstruction, $50,180.03, and during 1901, $68,417.50.

Dep. of Warren, p. 404.

First dep. of Smith, pp. 398, 399 and 402.

It is also shown in the proof that, for the year 1901, there was expended on wages for maintenance, $31,230.94.

H. Blair Smith's first dep., pp. 252 and 240.

The joint accountants report the amount added to construction for each of the years 1900 to 1908, inclusive.

The Mutual Audit Company reports the amount expended on construction for each of these years, and also reports the amount expended on maintenance and reconstruction, and nowhere is there any criticism of any of these pay-rolls.

The expert accountants, on examining these construction vouchers from January 1, 1900, to December 31, 1908, found items
216 aggregating $2,852.39, which had been charged to construction improperly, and these were eliminated.

Joint Report of Accountants, p. 2.

Aside from these items aggregating $2,852.39, the accountants for both parties reported that the construction added for these years was $1,023,545.34, and it is entirely reasonable to assume that if these pay-rolls had been improper in any respect these accountants, or some of them, would certainly have called attention to the fact. The gain in subscribers, and the amounts expended in maintenance and reconstruction, precludes any just criticism of the amounts added to construction for those two years.

"D."

The Master criticises the evidence of Complainant in undertaking to sustain this construction account. He states that no witness was introduced who pretended to have personal knowledge as to any of these items. This statement of the Master is excepted to by the Complainant for the following reasons:

It appears that Complainant has, since before 1900 to the present time, operated a system of telephone exchanges and telephone toll lines; that its auditing department is located in Nashville, Tennessee; that it has local managers at its various exchanges, and other employés necessary to conduct the business of each exchange; that it has records showing the cost and operation of each exchange; and, also, separate accounts of the cost of toll lines.

See Smith's first dep., p. 504.

See Caldwell's first dep., p. 598.

Whenever construction work is done at an exchange, or whenever any expense is incurred at an exchange, a voucher is made
217 showing what account it properly belongs to—whether to construction, operating or maintenance. These vouchers are then approved by the manager and sent to the Auditor at Nashville.

After he has audited them they go to the Assistant General Manager for his examination and approval. When they get back to the Auditor, with the approval of the Assistant General Manager, they are then distributed in the books of the Complainant, showing to what account they are chargeable.

H. Blair Smith's first dep., p. 153.
Leland Hume's dep., p. 105.

It has never been contended, or assumed, that the Auditor has personal knowledge of whether the work has been done, or whether the expense has been incurred, other than what he sees from the vouchers themselves. The local manager, or foreman, or other employé, who incurs the expense in the first instance, vouches for it. The Assistant General Manager, while the matter is fresh and the facts easily ascertainable, examines, and if found correct, approves the expenditure. It then goes to the Auditor, not to be approved by him, but to be entered on his books and preserved for safe keeping.

It would be impossible for Complainant to go back ten years and find the employés who incurred the expenditures and who vouched for their accuracy at the time, and it would be equally impossible for the Assistant General Manager to carry in his mind records showing expenditures at even the Louisville Exchange for a period of ten years, not considering the more than 500 other exchanges, and a system of toll lines radiating in every direction from Louisville, Ky., to New Orleans, La.

The only possible means that Plaintiff had to show the amount expended on construction, and the expense incurred at the Louisville Exchange for the years 1900 to 1908, inclusive, was to exhibit its books and sustain its books by exhibiting the original
218 vouchers covering the entire period of time. If there is any other known way of showng the cost of construction of a property, or showing the expenses of operation, it has not been suggested by any one in this record.

The Master criticises what he calls the small amount of wages charged to maintenance or reconstruction of the Lounsville Exchange during the nine years under consideration. The experts for the city have shown the amount expended by Complainant on maintenance and reconstruction of the Louisville Exchange for each of the years involved, excepting 1902, as follows:

1900	$50,180.03
1901	68,417.50
1903	51,630.75
1904	66,456.72

See dep. of Warren, p. 404, and
First dep. of Smith, pp. 398, 399 and 402.

The accountants' joint report shows that for the years 1905 to 1908, inclusive, Complainant expended on maintenance and reconstruction of the Louisville Exchange, the following:

1905	$90,870.36
1906	93,423.00
1907	107,511.41
1908	86,155.98

Joint report of accountants, p. 5.
Master's report, p. 41.

Thus, in the eight years involved there has been expended in maintenance and reconstruction of the Louisville Exchange the sum of $614,645.75, or an average of $76,830.72 per year.

It must be remembered that the amount expended in the latter years was necessarily larger for the reason that there was very much more construction which was required to be kept up. In other words, taking 1900, there was only added to construction
219 that year the sum of $166,775.23, which, on the Master's basis, made the entire cost of the exchange at the end of 1900, only $624,354.30. (The Master found the cost of the exchange on January 1 to have been $457,579.07, and adding the construction for that year, gives $624,354.30 as the cost to the end of 1900.) And in like manner, the cost of the exchange to the end of 1901, was $624,354.30, plus the construction added in 1901 ($178,549.14), or $802,903.44. On our basis the result is: Cost of exchange January 1, 1900, $678,354.69, plus construction added during 1900, $166,775.23, gives $845,129.92; and in like manner for 1901, $1,023,679.06. Thus showing that the amount expended on maintenance and reconstruction for those two years was in proportion to all subsequent years.

There is no criticism in the record that a sufficient amount has not been expended to maintain the plant. Therefore, it is unjust to the Complainant for the Master to criticise the amount of wages paid out for construction or to intimate that part of the wages paid for maintenance has been charged to construction.

There is no doubt, and no question, but what Complainant has paid out for the years involved, $1,023,545.34, and in addition to that, it has expended for maintenance of the Louisville plant the sum of $614,645.75, exclusive of 1902 (the amount for that year not appearing in the record.) So that if any part of this $1,023,545.34 is improperly charged to construction, the amount expended by Complainant in maintaining the property would have to be increased by just that amount. In other words, there is no question but that this money has been expended by Complainant, and if it has not been expended on construction, it has been expended on maintenance.

But we submit that the Master has no right to criticise, or throw suspicion or doubt upon the construction account when it appears that these vouchers were regularly made up, regularly ap-
220 proved, and regularly entered upon the books of the company from time to time during that period of nine years, and when the Auditor testifies that they are properly distributed and properly credited, and the Assistant General Manager testifies that he approved them as the expense was incurred, and there is, on the

contrary, nothing except that for some months, in the particular vouchers examined, it did not appear that much of the wages was charged to construction, and in other months large amounts of wages were charged to construction. It is submitted that the Master does not point out any evidence upon which he bases his criticism.

There is another, and conclusive, reason why this construction account must be allowed to stand as reported. The order of the Court, in referring this case to the Master, states that "he will, under and pursuant to the equity rules and under agreements that the parties may make, proceed to take testimony, etc." The supplemental report of the Master shows that it was agreed by Complainant and Defendant, that whatever the accountants reported jointly, should be accepted as true, and no other evidence permitted to vary or contradict the same. The accountants reported jointly that $1,023,545.34, after correcting all mistakes, had been added to construction from January 1, 1900, to December 31, 1908. The Master should accept this finding as well as the litigants.

"E."

Complainant excepts to the report of the Master in disallowing 10 per cent to be added to the invoice price of materials to cover freight, drayage, rentals, etc.

The proof in the case with respect to this item is as follows:

The company maintains at Louisville, Ky., a warehouse in which it stores material purchased in large quantities, and when
221 material is drawn from this warehouse for the use of any of the exchanges or toll lines in that territory, the actual cost of the material, plus not exceeding ten per cent, is charged to the exchange, or toll line, to which the material goes, and "supplies" and "supply expense account" are credited with a like amount. This amount (not exceeding 10 per cent at any time) is for the purpose of paying rent, insurance, clerk hire, drayage, freight and other items of expense incurred by Complainant in purchasing, storing and distributing materials to the various exchanges and toll lines as needed. This is not a profit in any sense to Complainant. It is the actual cost to Complainant of handling the supplies from the person from whom they are bought to the time they are delivered to the exchange or toll line employés.

It is true that in the first instance the expense of handling these materials is charged in the general accounts to "supply expense," and then, when the material is issued, "supply expense account" is credited with this not exceeding 10 per cent for handling, etc., and the exchange or toll line to which the supplies are issued is charged with a like amount.

The Master refers to the fact that he presumes that the company gets the usual trade discount for cash. Whatever trade discount the company gets reduces the invoice price of the supplies, and the records show that the actual cost to the company of the supplies, plus not exceeding 10 per cent, is all that is charged against the exchange or toll line receiving these supplies.

See dep. of H. Blair Smith, pp. 255 and 256.

There is no difference in the method Complainant pursues in handling supplies and in the method pursued by merchants. When a merchant buys goods, he must, in addition, pay the freight to get his goods to his store; he must pay his insurance, his house rent, his clerk hire, and other incidental expenses preparatory to
222 offering his goods for sale. He, of necessity, must add this additional expense to the cost of the goods before he begins to talk about profits, and it is only when he has added this additional expense to the invoice price of his goods that he can ascertain the real cost to him; and then on top of this must be added whatever profit he expects to make on the goods, and until he adds this he is not making any profit and could not afford to sell the goods at these prices, because it would result in his selling the goods at actual cost to himself.

This is precisely what this record shows the Complainant does. It adds not one cent of profit to the supplies.

Complainant therefore submits that the Master is in error in finding that a profit of at least $50,000.00 has been made on the supplies furnished to the Louisville Exchange from 1900 to 1908, inclusive.

"F."

Complainant excepts to the action of the Master in discrediting and declining to accept the statement of Complainant that it has charged to construction $10.00 per station on each station gained in the Louisville Exchange to cover the cost of labor and material in making such installation.

The evidence upon this point is as follows:

It requires material, apparatus and labor to equip each subscriber so that he may connect with the general exchange and be connected with other patrons of the exchange. It has been ascertained by experience that it cost Complainant, on the average, at least $10.00 to install a subscriber's instrument, counting the material used from the pole in the street to the telephone instrument, thence to the ground, which covers everything in the subscriber's place of business or residence except the telephone instrument itself.

223 That this charge is reasonable and proper is shown from the following testimony:

Complainant's valuation of the telephone instrument is $6.80.
Jagoe's dep., p. 67.

Mr. Polk in his deposition says that the instrument is worth:

Wall set	$6.50
Desk set	7.50

Polk's first dep., p. 110.

It must be remembered that the Company only charges $10.00 for installation, which covers everything except the instrument. Mr. Polk, in his second deposition, p. 145, states that it will cost about $25.00 to equip and install an instrument in a subscriber's residence or place of business. In this is included the wall set

at $6.50, or the desk set at $7.50. Deducting the larger amount, $7.50, leaves a charge of $17.50, which Mr. Polk says is necessary in order to install the subscriber's instrument. As above shown, the Company only adds $10.00 instead of $17.50 as testified to by the expert telephone engineer for the city.

When a subscriber discontinues his service, and the telephone instrument is taken out of his house, that is all that can be recovered or saved from the expense of installation. The wire and labor of installing the instrument is lost; and in the first instance this entire expense of installing the instrument is necessarily chargeable to construction because it is a part of the exchange plant and equipment, but when the telephone is removed the whole amount must be deducted from construction because that much of the construction has been lost and is no longer in existence. In order to facilitate the bookkeeping of the Company, for some period of time in the nine years under consideration, the practice of

224 Complainant was to, in the first instance charge all the expense and material and labor of installing a subscriber's instrument to expense of conducting the business of that exchange, and in like manner to charge to the expense of conducting that exchange the expense of removing the telephone instrument when it was given up by the subscriber. At the end of the month the net amount of increase in subscribers was charged to construction account at $10.00 per subscriber, and a like amount credited to the expense of conducting the business of that exchange. In other words, in the first instance each new subscriber had his instrument installed and the expense of doing it was charged, not to construction, but to expense of the exchange, and at the end of the month, assuming that he still had his instrument, the expense of conducting the business was credited with $10.00—in other words, reduced by $10.00—and construction charged with $10.00, or, in other words, increasing construction $10.00.

See 1st dep. of H. Blair Smith, pp. 309-10, 329 and 368.

There is no difference whatever in this method of keeping the accounts and in charging to construction the expense of labor and material of installing each new subscriber, and deducting from construction the amount so charged when such subscriber discontinues his service. This $10.00 charge did not inflate the construction account. It was simply one method, and a convenient method, of keeping the records of the Complainant so as to show the real facts, and was not intended, and did not in any degree, inflate the construction account.

"G."

The Master, on page 13 of his report, speaks of the difference between the witnesses as to the cost of the conduit system in Louisville.

We except to the language of the Master for the reason that these witnesses he refers to are speaking of the cost of repro-

225 duction, and are not speaking in any respect of the cost to Complainant of its underground system. The Master is

merely undertaking to ascertain the cost to Complainant of its Louisville Exchange, and not what it would cost some one else to build the plant, or what it is worth. On this branch of the case the Master is reporting solely on the cost to Complainant of its plant in Louisville.

"H."

The Master speaks, on page 14 of his report, of the method pursued in operating, maintaining and reconstructing toll lines. Complainant excepts to this part of the report for the reason that the Master has confused the expense of conducting the business with the question he is then discussing, namely, the cost to Complainant of its plant.

This discussion, with respect to the maintenance, reconstruction and operation of toll lines properly belongs under another heading, namely, profits, or receipts and disbursements, and has nothing whatever to do with the cost of the property.

"I."

Complainant excepts to the language of the Master, on page 14, in which he undertakes to deduct from the book cost of Complainant's exchange a part of $100,000.00 because of amounts expended on maintenance and reconstruction of toll lines.

It is immaterial how much Complainant expended in maintenance or reconstruction of toll lines and charged to the maintenance or reconstruction of the Louisville Exchange. It would not have any effect whatever upon the cost to the Complainant of the Louisville Exchange, and this is the enquiry in this part of the report.

226 "J."

Complainant excepts to all the language of the Master under this head of book value which relates to the cost of toll lines and toll line equipment and submits that the Master is in error for the following reasons:

It is not a fact that Complainant charges the cost of construction of any part of the toll lines to the Louisville Exchange. It is testified to by the Auditor of the Company, and not disputed by any one, that the cost of toll lines is charged to the construction of toll lines and not to exchanges.

H. Blair Smith's first dep., pp. 169 and 504.

The President says that toll line and exchange construction are kept separate.

Caldwell's first dep., p. 598.

Again, it is shown that there are only 80 circuits, or 160 wires, used for all toll purposes coming into or going out of the City of Louisville, and a part of these are used for the purpose of giving Louisville subscribers free service to the adjoining little exchanges in different parts of Jefferson County, Kentucky.

First dep. of H. Blair Smith, p. 537.

"K."

It is true that the toll equipment in the Louisville Exchange Main Building is charged against the Louisville Exchange Construction Account, and it should properly be so, and Complainant excepts to the report of the Master in declining to allow this.

It is shown in the record that this toll equipment is installed for the purpose of affording facilities to each subscriber to have connection with and use the toll lines from their individual stations. That is to say, the equipment is so arranged that the
227 subscriber may, from his office or his residence, both send and receive toll line messages at exactly the same rate he would pay for his long distance message if he went to the central office of the Complainant, and there received or sent his toll message. In order to enable subscribers to do this it was necessary to install this toll equipment in the central exchange at Louisville, but it was a part of the Louisville Exchange equipment and put there for the purpose of serving the Louisville subscribers; and in fixing the Louisville subscribers' rates for exchange service, this was taken into consideration, and a price placed upon the use of the exchange service which would pay for a proper part of this added expense of equipment and operating the toll department in such manner as to afford this easy access of the subscriber to the toll line from his office or place of business.

First dep. of Caldwell, p. 599.

The Master, in his report, on page 60, says:

"The company's plant is well located, it is in excellent physical condition, and it is a remunerative business. If we compare it with the Home Telephone Company as to its earning power, it is obvious that it occupies much the superior position in this: It has extensive toll lines that connect with similar lines extending over the entire United States. Connection with these long distance lines may be had promptly by the subscribers, and this I consider a most valuable asset, and in my opinion, it will in the future, as in the past, materially aid the Complainant in its efforts to obtain new subscribers."

This finding of the Master with respect to the added value to exchange subscribers by reason of the fact that they have immediate connection with, and access to, the toll line system is in thorough accord with the testimony of the witnesses for Complainant in this record, and it fully and thoroughly sustains the testimony of the President of the Company, who says that this was an added value to the exchange subscribers, and it can only be given to them
228 by means of this toll line equipment in the main exchange which was put there solely for the purpose of affording the exchange subscribers easy access to the toll lines from their individual stations.

"L."

Complainant excepts to the report of the Master in adding toll of the entire toll line system of the Ohio Valley Telephone Company on January 1st, 1900.

This toll line construction is what the experts report was the cost of the entire toll line system of the Ohio Valley Telephone Company on January 1st, 1900.

Mutual Audit Company's exhibit No. 1.

Wilkinson's report, p. 10.

This, then, was the cost of the toll line construction on January 1st, 1900, but the Master is dealing in his report with the situation in March, 1909. On the bottom of page 22 of the Master's report he states that there is some evidence, though vague and unsatisfactory, that some additions to construction of toll lines has been made since 1900.

The President of the Company testifies that whenever any one in the City of Louisville uses toll lines to any other point in Complainant's system, it uses Complainant's toll lines, and he states that the entire system of Complainant is saturated with its own toll lines.

Caldwell's first dep., p. 587.

The annual reports of the Company on file in the case show that for the year 1908 the gross toll line receipts of the Company were more than $1,500,000.00. With the annual report for 1908 is filed a map showing the toll lines radiating in every direction from every important commercial center in the entire system of Complainant—from the Ohio River straight through to the Gulf of Mexico.

229 It is inconceivable that the Master should assume that the entire toll structure was in existence on January 1st, 1900, and was only worth $125,000.00.

Again, if the Master assumes that the entire value of the toll lines is to be added as a part of the Louisville Exchange, then what would become of more than 500 exchanges if it should be attempted to get the value of these exchanges separately or together. If the entire $125,000.00 of toll line value is placed in the Louisville Exchange, then no other exchange of the Complainant would be chargeable with any part of the toll line construction. If the entire toll line construction should be prorated with the Louisville and the other exchanges in Complainant's system it might be argued that this would be proper treatment, but certainly the toll line value in 1900 should not be used for 1908.

The evidence is clear that the toll line construction is kept separate and distinct from exchange construction, and its cost or value does not appear in this record for the reason that Your Honor directed the Master to ascertain the cost and value of the Louisville Exchange, and not the cost and value of the Louisville Exchange plus the toll line system of Complainant.

"M."

Complainant excepts to the criticism of the Master as to the refusal of the Auditor of the Company to produce the supply vouchers from the Supply Department.

Mr. Smith was asked, in his cross-examination, by the attorney for the City, to produce the vouchers from the Supply Department. He stated in reply that he had no control whatever of the Supply

Department, and that he would have to refer the matter to
230 the counsel for the Company, who was not then present at the taking of the deposition. The matter seems to have been overlooked, and nothing further said about it.

H. Blair Smith's first dep., p. 330.

If the matter had been called to the attention of counsel for the Complainant, it, no doubt, would have received proper consideration; but it was open to the counsel for the Defendant to have summoned any one connected with the Supply Department and to have interrogated them with respect to any matters desired.

At any rate, it is respectfully submitted that it is hardly fair to Complainant to be criticised on what was apparently an oversight or a failure on the part of counsel for Defendant to pursue the enquiry further.

It also appears that the Mutual Audit Company's experts visited the Supply Department and had full opportunity to investigate the vouchers as much as was desired, and stated that they were not investigated for the reason that it would have taken several months to have done so.

H. B. Warren's dep., p. 380.

It also appears that the Auditor of the Company took the accountants for the Mutual Audit Company to the Supply Department and had explained to them the working of that department.

H. B. Warren's dep., p. 571.

"N."

The Master was directed to report the cost to Complainant of its plant and property in Louisville. The Master, no doubt by oversight, failed to report the real estate and improvements of Complainant used in its Louisville Exchange, and to this failure on the part of the Master, Complainant excepts.

231 The real estate owned and used by Complainant is stated in the deposition of the Auditor of Complainant to have cost to December 31, 1908 ..... $160,841.42

Smith's exhibit No. 21.

The Mutual Audit Company reports the cost of the real estate to December 31, 1908 ..... 160,841.42

Warren's dep., p. 493.

Mutual Audit Co.'s report, ex. 11-B.

Wilkinson states the cost of real estate to December 31, 1908, to be 160,841.42

Added in 1909 ..... 1,350.00

Total March 6, 1909 ..... $162,191.42

Wilkinson's report, pp. 20 and 28.

As has heretofore been stated, it was agreed between the counsel representing Complainant and Defendant, and approved by the Master, that whatever the accountants jointly agreed to and reported should be accepted by all parties, and no evidence permitted to vary or contradict it.

The examination of the accountants "involved a close inquiry in all matters relating to the business of the Complainant in the City of Louisville, including the books, accounts, vouchers, pay-rolls, agents' reports and other original sources of information, kept at the principal office of the Complainant in the City of Nashville, Tennessee," and they reported that the plant had cost Complainant to March 9, 1909.... 1,702,391.68

This was not what the books of the Complainant showed the plant to have cost, but was what these accountants agreed the books should have shown after errors had been eliminated.

232 The books of the company showed the cost of the plant to have been $1,700,045.26
First dep. of Smith, Ex. No. 2.

These accountants, having agreed upon the records of Complainant, showing the cost of the Louisville plant, excluding toll lines and real estate, should, under the agreement, be accepted, and that the cost was, as stated 1,702,391.68

Summary.

Complainant, for the foregoing reasons, insists that the Master was in error in reporting the cost to Complainant of its plant and property in the City of Louisville, as of January 1, 1900, as only..... $457,759.07
And on December 31, 1908 ..... 1,381,124.41
And real estate of only 108,034.50
The Master should have found and reported that Complainant's plant cost it, as of January 1, 1900.. $678,354.69
And added construction to January 1, 1909 ..... 1,023,545.34

Making the total cost to Complainant of its plant in Louisville, Kentucky, as of January 1, 1909 .....$1,701,900.03

And construction added from January 1, 1909 to March 9, 1909 ..... 491.65

Wilkinson's report, p. 19.
Warren's dep., p. 411.
Mutual Audit Co.'s report, ex. 4.

Making the total cost of plant to March 9, 1909..$1,702,391.68
And the total cost of real estate 162,191.42

Total "cost of plant and property," March 9, 1909..$1,864,583.10

233 II.

"A fair valuation of the plant and property of the Complainant employed in its business in said city as of March 6, 1909; also its value at the date upon which he may file his report herein. In doing this he will state generally the basis of his estimates."

The Master reports that on March 9, 1909, the plant was worth $1,243,011.97
That the toll lines and (toll) equipment was worth 112,866.12
Master's report, pp. 21 and 22.

The Master made no report with respect to the value of the real estate.
Complainant excepts to this report of the Master in reporting the value of the plant March 9, 1909, to have been only $1,243,011.97. He should have reported the value, exclusive of real estate and toll lines, to have been at least $1,702,391.68

Complainant's evidence on this branch of the case is the depositions of:
James E. Caldwell, President of the Complainant.
H. Blair Smith, Auditor of the Complainant.
Leland Hume, General Manager of the Complainant.
J. E. Jagoe, Assistant Superintendent of plant of Complainant, and
Stipulation with respect to units of value used by Prof. D. C. Jackson.
Defendant's evidence is the depositions of:
W. C. Polk, a telephone engineer.
Wm. H. Crumb, a telephone engineer, and
S. D. Levings, editor of a telephone Journal.

234 "A."

Evidence for Complainant.

All of these witnesses exclude real estate and toll lines, in fixing the value of the exchange plant.

James E. Caldwell.

This witness is the President of Complainant, and has been actively engaged in the telephone business with Complainant since 1885. Until about four years ago he was both President and General Manager, and since that time its President.
Caldwell's first dep., p. 575.

Its properties, except such as have been acquired by purchase or consolidation, have been built under his direction and supervision.
Caldwell's first dep., p. 575.

He states that the Louisville plant has been built with a view of being "permanent and of the very best character;" also "with reference to the growth of a city the size of Louisville, and importance of Louisville, giving evidence of its future."

Caldwell's first dep., p. 588.

He states that the plant in Louisville is worth, excluding real estate.....$1,702,391.68

Caldwell's first dep., p. 595.

Leland Hume.

This witness has been engaged in the telephone business with Complainant for twenty-five years. He has been its Treasurer, Secretary, Local Manager at Memphis Exchange, for ten years Assistant General Manager, and for the past four years General Manager.

Dep. of Hume, p. 101.

235 Most of Complainant's properties have been built under his direction and supervision.

The annual report of Complainant for 1909, filed in this record, shows that Complainant had on December 31, 1908, five hundred and twenty-seven exchanges, and a comprehensive system of toll lines throughout its territory, from the Ohio River to the Gulf of Mexico.

This witness has been familiar with the Louisville plant since June, 1899. It has been extended and developed with the greatest care and economy.

Dep. of Hume, p. 104.

He has supervised and approved all vouchers for constructing and operating this plant since before January 1, 1900.

Dep. of Hume, p. 105.

He examined the figures presented by Mr. Jagoe, Assistant Superintendent of Plant, as they were made up from time to time, and which will hereinafter be referred to more particularly, and he states that these figures are very conservative, and that it would be difficult for practical men to reproduce the plant at the figures given.

Dep. of Hume, p. 106.

He, of all men, has the best right to state its present value, and he does so, and says it is worth excluding real estate.....$1,793,540.30

H. Blair Smith.

This witness is now, and has been for more than ten years, the Auditor of the Complainant. He has devoted his time to auditing the cost of constructing toll lines and exchanges. During all that time he has been engaged in examining vouchers for operating,

maintaining and reconstructing toll lines and exchanges;
236 during that long period of time he, of necessity, has acquired very large experience and knowledge of Complainant's properties, their cost and value; and while he is only an Auditor, and not engaged in the actual construction or operation of telephone plants, yet his large experience in handling telephone accounts, and especially of the Complainant company, entitles him to have an opinion of the value of this plant, and that opinion is entitled to weight.

He states that the Complainant's plant in Louisville is worth, and cannot be reproduced for less than....$1,700,045.36

Smith's first dep., p. 31.

J. E. Jagoe.

This witness states that he is Assistant Superintendent of Plant of Complainant, and reports directly to the General Manager, who is the acting Superintendent of Plant.

Jagoe's dep., p. 2.

He made a study of the Louisville plant from the middle of January to a few days before his deposition was given on March 18, 1910.

Jagoe's dep., p. 3.

He gives in great detail the exact quantities of material in the plant, and gives the value of each item in like detail.

His valuation of the plant, excluding real estate, office furniture and fixtures, working capital, supplies on hand, teams and tools, was $1,793,540.30.

Dep. of Jagoe, p. 31.

This is the only witness in the record who undertakes to give exact quantities of material in the plant and does not rely upon estimates, as do all the witnesses for the Defendant.

237 His deposition shows that he has made a careful and accurate inventory of the plant in Louisville. He states certain things which ought to be recognized without any evidence. Among other things, he says that the number and size of the poles actually in use in an exchange must be known before a proper valuation can be placed thereon.

Jagoe's dep., pp. 11 and 12.

The cable used must be ascertained before valuation can be had, because different sizes of cable vary very greatly in price, and until the exact lengths and sizes of cable are ascertained it is impossible to place a valuation thereon.

Jagoe's dep. pp. 17-19.

And finally this witness says: "There is an individuality about every plant that you cannot separate from it. There are conditions

in every city that are different from the conditions in every other city, and one of the biggest features that often escapes attention is the class of service given. We can serve ten thousand subscribers of one class for one-third of the construction expense that we can serve ten thousand subscribers of another class; and then it is possible to give connection to subscribers at one price and then, by increasing the efficiency of the service, or the reliability of the service, to add fifty per cent to the construction value."

Jagoe's dep., pp. 22-23.

He says that there is a difference in the cost of telephone plants in the same city; it does not convey any intelligent idea of the value of one plant to talk about the value of the other plant; that the cost of one has no bearing upon the cost of the other, no more so than it would be proper to say that the ability of every lawyer is the same; that no man, expert or otherwise, has a right to undertake to value a telephone plant as large as Complainant's plant
238 in Louisville without accurate knowledge and a thorough investigation of it.

Jagoe's dep., p. 26.

He says "that a plant can be built in Louisville to serve ten thousand subscribers for $1,100,000.00, but that it would depend upon the character of material used and the work done—the character of the material and stability of the plant and the class of service that the plant would be equipped to give."

Jagoe's dep., p. 27.

The plant was valued by him as of March 18, 1910.

Jagoe's dep., p. 22.

There has been no addition to the plant since March 9, 1909, and that it is worth slightly less in March, 1910, than it was in March, 1909.

Jagoe's dep., p. 13.

In arriving at a classification of the materials used in this property, he used the classification adopted and in use in all of the large telephone companies in America.

Jagoe's dep., p. 13.

The value or cost of erecting different kinds of material in this plant was arrived at by actual experience. In speaking of the method pursued in getting the value of the cable in the plant, he says that a part of the cable work has been done in Louisville since he has been with Complainant, and that certain parts of those cables have been replaced and that "the cost of doing all work in Louisville during the past two years that I have had supervision of, has been used in assembling the units which we are using in this estimate."

Jagoe's dep., p. 53.

With respect to fixing the value on the poles, he says:

"I know what it cost our company during the past four
239 years to purchase and erect similar poles, and that is the amount I have given, and besides that, it seems to be the consensus of opinion among all companies, for when we buy or sell a half interest in poles to friendly companies, where we go into a joint pole agreement, the average price paid for the past two years on forty-foot poles has been $22.50 per pole, and that does not include the cross arms, simply the bare pole with the guys."

Jagoe's dep., pp. 57-58.

The valuation placed by Mr. Jagoe on forty-foot poles in Louisville, including the cross-arms, etc., is $23.92 each.

Jagoe's dep., p. 31.

The inventory value of the plant by the witness is full, complete and is in the greatest detail, both as to quantities and the units of value used in arriving at a total valuation.

The Master seems to have been impressed with this witness, and would no doubt have accepted his valuation, but that this witness includes as a part of his total valuation the expenses of organization, cost of engineering, supervison, freight and other expenses necessary to be incurred by any one in building so large a property. The Master does not think any such item of expense should be allowed in valuing the property. It is sufficient for the present to state that all these items of expense are universally recognized as proper; no plant can build itself; there must be an organization; there must be engineering plans, foremen, interest on capital while the plant is building; expense of tools and teams which wear out during the time of construction, claims for damages, legal expenses, securing rights-of-way, tree trimming privileges and numerous other known items of expense, as well as certain, but unknown, contingencies.

On page 19 of his report, the Master says:

"It is frankly stated by Mr. Jagoe that in all the construction, maintenance and reconstruction of the plant 'overhead charges' and
'supervision' have played a part in swelling the totals. To
240 what extent this bookkeeping device has been resorted to, the evidence fails to show, except in the few concrete instances mentioned by this witness as above stated."

The Master is here confused again.

There is no question of maintenance or reconstruction involved in this inquiry. The only question the Master is undertaking in this branch of his report to deal with is "the present value of the plant."

The cost of the plant is placed on its books without any allowance for supervision, engineering services, rights-of-way, interest on money, or overhead charges. There is no proof to the contrary.

Hume's dep., pp. 126-7.

Wilkinson's report, p. 20.

The Master has, in the former part of his report, dealt with the question of cost to Complainant of its plant, and is now dealing with the question of what the plant is worth, or, as is sometimes stated, the cost of reproduction.

For the present, it is sufficient to state that the Master is in error in declining to allow, under this inquiry, any overhead charges to be added to the actual cost of the material and the labor of placing it in position. This question will, however, receive consideration in another part of these exceptions.

An examination of the deposition of Leland Hume, General Manager, fully sustains all that Mr. Jagoe says with respect to the necessity of knowledge of the particular plant, its individuality and other matters relating to the ascertainment of value. No witness in this record testifies to the contrary.

Prof. D. C. Jackson.

Prof. Jackson is a member of the Society of American In-
241 stitute of Electrical Engineers, the American Society of Mechanical Engineers, and the American Society of Civil Engineers, formerly professor of Electrical Engineering of the University of Wisconsin, and later professor of Electrical Engineering in the Massachusetts Institute of Technology of Boston; he was the Chairman of the Telephone Commission appointed by the City of Chicago in 1907, to investigate the telephone conditions in that city, to prepare an estimate of the value of the telephone plant, to determine what it would cost to build an adequate plant, what the expense of conducting such a plant would be, and what rates would be reasonable and fair for the city to impose upon the operating company. He was continuously engaged in this work from January 8 to April 4, 1907.

Report of City Council Committee, exhibit to Crumb's dep., p. 9.

During 1908 and 1909 he was engaged under the employment and direction of the Massachusetts Highway Commission in preparing an inventory and valuation of the entire properties of the New England Telephone Company in the State of Massachusetts.

In order to value the plant of the New England Company in Massachusetts, after having ascertained quantities of material throughout the State, embraced in the various plants, it became necessary for him to ascertain units of cost for the various kinds and classes of material in the plants. He did this, and if his units of value are applied to the classes and quantities of material actually ascertained to exist in the Louisville plant by Mr. Jagoe, and excluding everything that Mr. Jagoe excludes, and only including what Mr. Jagoe includes, the valuation of the Louisville plant will be found to be, as stated by the Master on p. 16 of his report, $1,779,413.18.

A careful comparison of the value of the Louisville plant
242 between Mr. Jagoe and Prof. Jackson is developed in the deposition of Mr. Jagoe. Therein Mr. Jagoe points out that

in some instances his units of value are higher than Prof. Jackson's and in other instances Prof. Jackson's units of value are higher than Mr. Jagoe's. This comes about because of the dissimilar conditions under which the Louisville and Massachusetts plants are erected. As illustrative of this point, Mr. Jagoe gives the total value of the poles in the Louisville plant at $331,769.40, or $23.92 each.

Jagoe's dep., p. 31.

Applying Prof. Jackson's unit of value, he has a valuation of only $190,379.62.

Jagoe's dep., p. 20.

This is accounted for by Mr. Jagoe as follows:

"Prof. Jackson's unit of cost includes every pole in Massachusetts, including the twenty-five-foot pole out in the country routes. After we leave the city, the average pole is possibly about 25 or 26 feet, and the cost of them is about $6.50 each. Mr. Jackson used, of course, these poles, as well as the city poles, in his estimates."

Jagoe's dep., p. 20.

The poles in the City of Louisville are forty-foot poles, and this makes a great deal of difference in the cost. The cost of the pole itself and the cost of erecting the pole is always in a much larger proportion than the lengths. A fifty-foot pole would possibly cost five times as much as a twenty-five-foot pole.

Jagoe's dep., p. 11.

The valuation of the Louisville plant, using Prof. Jackson's units of value, is not a mere estimate, but is the application of actual units of cost to actual known quantities of material; and this valuation, using Prof. Jackson's units, is entitled to great respect.

His valuation of the plant is..... $1,779,413.18

No one of Complainant's witnesses includes real estate, or working capital.

243 "B."

Evidence of the Defendant.

All the Defendant's witnesses exclude toll lines and real estate, in fixing the value of the exchange plant.

W. H. Crumb.

Mr. Crumb is a telephone engineer and a contractor for erecting telephone properties.

In direct examination he states that he had made a "very careful inspection of the plant," but on cross-examination shows that he had not even made superficial examination of the plant in Louisville.

Crumb's dep., p. 12.

He attaches an affidavit as an exhibit to his deposition in which he states that the Louisville plant could be duplicated for one million dollars new, and in his cross-examination shows that he made this affidavit without the slightest knowledge of the plant.

Crumb's dep., pp. 145 to 151.

After giving this affidavit, he made two additional visits to the City of Louisville, but they were shown to have been so limited in time, and his investigation and examination of the plant so meager, that his testimony is an insult to the intelligence of the Court. It was discredited by the Master.

W. C. Polk.

Mr. Polk gave two depositions. His first one was given in January, 1910, following the deposition of Mr. Crumb given in October, 1909. Mr. Polk has been a telephone engineer for fifteen years.

Polk's first dep., p. 84.

244 He was chief engineer of the construction company that built the Louisville Home Telephone Company's plant in Louisville in 1901 and 1902.

Polk's first dep., pp. 86-7.

The knowledge acquired by him in 1901 and 1902 does not entitle him to speak as of March 9, 1909, when plant was changed and added to. He states:

"In the first place government statistics are four or five years behind, and the telephone business is developing so rapidly that statistics four or five years old do not apply."

Polk's second dep., p. 61.

The only inspection of Complainant's plant made by Mr. Polk was "a casual examination the last couple of days, in a general way."

Polk's first dep., p. 91.

This is his entire knowledge of the plant except what he saw while building the Home Company's plant in 1901-2, with the exception of an examination of some blue-prints attached to the deposition of Mr. Crumb, showing existing and proposed cable routes in Complainant's Louisville plant, which were incomplete, and delivered to Mr. Crumb with the statement that they were incomplete.

Crumb's dep., p. 28.

He also stated that he made no physical examination of the property, but did examine these incomplete blue prints of the cable system, and obtained his quantities of cable therefrom.

Polk's first dep., p. 126.

He says:

"As I understood my employment, all I prepared for was to place

a valuation on the plant, and not to make a report on its physical condition."

Polk's first dep., p. 130.

245 And again:

"I stated that I had made no specific examination so far as to determine the present value from a depreciated standpoint, but taking what I know of a going concern, as a general proposition, and the way they are kept up, and knowing the general character of the Cumberland, and the way they are doing work, I consider 20% as a reasonable amount, exclusive of real estate."

Polk's second dep., p. 49.

From this meager date and information, he gives a total valuation of the Louisville plant of.....$1,052,800.00

This, however, does not include real estate or any overhead charges of any kind, such as supervision, interest and other items.

Polk's first dep., p. 139.

After the deposition of Mr. Jagoe had been taken and filed, and after Mr. Polk had examined it, he gave another deposition, in which he begins with an admission of errors in his calculations given in his first deposition, and undertakes to explain how these errors were made. They were all, however, against Complainant.

He next attributes an improper motive to Mr. Jagoe in classifying the materials in the Louisville plant.

Polk's second dep., pp. 3 and 13.

On cross-examination he is forced to withdraw his statements when it is shown that his criticisms of Mr. Jagoe are unjust and unfair, and that he was acting upon misinformation.

Polk's second dep., pp. 76 and 87.

Mr. Polk, after correcting admitted errors, increases his former estimate of value from $1,052,800.00 to $1,195,737.00

Polk's second dep., p. 51.

246 This change in valuation seems to have escaped the attention of the Master.

When it is pointed out in the deposition of Mr. Jagoe that by actual count the number of poles in the Louisville Exchange is 13,870 (Jagoe's deposition, pp. 9 and 31), Mr. Polk still insists upon estimating only 11,000 poles to be in the Louisville plant, although he has not undertaken to count them, but says that this ought to be a sufficient number of poles to take care of the subscribers in the Louisville plant.

Polk's second dep., p. 25.

He admits that he is using the price of cable at the date of his deposition under instructions of the City Attorney, although cable as late as 1907 was twenty per cent higher than at the present time,

and does not use the average price over a period of years because he says he was instructed by the City Attorney to use present prices.

Polk's second dep., p. 83.

He says on page 13 of his second deposition that Mr. Jagoe had overstated the price of the large items of cable, and had understated the price of the small items of cable, but has to admit on page 88 that the facts were just the reverse, and that in the smallest quantities of cable the price fixed by Mr. Jagoe was higher than his prices, and on the largest quantities of cable Mr. Jagoe had fixed a price less than he had fixed.

It appears in the record that a telephone property is never a finished or completed plant. That as the city grows and subscribers increase, additional and new construction must be added year by year, and that of necessity a telephone plant must, after the initial installation, be added to by "piece meal" construction. In speaking of this "piece meal" construction, which he admits is necessary, he is asked this question:

247 "Q. Is it fair to a company that has invested its money in a plant, kept up with the growth of the city, and taken care of the business by piece-meal construction, to say that it can only have a return on what it would cost to build the plant over new again?

A. No, sir; I don't think that is fair.

Q. That is an unjust and unfair thing?

A. Yes, sir.

Polk's second dep., p. 111.

Both Mr. Polk and Mr. Crumb place a much smaller valuation upon the various switchboards used by Complainant in its Louisville plant than do the witnesses for Complainant. Their idea is that other switchboards built by other manufacturers are intended to serve the same purpose, and that, in their opinion, these switchboards built by other concerns named by them should be used.

It also appears in the record that Complainant purchases its switchboards from the Western Electric Company, because it believes that they are the best, have the longest life, and are more satisfactory in a telephone plant.

Jagoe's dep., p. 28.

There is no controversy in this case as to what the cost of the Western Electric Company's switchboards are, and Complainant's witnesses base their value upon the Western Electric Company's switchboard, which accounts for a considerable item of difference between their values and those of the city's witnesses, Messrs. Crumb and Polk.

Complainant's officers have been engaged in the business for a quarter of a century; they have had largely more experience than either Mr. Crumb or Mr. Polk, exercising their own good judgment and spending the money of their stockholders, they have thought it best to purchase the Western Electric Company's switchboards. It cannot be possible that this valuation is to be reduced because

248 some person has the opinion and idea that another switchboard costing less money is just as good.

Mr. Jagoe states that a telephone plant serving ten thousand subscribers in the City of Louisville can be built for $1,100,000, but it would not be the plant that Complainant has in that city.

Jagoe's dep., p. 27.

In this connection he states: "A telephone plant is not different from any other property, real estate, or any other kind of property. You can build a four-room house for a couple of hundred dollars, or you can build it for a couple of thousand dollars. The telephone plant is similar to any other property in that way. The better you make the plant the more expensive it is, and one peculiar condition is that you can get service up to a certain point very cheaply to everybody, but you add to the efficiency, if you add 5 per cent to the efficiency, you will add more than 5 per cent to the cost, for the last 10 per cent of efficiency of your service will amount to 50 per cent of the cost of your plant."

Jagoe's dep., p. 88.

Nowhere in the record does any witness undertake to contradict or explain away this statement. Mr. Polk admits that he has not sufficient knowledge of Complainant's plant in the City of Louisville to be able to determine or express an opinion upon its condition.

He is asked the following questions:

"Q. Did you intend to say, or do you now say anything about its present value?

A. I do not, only in an offhand way; I made a statement this morning that as a general average a concern going for several years, moderately maintained, will run down 20%.

Q. Don't you think it will be better to say that you have no knowledge of the present condition of the plant and of the relative
249 value compared with the replacement value?

A. I didn't say I had any knowldege. I had not made investigation.

Q. Then you don't wish to have any opinion stated in your deposition as to the present actual value of the Complainant company's plant in this suit?

A. No, sir; not as a specific proposition."

Polk's second dep., pp. 67-8.

Mr. Polk, having it pointed out by the witness that Complainant did use No. 10 iron wire in its Louisville plant, declined to allow any in his estimate, and insisted upon using the cheaper wire, No. 14.

Polk's second dep., p. 61.
Jagoe's dep., p. 29.
Green's dep., p. 30.

Mr. Polk, on page 51 of his second deposition, says that he estimates the value of private branch exchanges and sub-station equipment, etc., at $128,775.00, or an average of $13.70 per station, and on page 145 states that the cost per station is about $25.00, thus making a clear error against the Complainant of more than $106,000.00.

An examination of the deposition of Mr. Jagoe, in which he points out the exact quantities and qualities of cable, and points out the specific and direct errors made by Mr. Polk in his first deposition, in estimating quality and quantity of cable in Complainant's plant, was submitted to Mr. Polk, and, in his second deposition, while admitting errors on his part, and admitting the correctness of what Mr. Jagoe had stated, yet declined to change his valuation based upon an incomplete knowledge of what quantity and quality of cable was actually in the plant. This is not a minor difference between them.

Mr. Jagoe shows that the company actually had in use in
250 the Louisville plant one hundred and twelve private branch exchanges.

Jagoe's dep., p. 65.

Mr. Polk admits that he only estimated seventy-five, and declines to correct his statement, although he admits that he has no knowledge of the actual number in the plant.

Polk's second dep., p. 45.

The Master, in comparing the difference in value of cable between Mr. Jagoe and Mr. Polk, pp. 17 and 18, uses the values given by Mr. Polk in his first deposition, which in his second deposition Mr. Polk admits to be erroneous and undertakes to partially correct.

Polk's second dep., p. 51.

In this way, the Master has inadvertently made an error of more than $46,000 against Complainant.

S. D. Levings.

This witness was a clerk in an engineer's office in the City of Chicago until shortly before his deposition was given in New York, at which time he was the editor of a telephone journal. He shows very clearly that he has no knowledge of Complainant's plant in Louisville, and his attempted estimate of valuation of Complainant's plant is not worthy of serious consideration.

It thus appears that the only two witnesses introduced by defendant to testify as to the value of Complainant's plant in Louisville were not familiar with the property, made no examination of it with a view of ascertaining its value, and are testifying from their general knowledge of telephone conditions throughout the country, and are paid expert witnesses.

Their interest on behalf of their clients was certainly as great as the interest of Complainant's officers and employes on its side.

251 The general experience in the telephone business of Messrs. Polk and Crumb is far less than that of Complainant's officers. If Messrs. Polk and Crumb may testify as to the value of the plant because of their experience in the telephone business generally, and if their opinion of value is to be treated seriously, what is to be

said of the opinion of Complainant's President, General Manager, Auditor and Superintendent of Plant?

It must also be remembered that the testimony of Messrs. Polk and Crumb shows that their experience generally has been with companies building exchanges for sale, and the experience of Complainant's officers has been with building exchanges to operate.

The standing of Messrs. Polk and Crumb, however high it may be for ability or integrity, is not superior to that of the Complainant's officers, who have for twenty-five years received the confidence and trust of a board of directors; men who have successfully managed a great property for more than a quarter of a century; surely their opinion and their judgment and their testimony is of as great weight as that of Messrs. Polk and Crumb, assuming that they all had equal means of knowledge. But when it is remembered that Messrs. Polk and Crumb do not pretend, or assume to have the knowledge that Complainant's officers and witnesses have, it is readily seen that any discrepancy in the testimony is easily reconcilable upon the theory that Complainant's witnesses testify from actual knowledge and facts, while Messrs. Crumb and Polk testify from theories and general conditions, as they understand them, throughout the country, without reference to any knowledge of the particular plant about which they are undertaking to testify.

It thus appears that Complainant's witnesses have superior knowledge and experience, and no greater interest as witnesses.

Mr. Hume, in his deposition on page 124, quotes with ap-
252 proval the following extract from a pamphlet which is entitled "Valuation of Public Service Corporations," by W. H. Williams, and appears to have been a paper read by him for discussion by joint session of American Economic Association and American Political Science Association, Chamber of Commerce, New York, December 30, 1909, where it is said:

"The cost of reproduction is a matter of individual opinion; no engineer in estimating on the several important items of construction work for the year will come within ten per cent. of the total aggregate cost. Many of the more important items are frequently underestimated from twenty-five to fifty per cent. If experienced engineers, knowing the local conditions, cannot estimate the exact cost, how can those without special knowledge be expected to do so. A very good illustration of this may be had by contrasting the original estimates with the ultimate cost of post offices and other public buildings. An especially good illustration, and one known to all readers of the daily press, is that of the Panama Canal. The original estimate of the cost of engineering and construction work was $139,705,200, but the present estimate is $297,766,000, and it is probable this cost will be greatly exceeded."

It, therefore, appears that according to the Complainant's President, General Manager, Auditor, Assistant Superintendent of Plant, and Prof. Jackson, this plant was worth on March 9, 1909, more than $1,700,000, and that the evidence introduced by the Defendant consists of depositions from two telephone engineers, who have no superior experience in the telephone business, nor the necessary

knowledge of Complainant's plant in Louisville to entitle their opinion to serious consideration. They only purport to speak as expert witnesses without a knowledge of the actual facts and conditions. Therefore, it is insisted that the Master was in error in placing a valuation on Complainant's plant as of March 9, 1909,

of.....$1,243,011.97

253 He should have found and reported that Complainant's plant was, on March 9, 1909, exclusive of real estate and toll lines, worth at least the sum of..$1,702,391.63

"C."

Complainant excepts to the statement of the Master on page 19 of his report in which he declines to allow any "overhead charges" in estimating the present value of Complainant's plant.

The Master says on page 19 of his report:

"It is frankly stated by Mr. Jagoe that in all the construction, maintenance and reconstruction of plant, overhead charges and supervision have played a part in swelling the totals. To what extent this bookkeeping device has been resorted to the evidence fails to show except in the few concrete instances mentioned by this witness as above stated."

It has heretofore been shown that there are no overhead charges of any kind upon the books of Complainant.

Hume's dep., pp. 126-7.
Wilkinson's report, p. 20.

However, in this connection, the Master is considering only value, not cost. Therefore, if any such charges had been entered upon its books, it would not be pertinent to the present inquiry, viz: The present value of the plant.

Under this head, the Master is considering a property that has been erected under a proper organization, after proper engineering plans had been prepared, after a franchise, or permission of the city authorities had been obtained, after a legal organization had been perfected, after sufficient securities had been sold to provide funds with which to erect the plant, its supervision during the progress of its construction, the tools and teams necessary to use in its

254 construction, but which really wear out by the time the plant is constructed; attorneys' fees, claims for damages, tree trimming privileges, insurance, interest on money, and various other items of expense which are necessarily incurred in the building of the plant, and over and beyond all this, the advertising, canvassing and other means adopted to secure patronage so as to have an established going business.

It is the value of a plant which has incurred all these expenses that the Master is now considering.

No witness in the record intimates that it is not proper to include these items of expense in arriving at the present value of the plant. Mr. Polk, the main expert telephone engineer on behalf of the Defendant, allows in his amended estimate for overhead charges the sum of.....$90,000.00

Polk's second dep., p. 51.

The Chicago Commission, composed of three telephone engineers, after a careful study from January 7 to April 3, allowed overhead charges of about 20 per cent of the cost of the plant.

Report of Council Committee, p. 56.

In this report the Commission allows:

Supervision and engineering	$700,000.00
Interest and insurance	600,000.00
Brokerage in selling securities	1,877,333.00
Or a total of	$3,177,333.00
The total value of the plant, including these items and real estate, is	$18,773,333.00

The estimate furnished this Commission by the Manufacturers' Telephone Company in estimating the cost of construction of a plant they proposed to erect, provided overhead charges as follows:

255 Supervision and engineering	$690,000.00
Interest and insurance	550,000.00
Brokerage	687,300.00
	$1,837,300.00
Total cost of plant, including real estate and foregoing items	$14,983,300.00

Mr. Jagoe, in his valuation of plant, allowed less than 15 per cent overhead charges, and excluded from his valuation teams and tools, working capital, supplies and furniture and fixtures, and if these items had been included and deducted from the overhead charges allowed by Mr. Jagoe, it would have reduced the overhead charges to considerably less than 10 per cent.

That all these items of expense are necessary in estimating and valuing a going plant is so self-evident that we submit that the Master was in error even though there was no proof sustaining these items in the report, and for these reasons Complainant excepts to the Master's report in disallowing any of these items of expense.

"D."

Complainant excepts to the report of the Master in not allowing as a part of the present value of the plant the expense of securing business, franchise value, right-of-way, tree trimming privileges, tools and teams, supplies, office furniture and fixtures, and working capital.

Mr. Polk, in his second deposition, admits that all of these items of value are right and proper.

Polk's second dep., p. 116.

The Chicago Commission concedes and allows these items in fixing the valuation of the Chicago plant.

256 The Manufacturers' Telephone Company, in their estimate, both original and amended, allow these items.

It is apparent that a plant cannot be operated, maintained and reconstructed without having on hand supplies. It cannot be maintained, constructed or reconstructed without the use of tools and teams, office furniture and fixtures. It cannot do business until it has procured the consent of the municipality. It cannot serve patrons until it has secured patrons, and necessarily the expense of securing patronage is a part of the cost of the plant, and is entitled to be capitalized. No property can be operated without having on hand a working capital.

All of these items the Master disallows, and Complainant excepts to this part of his report, and insists that he should have allowed all of these items in arriving at the value of the plant.

"E."

Complainant excepts to the report of the Master in ascertaining the value of Complainant's toll lines to have been on March, 9, 1909, only $112,866.12.

Master's Report, p. 22.

The accountants ascertained that the cost of the toll lines, purchased by Complainant from the Ohio Valley Telephone Company in June, 1899, was $125,000, and the Master assumes this to be the value of all toll lines on March 9, 1909, less 10 per cent depreciation.

Complainant owns and operates five hundred and seventeen exchanges all connected together with a system of toll lines.

Smith's first dep., pp. 2 and 3.

The cost of building toll lines and exchanges is kept separate and distinct.

Smith's first dep., p. 9.
Caldwell's first dep., p. 598.

257 The Master has erroneously assumed that no toll lines have been built since January 1, 1900, and that the toll lines in existence on that date have depreciated in value 10 per cent.

There is no evidence of the value of Complainant's toll line system in the record for the reason that the Master was not directed by the Court to ascertain such valuation, and, therefore, no proof was introduced upon this point.

The master, on page 22 of his report, says:

"There is some evidence—though vague and unsatisfactory—that some additions to construction of toll lines have been made since 1900, but the only special line mentioned is one from Louisville to Nashville. This entire line cannot be considered as a part of the Louisville exchange construction. Its cost is said to have been $40,000—but all this cannot be charged to Louisville toll lines. Half of it, at least, must belong to Nashville, and there are other exchanges tapped by it between the termini, such as Bowling Green, Elizabethtown, Franklin and Edgefield."

The discussion with respect to the toll line from Nashville to Louisville was incidental entirely to another question which had arisen, and was not in connection with the construction of Complainant's plant in Louisville.

Smith's first dep., p. 507.

Notwithstanding the fact that the Master insists that the toll line between Louisville & Nashville belongs to all the exchanges between these two cities, yet, after ascertaining the value of the toll lines owned by the Ohio Valley Company on January 1, 1900, the Master, instead of prorating this value among the nine exchanges owned and operated by the Ohio Valley Company at that time, has allotted to the Louisville Exchange the entire value of the toll line system of the Ohio Valley Telephone Company.

That this is improper treatment is so manifest that no proof is necessary to overthrow it, and Complainant excepts to the
258 action of the Master in respect to his method of ascertaining toll line value, and its apportionment to the Louisville Exchange.

"F."

Complainant excepts to the report of the Master in that it fails to report the value of the real estate and improvements thereon, which constitute a part of the Louisville Exchange.

This real estate has cost to March 9, 1909, the sum of $162,191.42. Its value is equal to its cost.

Dep. of Burton.

Dep. of Brand.

The Master should, therefore, have reported the value of Complainant's real estate and improvements thereon, which constitutes a part of the Louisville Exchange, and having failed to do so, Complainant excepts.

"G."

Complainant excepts to the report of the Master in not allowing anything for "Supplies" and "Working Capital."

It is apparent that these things are necessary in order to conduct a business. There must be supplies on hand to care for the plant from day to day; there must be some money on hand to handle the business. All these things are recognized and allowed by the different experts. Mr. Polk says that he thinks that supplies and furniture and fixtures should be allowed to the extent of $20,000.00, and that there should be from $10,000.00 to $20,000.00 for working capital.

Polk's second dep., p. 49.

The Chicago Commission allowed in a plant costing $18,773,-
333.00 including real estate, tools and supplies, furniture and
259 fixtures, supervision and engineering, interest and insurance, bank balance and brokerage, the following amounts:

Tools and supplies	$250,000.00
Bank balance	300,000.00
Or a total of	$550,000.00

Chicago Committee's report, p. 56.
Wilkinson's report, pp. 54-5.

Complainant, therefore, excepts to the report of the Master in not including any of these items in his estimate of the value of the property.

Summary.

Complainant insists upon a valuation of its plant, excluding toll lines and real estate, as of March 9, 1909, of	$1,702,391.68
Real estate and improvements	162,191.42
Total	$1,864,583.10

The foregoing figures do not include franchise, going business, interest, working capital and supplies.

That all of these items are proper to be included in the valuation of the plant is apparent, but Complainant is content with the values above set out, and allows all these omitted items to off-set deterioration in the plant, or any lessening of its value below that of a newly constructed plant.

Therefore, Complainant insists that the Master is in error, and should have reported the present value of Complainant's plant and property in the City of Louisville, as of January 9, 1909, and the date of filing his report to be:

Exchange plant	$1,702,391.68
Real estate	162,191.42
Total	$1,864,583.10

260

III.

"The gross earnings and the net earnings of Complainant upon its plant and property employed in its business in said city for the years 1905, 1906, 1907 and 1908, stating separately as to each of said years, and giving the percentage of net income each year, and whether said percentage is inclusive or exclusive of any allowance for depreciation of plant, or claim for damages for personal or other injuries."

"A."

The Master reports Complainant's gross earnings as set out on pages 23 and 24 of his report.

The Master states on pages 23 and 24 of his report what he

says are the classified gross earnings of Complainant for the years 1905 to 1908, as found by the accountants:

1905	$269,823.38
1906	294,498.44
1907	319,758.51
1908	325,838.30

This includes all exchange earnings, 15 per cent on tolls, toll earnings from American Telephone & Telegraph Company, private line rentals, pole service and attachments, list advertisements, telegraph drops, messenger fees, removals and miscellaneous.

"B."

The Master refusing to accept the joint report of the accountants as to what the gross earnings really were for the respective years has undertaken to rearrange the earnings upon a basis of his own, which is not reported by any of the accountants, nor testified to by any of the witnesses, and the first of these items to be noticed is:

261 Complainant excepts to the report of the Master on page 24, in which he declines to allow 15 per cent of the toll earnings to be credited to the exchange as a proper allowance to the exchange for the service performed by it in handling the toll business.

The records show, without controversy, that Complainant owns and operates a system of exchanges and toll lines throughout a territory one thousand miles long and four hundred miles wide.

Smith's first dep., p. 3.

At these five hundred and seventeen exchanges, exchange service is given to local subscribers, and toll or long distance service is given through the exchange to these local subscribers and to the public generally, for a compensation graduated according to distance and the time of the conversation.

It is shown in the record without dispute that the construction of toll lines and exchanges, and receipts from exchanges and toll lines can be and are kept separate and distinct, but that it is impossible to separate the operating expense of the exchange from the operating expenses of the toll lines.

Caldwell's first dep., pp. 600-601.
Hume's dep., p. 121.
Smith's first dep., p. 542.

It is stated by two of Defendant's witnesses that this separation of expense can be done. One of them, Mr. Polk, gives no way in which it can be done.

Polk's first dep., p. 118.

Mr Crumb in his deposition, after stating it can be done, when asked to explain how, shows conclusively that it is impossible.

Crumb's dep., pp. 63-4.

The record shows that it is the universal custom among
262 telephone companies throughout the system to contract with each other for this service, and fifteen per cent is the maximum amount allowed the exchange for handling the toll business.

Hume's dep., p. 121.
Caldwell's first dep., pp. 600-1.
Smith's first dep., p. 557.

It also appears that in more than a hundred cases Complainant has contracts, some of which provide that Complainant shall at some of its exchanges handle the toll business of other companies for a compensation of fifteen per cent of the out-going toll messages, and that many other companies handle Complainant's toll business through their exchanges for the same compensation.

Smith's first dep., p. 557.

There is no evidence in the record to the contrary, and no instance is cited in which a higher compensation has ever been allowed to an exchange by a long distance company for performing this service.

The Master, on page 25 of his report states:

"Custom of trade among merchants has generally received the sanction of the courts. The reason of this is obvious, because merchants trade with each other at arms' length, and what is generally done under such circumstances ought to be, and is generally upheld by the courts, but the custom here testified to is a very different thing from the custom of merchants. The parent company manages and controls its subsidiary departments as it deems best. The subsidiary department occupies no position of independence, and, in fact, does not and cannot raise a protest."

The Master overlooks the entire testimony with respect to other companies dealing with Complainant on this basis, and Complainant dealing with other companies on this basis. The Master assumes, through inadvertence, no doubt, that the only contracts referred to in the record are contracts between Complainant dealing with
263 itself, with respect to its toll and exchange departments.

This, however, is not a fact. Complainant, of course, makes no contracts between its toll and exchange departments. It operates its entire system of exchanges and toll lines as one property; it carries in its general books the construction, receipts and disbursements of each of its five hundred and seventeen exchanges, and its system of toll lines; but for the purpose of ascertaining the earnings of each exchange, and the earnings of the toll lines, it becomes necessary for Complainant to separate the exchange earnings and the toll line earnings, both gross and net. There is no difficulty in separating its gross earnings. That is kept separate and distinct, but when it becomes necessary to separate the expenses between the exchange and the toll lines entering that exchange, the problem is most difficult. It has been attempted to separate accurately the expense of doing both kinds of business at the same place, but it has been found to be impossible.

Caldwell's first dep., p. 602.

Therefore, in order to ascertain the net earnings of an exchange, it must separate on its own books the earnings and expenses of the two kinds of business on precisely the same basis that it is willing to and does contract with other companies, and the basis upon which other companies are willing to and do contract with Complainant. It is for this reason that evidence has been introduced to show the universal custom of telephone companies dealing with each other at arms' length, independent, and each seeking every proper and just advantage.

These companies deal with each other on the basis of the owner of the toll lines paying to the owner of the exchange fifteen per cent of the out-going messages as compensation for the exchange service in handling the toll business, including necessary central office equipment, rent, operating services, accounting and collecting; and the owners of the exchanges are willing to and do handle the
264 toll business of the long distance companies for a compensation of fifteen per cent of the toll earnings originating at their exchange.

It is also to be noted that no one in this record criticises this basis except the Mutual Audit Company. Neither Mr. Polk, Mr. Leverings nor Mr. Crumb criticises this compensation to the exchange by the toll lines.

On page 39 of Wilkinson's report he states:

"Rate of Connecting Companies."

"We find that the Complainant does business with a great many other telephone companies, whose toll lines connect with the Complainant's exchanges, at various points throughout the State of Kentucky, excepting Louisville.

19 companies or individuals receive from the Complainants a commission of 15% (or less) on original messages.
14 companies or individuals agree to interchange service without charge.
2 companies receive 15% with a small added charge for extra facilities furnished.

35 in all.

We submit for your consideration the suggestion that the foregoing facts establish that the 15% commission allowed to the Louisville exchange for the terminal facilities and recording furnished, is a sufficient remnueration for the service rendered.

In this connection, it is proper to bear in mind that the plant and property owned by the Complainant in the City of Louisville, includes the switchboard and other exchange equipment used in affording terminal facilities for long distance traffic."

The separate report of the Mutual Audit Company was prepared by Mr. Farnham, its General Manager, and Mr. Warren, one of its employés.

Warren's dep., p. 576.

Neither of these witnesses have ever had any experience in
265 the telephone business. Mr. Farnham is not even an expert accountant. He has been a locomotive engineer, a telegraph operator, a train dispatcher, engaged in construction work, electrician, detective, express business, and general manager of some railroad companies, but has never been either a telephone man or an expert accountant.

Fisher's dep., p. 179.

Mr. Warren testifies that he never examined telephone accounts, and has been a bookkeeper throughout his career, being only thirty-two years of age.

Warren's dep., pp. 353-566.

So far as this record shows, fifteen per cent commission to the exchange for operating and handling of long distance calls from the toll lines is the correct and proper compensation for the service rendered.

It is also shown, and not in any way disputed, that it is an added value to the exchange subscribers to be able to be put into communication with the toll lines so as to receive, or send, long distance calls from their particular station in their residence or business house, and this advantage and benefit is taken into consideration in fixing the exchange subscriber's rates.

Caldwell's first dep., p. 599.

The Master, on page 60 of his report says:

"Connection with these long distance lines may be had promptly by subscribers, and this, I consider a most valuable asset, and in my opinion, it will in the future, as in the past, materially aid Complainant in its efforts to secure new subscribers."

If Complainant owned no toll lines, it would, as the Master states, be willing and anxious to make a contract with a long distance company to connect with it and handle its toll business, in order
266 that its subscribers might have this added facility, and would, in fixing subscribers' rates, take into consideration this added advantage, which had been contracted for with the long distance company.

The Master, on page 26 of his report states:

"Mr. Caldwell and Mr. Smith emphasize the fact that the toll line connections are arranged for the convenience of the subscribers, so that at a moment's notice any subscriber in Louisville may connect with the Long Distance Department, and that this accessibility is an important factor in determining what are reasonable or unreasonable rates to be charged the subscribers.

This argument would be plausible if the toll service and its convenience were furnished by a stranger company, in which case the fair and reasonable distribution of the revenues and the proper allotment of the cost of operation would be regulated and controlled by a solemn contract between independent parties. But Complainant is the owner of the toll lines. It operates them and is entitled to receive, and does receive the revenue. It is also the owner of the

Louisville exchange. The question then is whether or not the division of toll line revenues, as set out above, is fair and reasonable under existing conditions."

The Master, stating that fifteen per cent of the out-going tolls does not appeal to him as being a reasonable division, proceeds to allot to the exchange one hundred per cent of the tolls, thus taking the entire revenue of the toll lines and treating it as a part of the exchange revenue.

It is submitted that if fifteen per cent is not sufficient compensation to the exchange, one hundred per cent is certainly too much compensation.

The Master, no doubt, was influenced in his conclusion by assuming that the fifteen per cent commission was largely less than it really is.

On page 27 he states that the fifteen per cent of the earnings of the toll department has been credited or paid to the Louisville Exchange as follows:

267

1905	$6,539.92
1906	7,064.91
1907	8,030.15
1908	7,632.11

The correct amount is:

1905	$10,482.72
1906	12,280.80
1907	14,774.08
1908	13,693.33

See report of Master, pp. 23 and 24, where the proportion of tolls earned includes items 2, 4, 8 and 9, making the totals above set out.

For the foregoing reasons, Complainant excepts to the report of the Master in declining to accept fifteen per cent of the toll earnings as a proper compensation to the exchange for handling the toll business for the long distance lines.

"C."

Complainant excepts to that part of the report of the Master in which he states that the exchange plant is charged with the expense of maintenance and reconstruction of toll lines.

The Master states, on page 28 of his report:

"There is another branch of this question that requires notice. It appears that the maintenance, repairs and maintenance, reconstruction of toll lines and toll equipment are paid by the Louisville exchange. What the cost of the labor and material for this purpose amounts to I have been unable to ascertain from the record. That it is a substantial sum may be assumed."

It is not shown anywhere in the record that the cost of maintaining and reconstructing toll lines is charged to the Louisville Exchange. In this the Master is in error. The most that can possibly

be claimed is that where a break or accident happens to a
268 pole route in the Louisville Exchange plant which carries toll lines as well as exchange subscribers' lines, that the employé of the company who repairs the break in the subscribers' lines also repairs the break in toll wires. It is only such small items as this, if any, that can be shown to have been charged to the Louisville Exchange.

But even though the entire toll lines inside the Louisville Exchange area were maintained and reconstructed and charged to the Louisville Exchange, the amount would be too insignificant to affect any result or call for special attention and treatment.

It is shown in the record that there are only eighty toll circuits entering the Louisville Exchange, and a part of these are used to give free service to the exchange subscribers of the Louisville plant to the various small exchanges in metropolitan Louisville.

Smith's first dep., pp. 40 and 537.

It is also shown that every toll circuit entering Louisville comes in on exchange subscribers' pole routes.

Smith's first dep., p. 536.

These pole routes would have to be maintained whether they carry toll circuits on them or not, and the proportionate amount of the maintenance to be apportioned to toll circuits in comparison with exchange subscribers' circuits is shown as follows:

The proportion of circuits to the number of telephones installed in the Louisville Exchange is sixty-two per cent.

Jagoe's dep., p. 24.

The number of telephones in use in the exchange is 9,395.

Jagoe's dep., p. 8.

It thus appears that 62 per cent of 9,395 gives 5,824, the number of exchange circuits in use in the exchange. Assuming that the entire eighty toll line circuits were used exclusively for toll
269 line business, and no part of them were used in giving free service to the Louisville subscribers to the small adjoining exchanges, it would result that less one and one-half per cent of the circuits in the Louisville Exchange are toll circuits. And thus it is that, assuming they are maintained in the Louisville Exchange area, and charged to the Louisville Exchange Expense Account, the amount is so inconsiderable as to be of no practical use or value in this case. One and one-half per cent of the entire maintenance and reconstruction expense of the Louisville Exchange, covering switchboards, instruments, poles, wires and all apparatus and material of every kind is for 1908, $1,292.32, but of course the entire amount of maintenance and reconstruction expended in 1908 was not expended on either poles or wires. Even if fifty per cent of the maintenance and reconstruction for 1908 was incurred on account of poles and wires in the Louisville plant, then the amount to be borne by the toll circuits, assuming all of them to have been used exclusively for long distance business, would amount to less than $646.16.

It is, therefore, submitted that the criticism of the Master in this respect is quite immaterial.

"D."

Complainant excepts to the report of the Master in the method by which he reduces the rent of the real estate and improvements owned by Complainant in Louisville.

It has been the practice of the Complainant to carry upon its books its real estate in a separate account. It added no part of the cost or value of its real estate to the plant account. It required the exchange to pay a revenue of not exceeding eight per cent upon the actual cost, but the buildings on the real estate were maintained out of this not exceeding eight per cent, and the exchange paid the insurance and taxes.

This was done as a convenience to Complainant in keep-
270 ing its accounts. It is not unfair to its patrons, since Complainant is entitled to a net revenue of at least eight per cent (less the repairs on real estate improvements), as compensation for furnishing the real estate and improvements for the use of the plant. Another reason for this is that Complainant does not charge any depreciation against any part of the real estate and improvements in ascertaining depreciation on the plant, and for this reason it is necessary to keep separate the real estate department from the remainder of the plant; but the criticism of this treatment of the real estate only involves a small amount.

In 1908 the exchange paid as rent for the real estate and buildings	$13,800.00
Wilkinson's report, p. 48.	
Complainant paid out of this sum for repairs on the buildings	2,092.48
Wilkinson's report, p. 49.	
Making a net rental of	$11,707.52
The cost and value of the real estate to December 31, 1908, is	$160,841.42

Which gives Complainant a net return on its real estate in Louisville for 1908 of only 7.28 per cent.

However, if no rent is to be charged against the plant for the real estate, then the plant value must be increased by the value of the real estate, and in this way the amount for 1908 upon which a net return must be earned is increased by	160,841.42
If Complainant is allowed to earn net only 6 per cent on the value of its plant, the difference is only	2,056.62
It is thus seen that the Complainant's treatment of real estate can only increase the expenses of the exchange, on a basis of a 6 per cent net return	2,056.62

271 "E."

Complainant excepts to the following language from the Master's report on page 29:

"It is further true that the toll department could not be as profitably conducted unless it were intimately connected as it is with an exchange. The Complainant owns and controls both departments. Complainant has introduced testimony which shows that the toll department as it is operated is very profitable, while the exchange is unremunerative. This condition, as appears from the evidence, is brought about, as I have shown, by the arbitrary allotment of all operating expenses of the toll department to the exchange, and by setting aside only fifteen per cent of its revenue to the exchange, and by passing eighty-five per cent thereof to the general surplus or reserve fund of Complainant."

The Master is entirely in error in this statement. No proof was introduced showing whether the toll department was remunerative or unremunerative. The toll department was not under inquiry, and no proof was offered by either party to show the result of the operation of the toll lines, nor did the Master request any such proof.

The Master assumes that eighty-five per cent of the toll line receipts are net profits, and are passed to the reserve account of Complainant. Complainant excepts to this statement. Such matters were not gone into in the evidence because there was no inquiry directed to this part of the Complainant's business by the Court in the Order of Reference.

There is no evidence in the record that the toll department could not be as profitably conducted if it were independent of the exchange, and the statement that its intimate connection with the exchange is responsible for its prosperity is a conclusion of the Master without evidence to support it.

"F."

Complainant excepts to that part of the report of the Master on page 31 where he states:

272 "I fail to see any just reason for separating the earnings of the toll department from the earnings of the exchange. If all the toll earnings be given to the exchange, and the expenses of toll operations and taxes and insurance be paid out of exchange earnings, the result will not affect the net cash receipts of Complainant."

In this statement the Master again assumes that the only expense connected with the toll department is that performed by the exchanges for which they receive fifteen per cent commission.

This assumption leaves out of view entirely the expense of maintenance, reconstruction and other expenses in connection with the operation of a toll line system. It ignores the many items of expense which of necessity must be incurred in keeping toll lines free from obstructions, keeping insulation in proper condition so that the lines may be used by Complainant's patrons. It leaves out of view the enormous expense of erecting these pole lines throughout

the entire area of Complainant's territory, the taxes, damages, various other items of expense in constructing, maintaining and reconstructing the toll line system.

"G."

Complainant excepts to the report of the Master in stating that its books show operating expenses as set out on page 23 of his report.

The Master sets out on page 23 of his report what he says is the operating expenses of the Complainant for the years 1905 to 1908 inclusive, "according to Complainant's books."

In this the Master is in error. These are the operating expenses of Complainant as corrected and classified in the joint report of the accountants, and are not what the books of Complainant show, but are essentially different.

Joint Report, p. 5.

273 The joint report of the accountants shows operating expenses as follows:

1905	$227,171.29
1906	233,898.28
1907	246,598.61
1908	217,395.53

The books of Complainant show operating expenses as follows:

1905	$240,263.39
1906	247,130.03
1907	260,126.33
1908	227,495.66

There is a difference between the operating expenses as shown on Complainant's books and the amount reported in the joint report of the accountants as follows:

1905	$13,092.10
1906	13,231.75
1907	13,527.72
1908	10,100.13

A part of the difference in each of these years is accounted for as follows:

Complainant in keeping its books charges up all exchange earnings under the head of "Revenue." This is done because these charges are placed upon its books before it is known whether all these accounts can be collected. Thereafter, when it is ascertained that any accounts are uncollectible, they are charged as expenses, which offsets a like amount of revenue. This is done because it is more convenient in keeping the books to do it this way.

The accountants, in making up their joint report, knowing what revenue had been collected, stated the net revenue that had
274 been collected by Complainant, and, therefore, did not charge uncollectible accounts as an expense. The result to Com-

plainant is the same, and its books at the end of any given period would show larger gross earnings and larger expenses by the exact amount of uncollectible accounts, but the one would offset the other. The accountants have eliminated bad debts, both from the earnings and expenses, thus leaving earnings and expenses without being encumbered with uncollectible accounts.

So that, as stated, a part of the difference in expenses between the books of Complainant and the joint report of accountants, as above set out, is as follows:

	Bad Debts.	Net Difference.
1905	$1,679.39	$11,412.71
1906	1,519.41	11,712.34
1907	2,344.94	11,182.78
1908	3,707.34	6,392.79

Smith's first dep., Exhibit 1.

Substantially all the remainder of this difference is accounted for in the following way:

During the time the Mutual Audit Company were examining the books of Complainant they had in their employ at Nashville, Tenn., but not in the office of Complainant, where they were engaged in their work, a man by the name of Settle, who had been for many years local cashier of Complainant at its Louisville Exchange. It was developed that he was a defaulter and he was discharged about September, 1908.

Dep. of Settle, pp. 303-5.

This witness occupied a desk in Complainant's office of its Main Exchange Building in Louisville on the first floor. He undertakes to give with great accuracy, during all of the time he was so employed, the exact amount of time various of Complainant's
275 employés spent in the Louisville Exchange, and the time spent by them elsewhere. He undertakes to give the time spent by the Superintendent of the Louisville Division in his office, although the Superintendent's office was on the next floor, and was entered by a door not connected with the floor on which Settle had his desk.

Dep. of Settle, pp. 272, et seq.

The Mutual Audit Company, having in its employ this young man Settle, undertook to deduct from the Louisville Expense Accounts a part of the wages and salaries of the men named by Settle in proportion that the time Settle said they were in the Louisville Exchange compared with the time he said they were in other places.

It thus appears that these deductions were made from the expenses as entered upon the books of Complainant, and as shown by the original payrolls, alone upon the statement of a man who had proven unworthy of confidence, and who had been discharged from Complainant's service.

As soon as these facts were developed in the evidence, proof was introduced by Complainant to show, not only that these deductions from its expenses were unjust, but that it was a physical impossibility for Mr. Settle to have any such knowledge as he claimed to possess, and upon which deductions of several thousand dollars per annum had been made from the expenses of conducting Complainant's Louisville Exchange.

Mr. Hume, the General Manager of the company, makes the following explanation:

"The exchange, in addition to being under the general supervision of a district superintendent, has its local manager, its general foreman of plant or construction, its chief electrician, its chief operator, and the employés that work in these respective departments, and what is there is what would be found in the same size exchange, approximately the same size exchanges as at Nashville and Memphis, no more and no less. As to Mr. Settle's charge
276 that there were men there who were giving one-fourth of their time or any other material part of their time to outside matters, he has made the charge without personal knowledge and without fact. The matter that he has gotten on his mind in a twisted manner is simply this, that in the development of the business around what we term the metropolitan district of Louisville, we have put in a number of small switching exchanges in various sections of the country, both in Kentucky and in Indiana, within a radius of twenty or twenty-five miles of the City of Louisville itself, and at each of these small exchanges, we have employés to take care of the exchange and to give the service from the switchboard. In other words, at each of those switchboards, we have exactly the force we would be compelled to have and that would be found in other small exchanges, even though they might be a hundred miles from any large exchange, but, on account of the fact that to all those exchanges and from all those exchanges there are certain subscribers who have arranged for Louisville service, and the further fact that all the subscribers of Louisville are given access to all these special subscribers in all these exchanges referred to, and given . service without any charge whatever in the way of tolls or additional monthly rate in their exchange, in the interest of their exchange, in the interest of the Louisville service, we allow the manager and the other supervising officers of the Louisville exchange to do whatever may be necessary in the way of supervising, in watching over the service, at these smaller exchanges, but whenever it comes to any actual work, the employment of any of our linemen or troublemen or electrical men or plant men or material shipped to Louisville for the use of Louisville, every item and every minute of time employed by such employés is reported and the proper credit given on the Louisville account and proper charge made against these smaller exchanges that are not in every respect and, in fact, a part and parcel of the Louisville plant."

Hume's Dep., pp. 116-118.

Mr. Hume then shows how impossible it is for Mr. Settle to have been able to determine what portion of time any of these employés spent in or outside the Louisville Exchange.

Hume's dep., pp. 118-9.

277 Notwithstanding these facts, the accountants who are merely bookkeepers and did not know anything about the reasons actuating Complainant's officers in charging up the expenses of the Louisville Exchange as they did, have seen fit to deduct several thousand dollars each year from the expenses of the exchange which properly belonged thereto.

However, under the agreement heretofore referred to, if Complainant is bound by the joint report of the accountants, then the total expenses for the four years are as follows:

1905	$227,171.29
1906	233,898.28
1907	246,598.61
1908	217,395.53

"H."

Complainant excepts to the report of the Master on pages 35 and 36 where he deducts from the General Expense Account taxes paid on the Main Exchange Building, and charged as an expense against the exchange.

It has heretofore been shown under the head "D," page 134, how real estate is treated by Complainant.

However, the amount deducted by the Master is small and not material in the final result.

"I."

Complainant excepts to the statement of the Master on page 36 of his report, in which he states that certain expenses should be deducted as chargeable to toll department in the event the toll department is separated from the exchange.

He says:

"These charges against the exchange should clearly be made against the toll department, if the latter be treated as an independent department as I have shown supra. But, as I have already
278 disposed of this question, it is unnecessary to go critically into an investigation of the correctness of these figures."

The Master is giving the figures presented by the Mutual Audit Company upon some kind of a theory that the expenses of the toll business and the exchange business should be divided and prorated on the basis of revenue derived from each.

This is purely a theory which has no evidence to support it, and it is manifestly erroneous. It assumes that the toll department is equally as profitable as the exchange department; it leaves out of view any question of what the total toll expenses of conducting the toll department may have been; expenses are then prorated on the

basis of toll earnings; it presumes to prorate expenses on one business because expenses on another business have been ascertained.

However, if these expenses are to be charged against the toll department and taken out of exchange expenses, then the toll receipts should not be credited to the exchange earnings. The result would not be substantially different from that obtained by charging the expenses to the exchange and crediting the exchange with 15 per cent. of the toll line earnings, as Complainant has done in its accounts. The difference between the two amounts is not very material.

The total toll expense, as claimed by the Mutual Audit Company is:

1905	$23,536.25
1906	24,671.90
1907	24,478.86
1908	20,239.65

Report of Mutual Audit Co., Ex. 9.

The amount added to exchange earnings, by allowing the exchange 15 per cent. of toll earnings, is:

279	1905	$10,182.72
	1906	12,280.80
1907		14,674.08
1908		13,693.33

Master's report, pp. 23, 24. (Items 2-4-8 and 9.)

The difference is all that can be claimed by any one to have been added to exchange expenses above what is admitted by all to have been exchange expense.

This difference is:

1905	$13,053.53
1906	12,280.80
1907	9,804.78
1908	6,546.32

"J."

Complainant excepts to the method by which the Master applies depreciation of plant in arriving at a basis of net earnings for each of the four years 1905 to 1908, inclusive.

On page 37 the Master states:

"In regular order, the next items of expense are maintenance repairs. The charges under this heading are for the current repairs, mending breaks, tightening wires, rectifying trouble, and generally maintaining the property in first-class running order."

On page 38 he says:

"The next item of expense to be considered is entitled Maintenance Reconstruction. This is a subdivision of Maintenance. The items making up this account are mainly salaries and wages, mate-

rials and traveling expenses. Why this separate account should have been kept I cannot understand from the evidence. The witnesses on behalf of Complainant admit that the two accounts, Maintenance and Maintenance Reconstruction, are practically one and the same. Mr. Caldwell says the distinction between them is shadowy."

280 Both maintenance repairs and maintenance reconstruction are a part of the expense of conducting the business. Maintenance repairs is, as stated by the Master, making current repairs. In other words, maintaining the property in an operating condition, but no part of maintenance repairs adds anything to the value of the plant, nor, indeed, does it rebuild any part of the plant.

On the other hand, maintenance reconstruction is not simply taking care of ordinary breaks or ordinary repairs so as to keep the plant in an operating condition, but it is a renewing, or a rebuilding of parts of the plant. It is the substitution of new construction for old construction.

It is wholly immaterial to the owner of the plant whether these two items be kept separate or not. Both are items of expense in operating the plant. Both items must be treated as expense of conducting the business precisely as operating expenses, insurance and taxes, and various other expenses necessarily incurred in operating a plant. It is only important to separate maintenance repairs from maintenance reconstruction when it is desired to ascertain the amount of reserve for depreciation. Before it can be determined what depreciattion is to be set aside, it is necessary to first ascertain how much depreciation has been taken care of during the particular year under inquiry. If the plant has been partially rebuilt, to this extent depreciation has already been taken care of, and nothing is to be set aside for that part of the depreciation, and it is for this reason alone that maintenance repairs must be separated from maintenance reconstruction.

A simple illustrattion of the difference between maintenance repairs and maintenance reconstruction is given by one of the witnesses:

"If you will let me use the illustration, I will take a suit of clothes. During the time that suit of clothes is kept or worn,

281 it is often brushed, sometimes cleaned by a cleaner, and it is giving good service, but there does come a time, notwithstanding the very best treatment that can be given that suit of clothes by a careful man, the most careful care a man can take of it, that it has to be cast aside, but, up to the day it is cast aside, it is giving, as far as wearing is concerned, one hundred per cent. service. Now, during that time, using the suit of clothes in connection with the telephone plant, the plant is being maintained by a percentage or sum of money set apart from time to time as may be necessary to do that, but there comes a time necessarily when that thing actually and in fact goes out of commission and out of service, and must be taken out of the plant. Then comes in the question of falling back on this account which has been set apart for depreciation or de facto replacement of the property."

Dep. of Hume, p. 110.

Maintenance repairs and maintenance reconstruction do run into each other. They run into each other because the line of demarcation between what is repairs and what is a replacement or reconstruction is vague and shadowy, and, as stated by Mr. Caldwell:

"It is a hazy line in there that requires very careful auditing to determine just where it should properly belong."

Caldwell's second dep., p. 22.

It is plain that, where a new pole route is substituted for an old pole route, this is replacement, or "maintenance reconstruction"; it is a renewal of that part of the plant which has served its life; and, on the contrary, where wires become so slack that the service is impaired, and employés take the slack out of that wire, and tighten it up, this is current repairs, or "maintenance repairs," because no part of the plant has been renewed, but the same wire has been put into an operating condition. If all reconstruction and all repairs were as plain and simple as these two illustrations of renewal of the pole route and tightening up of the wires, there would be no difficulty; but as these two extremes approach each other, the
282 line of demarcation between what is maintenance repairs and maintenance reconstruction becomes vague and shadowy, and it was in this sense that Mr. Caldwell said that "the line between the two required very careful auditing to determine to which item such expenses should be charged."

But, as heretofore stated, it is of not the slightest concern to the owner of the property to determine whether any particular item of expense shall be charged to maintenance repairs, or to maintenance reconstruction, because both are expenses of conducting the business, and must come out of the gross receipts before there can be any talk of profit. It is important, as stated before, only in connection with the inquiry as to what amount of depreciation has been cared for in an order to determine what amount of uncared for depreciation shall be added to the other expenses, before ascertaining net profits.

At this point it beomes necessary to except to the report of the Master with respect to his treatment of

Depreciation.

On pages 40 and 41 of the report, the Master says:

"I have found, in answer to interrogatory No. 5, that a proper allowance for depreciation will be seven per cent of the value of the plant for each of the years 1905, 1906, 1907, and 1908, and for subsequent years.

In order, therefore, to make my findings as to the net profit and the percentages thereof, I must show under this division, the amount of such depreciation found, and how it will affect the net earnings."

The Master then gives what he says is seven per cent on the value of the plant as found by him for each of the years in question, and states that the average amount of depreciation allowed for the four years is, per annum, $92,449.45.

The Master then states, on page 41:

283 The amount actually expended by Complainant for maintenance and reconstruction for each of said years on an average is $94,490.19.

The Master then proceeds to find that "the average annual excess of expenditures over allowance for depreciation is $2,050.74."

The Master then proceeds, on pages 41-42:

"An analysis of the above figures leads me to believe that in a period of ten or fifteen years, the allowance of seven per cent for depreciation will be ample. An expenditure for maintenance in one year of an amount in excess of seven per cent will probably be followed in the next year by a requirement of a less amount.

But in ascertaining the percentage of net earnings to the value of the plant, it is proper to deduct from the net earnings as found above, the average excess of the maintenance expense over the average allowance for depreciation."

Upon this basis, the Master proceeds to figure the per cent of net earnings to the value of Complainant's plant as found by him for the four years involved.

Master's report, p. 42.

"K."

The Master, after allowing seven per cent for depreciation, has included, as a part thereof, maintenance repairs. This is clearly erroneous.

Depreciation is not repairing or maintaining the property or plant in an operating condition. Depreciation is intended to care for silent decay, changes in the art brought about by the evolution in the business, changes required in shifting parts of the plant, owing to the municipal authorities, orders, and unknown but certain disasters which come in a cycle of time.

There is another expense of operating a telephone plant

284 which is not connected with in any way the depreciation of the plant, and that is maintaining the property in an operating condition, and called "current repairs," "operating maintenance," "maintenance repairs," or merely "maintenance."

Depreciation does include reconstruction. It embraces reconstruction; and, in addition, embraces evolutions in the art requiring the replacement of parts of the plant that have not worn out, but are replaced because of newer and better apparatus and appliances; and, also, as stated, shifting of plant on account of the necessities of the city, and unknown disasters, or losses, that always come within a cycle of time, and must be provided for out of earnings.

There is no confusion in the record among the witnesses as to "maintenance" and "depreciation."

Mr. Caldwell, Complainant's President, states:

"Depreciation covers—in other words, when I am considering depreciation and when I am discussing it, it covers quite a wide field. Not only is contemplated the wear and tear that is not observable, or that does not require immediate attention, but it also contemplates

the changes in the art, the evolution that has gone on and is going on continuously, and the unknown dangers and hazards that are likely to come up and are sure to arise in some form, not at stated intervals, and not perhaps frequently, but will arise in some form or other and call for extraordinary expenditures. That, I say, is the field that I have before me when I am considering the question of depreciation, and the necessity to provide therefor is imperative. As to how it may be treated, or how it may be kept, it is a subject that will vary and has varied with different people in different lines of business, but whether it is reckoned within the accounts or not, does not alter the fact that the force is working its way all the time, and that it will have to be reckoned with inevitably. In other words, it is a force that is not dependent upon the whims or idiosyncrasies or opinions of individuals. They are entirely above and beyond any such influences."

Caldwell's second dep., p. 13.

285 And again, in reply to a question by the Master, he explains the difference betwen depreciation and maintenance as follows:

"If a brick—if something should fall off of this house, a brick or something, and break our route in two there, men would go there to repair that. The cost of doing that would be Incidental Repairs, and it would go into Maintenance, but it would not be that class of expenditure which would be counted as a thing to perpetuate and renew the property. Now, then, all that class of expenses, if it had gone into Maintenance, would have to be taken out, and excluded before you made up the amount that would represent what you term the equivalent of seven and a half per cent. (Depreciation.)"

Caldwell's second dep., p. 21.

Mr. Crumb, one of the city's expert engineers, says:

"Assuming there are ten thousand telephones and operating, general and maintenance expense of $150,000, there should be added to those expenses the sum of money based upon the actual cash investment in the plant sufficient to cover the depreciation. Taking the actual cash investment in the plant at approximately one million dollars, and figuring depreciation at seven per cent, would be $70,000, which should be added to the $150,000, making $220,000, which it would be necessary for the telephone company to earn to cover the actual cost of operation, maintenance, general expense and depreciation."

Crumb's dep., p. 80.

Mr. Levings states that:

"In figuring the expenses of operating a telephone plant, you must allow for depreciation, operating, maintenance, and general."

Levings' dep., p. 38.

Mr. Polk says that:

"In operating a telephone plant, you must allow for general ex-

penses, operating expenses, maintenance expenses, and, in addition, depreciation."

He speaks of maintenance as "maintenance operating," in-
286 stead of "maintenance repair," as some of the other witnesses call it.

Polk's second dep., p. 70.

In the statement of the estimated expenses as found by the Chicago Commission in 1907, it is shown under what classification telephone expenses should be grouped, and they are as follows:

Operation, maintenance, general, depreciation and interest.

The commission includes under maintenance the following:

Switchboard repairs, etc., line and telephone repairs, cable repairs, conduit repairs, pole line repairs, line wire repairs, telephone and private branch exchange inspections, out orders, plant changes, etc., care of buildings, etc.

After allowing all of these expenses under the head of maintenance, the commission over and beyond this, allows for depreciation and interest.

Report of Committee to Chicago Council, p. 58.

It thus appears that the treatment by the Master of depreciation is erroneous, and his findings as to any return for each of the four years from 1905 to 1908, inclusive, is based upon an erroneous conclusion to which Complainant excepts.

"L."

Complainant excepts to the report of the Master in finding net earnings for the years 1905 to 1908, inclusive, as shown on page 42 of his report, and also the percentage of net earnings to the value of Complainant's plant for same years and that the above percentages are inclusive of allowances for depreciation of property and plant.

First Basis.

This basis is upon the assumption that the Master
287 allows seven per cent per annum of the value of the plant as proper amount for depreciation.

The Master states in his report, on page 41 that seven per cent depreciation per annum upon the value of the plant, excluding real estate, is reasonable, and that he allows this amount.

But when he comes to apply this depreciation he does so in an improper manner.

The Master finds on page 39 of his report the balance of revenue over expenses to be:

1905	$80,830.59
1906	101,694.65
1907	119,741.78
1908	152,723.93

The Master finds, on page 41, the amount which he allows for depreciation to be:

1905	$86,818.77
1906	93,457.53
1907	94,914.66
1908	94,606.83

There was actually expended on reconstruction in

1905	$41,051.02
1906	40,626.07
1907	41,895.10
1908	31,450.07

The amount actually expended on reconstruction each year should be deducted from the amount allowed by the Master for depreciation in order to arrive at the balance, or the reserve for unexpended depreciation.

Deducting the amount actually expended on reconstruction from the total allowance by the Master for depreciation gives a balance of

288

1905	$45,767.75
1906	52,831.46
1907	53,019.56
1908	63,156.76

This balance of the reserve for depreciation as allowed by the Master should be deducted from the revenue as found by the Master in order to arrive at net earnings. This balance deducted from earnings as found by the Master leaves net earnings of:

1905	$35,062.84
1906	48,863.19
1907	66,722.22
1908	89,567.17

But this amount must be further reduced, because the Master has included the entire toll receipts as a part of the exchange earnings. As has heretofore been shown under "I" (p. 142), the most extravagant claim by any one in the record as to the expenses for the toll department for the respective years, are:

1905	$23,536.25
1906	24,671.90
1907	24,478.86
1908	20,239.65

Mutual Audit Company's Exhibit No. 9.

Total toll earnings:

1905	$47,542.25
1906	52,315.38
1907	60,278.24
1908	56,942.03

(These toll learnings are arrived at by adding the toll receipts as shown on page 33 of the Master's report, and the fifteen per cent of toll business allotted to the exchange on page 23-4 of the Master's report, consisting of items 2, 4, 8 and 9.)

289 If from the total gross toll earnings there be deducted total gross toll expenses, the result will be the net toll earnings which the Master has included in the net exchange earnings. The net toll earnings are:

1905	$24,006.00
1906	27,643.48
1907	35,799.38
1908	36,702.38

In order to correctly ascertain the net earnings of the exchange on this basis, it becomes necessary to deduct the net toll earnings from the Master's net exchange earnings, as the Master includes gross toll earnings in exchange earnings, and gross toll expenses in exchange expenses, so that if only net toll earnings be deducted from net exchange earnings, as found by the Master, we thus eliminate toll earnings and toll expenses.

The net exchange profits, on the Master's basis, are:

1905	$31,011.45
1906	48,897.72
1907	54,125.47
1908	98,018.02

Deducting therefrom the net toll earnings for the respective years, the result is:

1905, net exchange earnings	$7,005.45
1906, net exchange earnings	21,254.24
1907, net exchange earnings	18,326.09
1908, net exchange earnings	61,315.64

It will be recalled that the Master deducted $100,000 from the construction account for the years 1900 to 1908, inclusive, because he said that it was improperly charged to construction. If this $100,000 is to be deducted from construction, then, a part at least, must be added to the expenses of conducting the business during that period, because a part at least, according to

290 the Master's report, of this $100,000 was expended, and the only controversy is as to whether it was expended in operating the exchange, or in adding to the construction account. However, since the Master leaves it uncertain how much of the $100,000 is expense, no part of it will be added to exchange expense.

If there be deducted the loss which would be sustained under the rates prescribed in the ordinance of	$19,721.76
The result is, for 1908, a net profit of only	11,593.88

Second Basis.

This second basis is upon the assumption that Complainant is entitled to no amount for depreciation, beyond the amount actually expended in each year for depreciation.

The Master finds the net earnings to be for:

1905	$80,830.59
1906	101,694.65
1907	119,741.78
1908	152,723.93

In order to correctly ascertain the net earnings of the exchange on this basis, it becomes necessary to deduct the net toll earnings from the Master's net exchange earnings, as the Master includes gross toll earnings in exchange earnings, and gross toll expenses in exchange expenses, so that if only net toll earnings be deducted from net exchange earnings, as found by the Master we thus eliminate toll earnings and toll expenses. Eliminating net toll earnings, the result is:

1905, exchange earnings	$56,824.59
1906, exchange earnings	74,051.17
1907, exchange earnings	83,942.40
1908, exchange earnings	116,021.55

It will be recalled that the Master, on page 21 of his report, has deducted ten per cent of the value of the plant for depre-
291 ciation, *i. e.*, from January 1, 1900, to December 31, 1908, he says the plant depreciated $138,112.44.

It is apparent that this loss must be considered a part of the expenses of conducting the business. If Complainant had a property which had cost $1,381,124.41, and it depreciated in nine years $138,112.44, if the depreciated value is to be accepted as the present value, then the depreciation, or loss in value of the plant, must be added to the expense of conducting the business.

It is also apparent that this $138,112.44 ought not be prorated in the expense evenly over the nine years, for the reason that there was very much more property to depreciate in 1908 than there was in 1900.

On the Master's basis, the property was worth on January 1, 1900, $457,579.07.

Master's report, p. 8.

There was only added to construction that year $166,775.23.

Joint report of accountants, p. 3.

So that at the end of the year 1900, on the Master's theory the property had cost only $624,354.30; whereas, at the end of 1908, the Master finds the property had cost $1,381,124.41. It thus appears that this $138,112.44, should not be pro rated evenly over the nine years, but a much larger proportion should be pro

rated on the last four years than on the former years. However, if it be prorated evenly over all the years, the result is a total annual deduction of $15,345.82, the one-ninth of $138,112.44.

This deducted from the net earnings as above, leaves real net earnings on the Master's basis of:

1905	$41,478.77
1906	58,705.35
1907	68,596.58
1908	100,675.73

292 If there be deducted the loss which would be sustained under the rates prescribed in the ordinance of $49,721.76

The result is, for 1908, a net profit of only 50,953.97

Third Basis.

This third basis is upon the assumption that the Master should have allowed the 15 per cent of toll receipts to the exchange as sufficient compensation for its service to the toll lines.

The amount of net earnings as reported by the Master, on page 39, is:

1905	$80,830.59
1906	101,694.65
1907	119,741.78
1908	152,723.93

Included in these net earnings are the total toll earnings.
See Master's report, p. 33.

These toll earnings, over and above the fifteen per cent allowed the exchange, amount to:

1905	$37,059.53
1906	40,034.58
1907	45,504.16
1908	43,248.70

If this should be deducted from the net exchange earnings, as found by the Master, the result is:

1905 net earnings	$43,771.06
1906 net earnings	61,660.07
1907 net earnings	74,237.62
1908 net earnings	109,475.23

There must also be deducted a proportionate amount of the depreciation deducted by the Master from the construction account, as shown on page 21 of his report, of $138,112.44.

293 As has heretofore been pointed out, it is not fair to deduct only the one-ninth part of this depreciation from each of the last four years under consideration. A much larger amount

than an equal pro rate should be allowed as heretofore shown. However, if the total depreciation of $138,112.44 is pro rated evenly over the entire nine years, the result is for each year $15,345.82.

If this item be deducted from the Master's net earnings for each of said years, it reduces the Master's net earnings to:

1905	$28,425.24
1906	46,314.25
1907	58,891.80
1908	94,129.41

If there be deducted the loss which would be sustained under the rates prescribed in the ordinance of..... $49,721.76
The result is, for 1908, a net profit of only..... 44,407.65

Mutual Audit Company's Basis.

It will be recalled that the Mutual Audit Company, the accountants selected by the Defendant, made a separate report to the Master and in this report they find the net earnings for the years in controversy to be as follows:

1905	$101,010.80
1906	118,737.95
1907	130,012.58
1908	151,612.74

Mutual Audit Company's Exhibit No. 15.

These net earnings are arrived at by eliminating what is called toll expenses and toll revenue. There is also eliminated for each of the years the exact amount spent by Complainant on reconstruction, and nowhere is this expense charged in the operation of the exchange for the respective years. They simply deduct the amount expended on reconstruction, stating that this amount should
294 be charged against reserve, but no where do they create a reserve to which this reconstruction can be charged.

Mutual Audit Company's report, p. 27.

The amount of reconstruction for each year, as found by the Master on page 23 of his report, is as follows:

1905	$41,051.02
1906	40,626.07
1907	41,895.10
1908	31,450.07

Deducting these amounts from the net revenue as reported by the Mutual Audit Company leaves net revenue on this basis of:

1905	$59,959.78
1906	78,111.88
1907	88,117.48
1908	120,162.67

The Master has stated that the plant has depreciated in the nine years $138,112.44.

Master's report, p. 21.

If only one-ninth of this amount be deducted for each of the years, which, as above shown, is manifestly unfair, it will result in a further reduction of net earnings of $15,345.82 for each of the years. Deducting this amount leaves net earnings on the Mutual Audit Company's basis for each of the years as follows:

1905	$44,613.96
1906	62,766.06
1907	72,771.66
1908	104,816.85

The Mutual Audit Company, in arriving at this result, has deducted expenses which they insist should have been charged against other exchanges, as explained in "G" (p. 137). If these amounts, erroneously deducted by the Mutual Audit Company, be
295 added in expenses for the respective years, it would result in the net earnings, as given above, on the Mutual Audit Company's basis, being further reduced, as follows:

1905	$11,412.71
1906	11,712.34
1907	11,182.78
1908	6,392.72

This, deducted from the net earnings as above shown, leaves the net earnings on the Mutual Audit Company's basis:

1905	$33,201.25
1906	51,053.72
1907	61,588.88
1908	98,424.13

If there be deducted the loss which would be sustained under the rates prescribed in the ordinance of	$49,721.76
The result is, for 1908, a net profit of only	$48,702.37
The Master finds the value of the plant, exclusive of toll lines and real estate, to be	$1,243,011.97

Master's report, p. 21.

The net earnings on the report of the Master are:

First basis, 1908	$11,593.88
Second basis, 1908	50,953.97
Third basis, 1908	44,407.65
Mutual Audit Co.'s basis, 1908	48,702.37

Summary.

Gross earnings:

The Master, following the joint report of the accountants, reported gross earnings:

1905	$269,823.38
1906	294,498.44
1907	319,758.51
1908	325,838.20

This includes the 15 per cent of tolls.

296 Gross expense:

The Master reports gross expenses, as shown in the joint report of the accountants:

1905	$227,171.29
1906	233,898.28
1907	246,598.61
1908	217,395.53

Unless Complainant is bound by the joint report of the accountants, these gross expenses must be increased, as shown in "G" (p. 137), as follows:

1905	$11,412.71
1906	11,712.34
1907	10,886.81
1908	6,392.79

The real gross expenses, which the Master should have reported, will be, after adding these omitted items last above set out, the following:

1905	$238,584.00
1906	245,610.62
1907	257,485.42
1908	223,788.32

The Master should, therefore, have reported the balance of revenue, after deducting expenses, as follows:

1905	$31,239.38
1906	48,887.82
1907	62,273.09
1908	102,049.98

The foregoing does not include any allowance for depreciation, except the actual amount expended for each of the years on reconstruction. It is only important to show that for the year 1908 the amount expended was only $31,450.07

Master's report, p. 38.

297 *Rates Prescribed by Ordinance.*

If the rates prescribed in the ordinance had been in effect in 1908, the net profit would have to be reduced by . $49,721.76
Leaving a balance of revenue over expenses for the year 1908 of 52,328.22

From this amount there must be deducted incomplete depreciation of whatever amount may be allowed.
If the depreciation be allowed as found by the Master on page 41 of his report, amounting to $94,606.83
The reserve for, or the incomplete depreciation, will be reduced by 31,450.07
Leaving a reserve for depreciation of 63,156.76
Or a net loss under the ordinance rates of 10,828.54

Complainant excepts to the report of the Master, because he did not so report.

IV.

"The Special Master is directed to make an estimate upon the testimony, and state his conclusions therefrom as to what would be the reasonably probable gross and the reasonably probable net income of Complainant from its said plant and property employed in its business in said city for the current year and the year 1910 if the rates of telephone charges fixed by the ordinance enacted by legislative body of Defendant, and approved by the Mayor on March 6, 1909, should be put into operation and effect."

The Master states, on page 43 of his report, that the joint report of the accountants agreed that if the ordinance rates be put into operation, the loss in net revenue to Complainant would amount to $49,721.76.

Joint report of accountants, pp. 5 and 6.

298 "A."

Compainant excepts to the statement of the Master on page 47 of his report as follows: "I am of the opinion that the first year after the new rates shall be in force, say 1911, the net decrease to the company in revenue will probably amount to $30,000 below what the net earnings have been found to be under present rates in 1908."

The joint report of the accountants, as has heretofore been shown and as reported by the Master, states that the loss in revenue under the ordinance rates will amount to $49,721.76 per annum. The record shows beyond any controversy whatever that there will be no decrease in expenses in operating the exchange if the rates prescribed in the ordinance be put into effect.

It is also shown in the record, and without any contradiction, that any increases in patronage will entail at least a corresponding increase in expenses, and also in capital accout, *i. e.*, new subscribers obtained will necessitate new construction to serve them. In this respect the telephone is different inherently from all other known

kinds of business. A water company, gas company, street railway and other like public service companies obtain additional patronage without a corresponding increase in expenses and capital account. They may obtain new patrons without the necessity of increasing their facilities. A new patron enters a street car and pays his fare. This does not entail upon the company the necessity of increasing its equipment, and does not increase its expenses appreciably. The gas company may obtain a new patron and he is served by the existing facilities and appliances, and so with the water company and other public service companies, excepting the telephone company.

Each new subscriber of the telephone company must have
299 his own wires leading from his place of business or residence to the exchange. He must have his separate and distinct instrument, which must be installed for his use; his wires at the switchboard must be connected in such way that he may have access to all other subscribers, and all other subscribers may have access to him, which means that increased patronage calls for increased facilities, which brings at least a corresponding increase in operating, maintenance and other expenses.

This principle is recognized by the Supreme Court of the United States in La. R. R. Com. vs. Cumberland Tel. Co., 212 U. S., p. 426. The Court says:

"We say this because the evidence shows that in the case of telephone companies the general result of a reduction of rates in some other kinds of business does not follow, namely, that there would be an increased demand, which could be supplied at a proportionately less cost than the original business. Such, it is admitted, would be the case generally in regard to water companies, gas companies, railroad companies, and perhaps some others, where the rate is a reasonable one. For example, it is said that it would cost no more, or certainly scarcely an appreciable amount more, to haul a train of two cars both filled than it would to haul the same train with both cars half filled, and if the reduction in rates should result in filling the cars where previously they had not been half filled, there might be an increased carriage at a cost very little more than before, and probably an increased profit. So, in the case of a water company, the reduced rate might result in furnishing more water to consumers already existing, and the increased cost of furnishing the same would be infinite-simal, where there was a supply sufficiently large to fill the demand. So, also, in furnishing gas at reduced rates, the reduction in the rate would very probably result in increased consumption, not only in increased demands from more consumers, but also an increased consumption by consumers already existing, and the increased cost of furnishing the gas would be nothing like in proportion to the increase in consumption. In

these cases increased profits might be the result of decreased
300 rates. But with telephone companies, as shown by the testimony of the president of the Complainant, the reduction in toll rates does not bring an increased demand, except upon the condition of corresponding increase in expenses."

The evidence in the record with respect to the future in operating on the schedule of rates prescribed in the ordinance is as follows:

James E. Caldwell, President of Complainant.

This witness states, in reply to an inquiry as to the policy pursued with respect to rates by himself and associates as compared with the policy pursued by the former owners and managers of the Louisville property:

"The former owners had two rates. They had one business rate, that is to say, they had a rate for private or direct telephones, and a rate for private or direct residence purposes. We endeavored to make a variety of rates which would meet the requirements and wishes of every phase of the community. Our effort was to put the service within reach of everyone in the community. We adopted schedules of rates that were not only a modification of the direct or private business service and the private or direct resident service, but public stations, party-line stations, measured service, and, in the greatest variety, and extending this service not only to the suburbs but well out into the country around Louisville, extending toll line facilities in every direction out of Louisville, so as to offer that community the very greatest sort of value, and expansiveness in the telephone service, we extended it to farmers, market gardeners, dairymen, summer residences, etc., and we endeavored to reach every class and kind of business and individual."

Caldwell's first dep., pp. 596-7.

Again, he says that any decrease in earnings will not decrease expenses; and in reply to an inquiry as to what would be the result to the Complainant if there should be an increase in subscribers owing to the reduced rates, he says:

301 "Well, if you increase your subscribers you would be compelled to increase your facilities and your capital account. You would be compelled to increase your operating force to take care of the greater number of calls that would go over the system; you would have to encounter certainly a shifting of customers from one class of rates to another, which expense you would be certain to meet, but you do not know what it would be. The growth that would take place in that, you could not tell whether it would be on the maximum or the minimum, or in what direction in the city it would be found; it would all be a matter of speculation so that to forecast the future on that is a matter of speculation and doubt."

Caldwell's first dep., p. 606.

And again, he says:

"My opinion is that we would have to provide a considerable additional capital outlay; that we would get little or no additional gross revenue, certainly we would not get more than would be off-set by the additional expense. My deliberate opinion is, it would be a very losing and disastrous experiment."

Caldwell's first dep., p. 608.

Leland Hume, General Manager.

Mr. Hume states that no man who had any practical experience, or any reasonable information about the business, would be willing to say that if the rates prescribed in the ordinance should be put into effect, that it would result in an increase in patronage without at least a corresponding increase in expense. He says such a statement is not a fact, and could not be. On the contrary, he says that an increase in the number of subscribers would entail an increase in the expense of conducting the business, that it would not decrease expenses in any way per subscriber; that an increase in patronage would bring about a proportionate increase in the cost of operating the telephone per subscriber, and that it would be impossible for it to decrease expenses.

Hume's dep., pp. 171-2.

302 He further states:

"When we purchased the Ohio Valley Telephone Company we found what we considered a very small development of the telephone business in Louisville; we promptly set about to provide facilities that would enable us to take on business very rapidly, believing that by providing the facilities that we could then secure the business, and we set about it with the best traffic men that we could procure, men who had established themselves as good traffic men, and solicited business. The rates that the Ohio Valley Telephone Company had formerly charged were not increased, notwithstanding the fact that we proposed to add largely to the exchange if we could, but as the business did not respond except very slowly, we retained those rates, but at the same time added a schedule of rates that were considered very attractive, offering various kinds of service, including the metered service, and measured service, and pay station service, following plans that had been successful in other large cities. Those rates brought about some increase in business, but nothing phenomenal, or nothing that we thought was in accord with what should be accomplished, and as a consequence, we have, from time to time, put out schedules of rates with attractive features, and we have offered, at Louisville, all the features that were attractive and that were taken hold of by other communities, and I can state that we have never conducted our business in any place where more study has been given to the question of placing before the public various types of service and plans for service than has been done by us in the city of Louisville."

Hume's dep., pp. 172, 173.

H. Blair Smith, Auditor.

Mr. Smith states that a reduction in rates would not decrease the expenses.

Smith's first dep., p. 43.

These witnesses not only have a very large experience in the telephone business, but have an intimate knowledge and experience with the operation of the Louisville plant.

Turning to the evidence of the Defendant, we have the same result.

303 *W. H. Crumb.*

Mr. Crumb is a telephone engineer. He states, "Based upon the flat rate basis of charging for telephone service, in my opinion, there is a slight increase in producing telephone service in a given locality in large quantities over what it costs to produce telephone service in moderate quantities, but I believe the cost is often considerably overestimated, and, in fact, very generally overestimated by telephone people; that the cost is not so great as is usually believed to be."

Crumb's dep., p. 90.

This simply means that in Mr. Crumb's opinion there would be a slight increase per subscriber in expenses as the number of subscribers increases.

W. C. Polk.

Mr. Polk is also a telephone engineer. He states that as the number of subscribers increases the cost of the plant must also increase.

Polk's second dep., p. 105.

He also states that the effect of putting into force the rates prescribed in the ordinance would result in an increase in the number of subscribers, and that this would result in an increased capital account, and that it would result in an increase in all expenses of conducting the business; that a reduction in rates would not reduce the expenses at all, but that an increase in patronage would increase the expenses per station to a certain point.

Polk's second dep., pp. 118-19.

Mr. Polk also says, when asked in regard to the reasonableness of the rates prescribed in the ordinance, that he would not be willing to invest his money in a plant only costing $1,300,000, including real estate, if it was to be operated on the rates prescribed in
304 the ordinance; and that it would be a risk he would not care to take if his money was involved to any large extent; he might be willing "to take a gamble" for a small amount.

Polk's second dep., pp. 118-121.

In the report of the Committee to the City Council of Chicago, September 3, 1907, it is said on page 12:

"The average person does not understand why it costs more per telephone to supply telephone service in a large city than in a small city. The assertion of this principle to many seems a paradox. It is regarded as contrary to the ordinary principle of business—that

is, that the unit cost becomes less as the volume of business done increases. It is but natural to think that the wholesale principle ought to apply in the telephone business as in other lines. This idea prevails because the ordinary individual does not understand the peculiar features of the telephone business, and does not look beyond the telephone on the wall or on the desk. He does not take into consideration that the real business of a telephone is to furnish service, transmit messages, and not merely to rent instruments. This prevailing idea has been constantly brought home to the members of the committee by having their attention called by people thus uninformed to the lower rates existing in other cities; cities between which and Chicago there can be no common basis of comparison. Attention is called to some of the reasons for this exception to that rule of business, so well established."

There is attached as an exhibit to the deposition of Mr. Caldwell a pamphlet giving the reasons why increased patronage entails a proportionate increase in expenses.

Caldwell's first dep., p. 619.

This pamphlet was handed to Mr. Crumb, and he was requested to read it.

Crumb's dep., p. 111.

After reading it, he stated that he did not have anything to say specific in reply thereto other than what had been said generally in his deposition.

Crumb's dep., p. 188.

305 But as has heretofore been shown, Mr. Crumb said nothing in his deposition contrary to this known fact in the telephone business, but sustains what is therein said.

There is but one suggestion to the contrary in this entire record, and that is the separate report of the Mutual Audit Company, the so-called experts employed on behalf of the Defendant. In this report it is claimed that a lowering of the rates would result in an increased patronage, and that this would result in increased profit.

Mutual Audit Company's report, p. 29.

Mr. Farnham, who wrote this report (Warren's dep., p. 576), is not a telephone engineer, has never had any experience in the telephone business, and does not appear to know anything about the business (Fisher's dep., p. 179). On the contrary, it appears that when he was first employed he went to see Mr. Crumb, a telephone engineer, to ascertain along what lines his investigation of Complainant's books should be made.

Crumb's dep., p. 174.

Mr. Wilkinson, the expert for Complainant, gave his deposition, and full opportunity was given to test any statements made in his report, but Mr. Farnham did not give his deposition, and no opportunity was given Complainant to cross-examine him and test either his accuracy or his means of knowledge.

In view of the undisputed evidence in this record by all the witnesses qualified to speak, if the rates prescribed in the ordinance of Defendant should be put into effect, it would result in the immediate reduction in gross revenue of nearly $50,000; it would not result in any decrease in expenses, and it would certainly result in a large increase to the capital account, if new subscribers were obtained, and these new subscribers would entail at least a corresponding increase in expenses.

306 The Master seems to have relied upon theories of bookkeepers to the exclusion of practical telephone men, testifying on behalf of Complainant and Defendant. It is not to be expected that bookkeepers will be able to forecast the future as to telephone rates, and the only people who have a right to hazard an opinion upon such a subject are those who have had actual experience in the business, or show themselves to have made a study of the matter.

A reading of the reasoning of the Master upon this branch of the case clearly discloses that he has not considered the statement of any witness in the record except the bookkeepers of the Mutual Audit Company, neither of whom appears to have had any experience whatever in the telephone business, or the experience of examining the accounts of a telephone company.

The Master agrees that the joint report gives the annual loss in revenue under the ordinance rates as $19,721.76.

Master's report, p. 43.

On page 47 of his report, he says:

"I am of the opinion that the first year after the new rates shall be enforced, say 1911, the net decrease to the company in revenue will probably amount to $30,000.00 below what the net earnings have been found to be under present rates in 1908."

To bring about this result it is clear that the revenue of the exchange operating under the ordinance rates must increase enough after they are put into effect to add the difference between $19,721.76 and $30,000.00 to net revenue. The loss to be thus recouped is $19,721.76

The greatest amount of net exchange revenue for 1908 under the various bases (p. 160) is $50,953.97. The net revenue to be recouped, $19,721.76, is 38.7 per cent of this amount.

307 The Master reports the cost of the exchange plant, exclusive of real estate and toll lines as $1,381,121.41

Master's report, p. 21.

It is submitted that under the evidence, to gain 38.7 per cent in net exchange revenue it will require at least an addition of 38.7 per cent to exchange plant. That is, new capital must be added to the extent of $35,495.14

So that, at the end of the first year, the exchange plant alone, excluding real estate, will have cost at least $1,916,619.55
And not, as the Master estimates on page 48 of his report, viz.: 1,400,000.00

On an earnings basis it is also shown that the Master is in error.

The value of exchange plant with toll lines added is estimated by the Master to be at the end of the first year $1,400,000.00
And the present value of the same plant he gives on page 22 as 1,355,878.09

Making the new capital to be added the first year.... $44,121.91

Which, he says, will produce $19,721.76 net revenue. That is, the new capital will produce 44.7 per cent net revenue annually, while the ordinance rates are said to be only reasonable rates, and only capable of producing a fair return upon the capital invested.

Again, the number of telephones in use in the exchange is (Jagoe's dep., p 8)..... 9,395

The revenue of the exchange is derived from the
308 exchange telephones, and to increase the net revenue 38.7 per cent, it will be necessary to add 38.7 per cent to the present number. This will require a gain of..... 3,636

Making the total number at the end of 1911..... 13,031

For these reasons, Complainant excepts and insists that:

The Master should have reported that the reduction in revenue under the rates prescribed in the ordinance would have been $19,721.76; and that a reduction in the rates would not have in any way decreased expenses. Also, that a decrease in rates would probably result in increased patronage, which would necessitate an increase in cost of construction, and at least a corresponding increase in expenses.

V.

"He will ascertain and report from the testimony what would be a fair amount of proportion of annual income to set aside as a substantial provision and allowance for depreciation of Complainant's plant and property employed in its business in said city, and the basis of his estimate thereof."

The Master states, in concluding on this subject, page 53:

"In view of the foregoing, I find that the fair and reasonable amount or proportion of annual income of Complainant that should be set aside as substantial provision and allowance for depreciation of Complainant's plant and property employed in its business in Louisville, and including everything except cash, working capital and supplies, would be an amount equal to seven per cent of the value of the plant, as above limited, and that the amount expended

annually for maintenance and reconstruction of the plant should be deducted from the seven per cent fund."

Complainant excepts to the report of the Master in that he
309 states that while seven per cent is a proper amount to set aside for depreciation, there should be deducted from this all amounts expended annually for maintenance and reconstruction.

The basis upon which Complainant insists upon depreciation, and, so far as this record shows, the only basis that any witness adopts is to set aside a fund equal to whatever per cent of the cost of the plant is thought to be proper by the respective witnesses as a depreciation fund. Whatever amounts are expended during the year for rebuilding or reconstructing any parts of the plant are deducted from this per cent, whatever it may be, and the remainder is the unexpended depreciation fund, or what is sometimes called a reserve or a fund to take care of incomplete depreciation.

It is not proper treatment to charge against this depreciation fund any of the expenses incurred for maintenance of plant. When a plant is being maintained in an operating condition, it is having nothing added to the value of the plant, it is not a rebuilding or a substitution of new material for old material in the plant, it is simply keeping the plant in an operating condition, such as tightening up wires and other things necessary to keep the plant in a high state of efficiency from an operating standpoint. When wires are tightened, nothing additional is being added to the plant, and new wire is not substituted for the old wire, but the old wire is simply tightened up so that it can be used in operating the plant.

A homely illustration may be used. A vehicle is maintained in running condition by being washed and greased, but this is not depreciation—it is not substituting any new part of the vehicle for a part which has served its life, worn out and must be renewed. It is simply keeping the vehicle in an operating condition, and so it is when a bolt or nut becomes loosened, and is tightened up. This expense is ordinary repair, or maintenance repair; but when
310 a wheel breaks down and a new one is substituted, this is replacing a part of the vehicle with a new part, and this new part replaced is a charge to reconstruction or depreciation.

So that Complainant insists that the Master is in error in assuming that maintenance is included in the seven per cent allowance for depreciation.

Mr. Polk, in his second deposition, in speaking upon this subject, states that there are two kinds of maintenance—one is called "maintenance of operation," and the other "maintenance of plant."

Polk's second dep., p. 71.

And on page 70, he states, in figuring the expense of conducting a telephone exchange, that he would allow $10,000 to $15,000, "say $15,000," for maintenance.

And then, on page 71, he says that he would allow 5 per cent of the physical value of the plant for depreciation, and that he would not charge maintenance to this depreciation account.

The Master quoted from the decision of the Supreme Court in Knoxville vs. Waterworks, 212 U. S., p. 14, where it is said:

"Before coming to the question of profit at all, the company is entitled to earn a sufficient sum annually to provide not only for current repairs, but for making good the depreciation, and replacing the parts of the property when they come to the end of their life."

Notwithstanding the fact that the Master quotes this language, he still insists that current repairs must be included in depreciation, while Complainant insists that the language of the Court is as plain as can be written, that current repairs and depreciation are wholly separate and distinct things.

Complainant, therefore, insists that the Master has erroneously included current repairs, or maintenance, in depreciation.

Probably the best analysis of the way depreciation of a tele-
311 phone plant is ascertained is shown in the report of the committee to the Chicago Council, where the Telephone Commission states what the depreciation per annum on the different items of a plant will be, in their judgment, in the City of Chicago, on page 118.

The commission first ascertained what they believed to be the life of each particular item composing the entire telephone plant. They gave the life of underground conduit as being fifty years; underground cable, twenty years; poles, including cross-arms, ten years; subscribers' station instruments, ten years; private branch exchange switchboards, eight years; fireproof buildings, forty years; teams, tools, furniture, etc., four years, and so on throughout the entire list of every item of material entering into a telephone plant.

Having ascertained the life in years of each particular part of the material in the plant, they next ascertained the original cost of each particular part, and then ascertained the per cent to depreciation. In this way they ascertained that underground conduit only depreciates .89 per cent of its original cost per annum; they ascertained that underground cable will depreciate only 3.72 per cent of its value per annum; that aerial cable will depreciate 5.38 per cent of its original value per annum; that subscribers' station instruments will depreciate 8.73 per cent of its original cost per annum; and that teams, tools, furniture, etc., will depreciate 23.92 per cent of their cost per annum. And so on with the other items composing the plant. In this way they arrived at how much each item in the plant will depreciate per annum, and by taking the average per annum, based upon the value in dollars of each, the commission ascertained that a telephone plant will depreciate 8.03 per cent of the original cost per annum; and, therefore, the commission sets aside 8.03 per cent of the original cost of the plant per annum for depreciation. This includes everything connected with the plant except supplies and working capital, but does include the fireproof buildings.

312 The basis insisted upon by Complainant is that seven and one-half per cent of the original cost of the plant should be set aside each year for the depreciation fund, and that this seven and one-half per cent of the original cost of the plant must be taken out of gross earnings before there can be any net profits, but in reaching the cost of the plant there is excluded working capital, sup-

plies and material on hand, and real estate and buildings, which leaves the bare plant, and it is only seven and one-half per cent of the bare plant that is considered by Complainant in determining the depreciation fund.

In view of the fact that a telephone plant is deteriorating all the time, and in view of the fact that after the plant has been in existence some years, that different parts of the plant require renewing each year, the process of reconstruction or caring for depreciation is going on continuously, and whatever amount is expended in replacing any part of the plant that has worn out or reached the end of its life, either through decay, wear and tear, or the invention of something which takes the place of that part of the plant, is charged on the books as "reconstruction," and this amount is deducted from the seven and one-half per cent depreciation fund, because it is pro tanto taking care of depreciation, leaving the difference between seven and one-half per cent of the cost of the bare plant, and the amount actually expended during that year in construction, as the balance to be set aside out of earnings to take care of incomplete depreciation. This incomplete depreciation may arise from several causes, and it does not come evenly year in and year out, but does come in a cycle of time. A telephone plant may escape the necessity for the incomplete depreciation for a number of years, inventions of apparatus or new methods of making cables, or new subscribers' station equipment, or other parts of the plant, are not discovered with regularity, but at intervals of time; disasters, which experience has taught owners and operators of telephone plants, are certain to come in one form
313 or another in a cycle of time. When these inventions or disasters do come, then it is not merely seven and one-half per cent of the original cost of the plant that is needed to replace part of the plant, but it is often many times seven and one-half per cent.

And so it is that not only in the telephone business, but in every business where material, machinery, apparatus and appliances are being used, this risk and expense of the business must be taken into consideration, and provided against in order to prevent disaster to the enterprise.

Complainant does not contend that any part of the gross earnings of one year should be set apart to care for incomplete depreciation occurring in preceding years. It only asks that each particular year shall bear its proportion of the annual contribution to this depreciation fund. Complainant does not ask that the expenses of 1908 be burdened with any part of the depreciation which will occur in 1909. But does ask that 1908 be required to bear its proportion of the annual contribution to the depreciation fund.

The fact that Complainant has not in the past set aside as a sacred trust fund a part of its gross receipts from its Louisville plant to care for incomplete depreciation, when the time comes for such expenditure to be made, does not affect the principle it contends for—that is, that each year should be burdened with its proportionate amount, as a contribution to this fund.

In the process of its business Complainant may be compelled to

provide this fund for incomplete depreciation from its other properties, from its reserve accounts, from its surplus, from borrowed money, or from the sale of securities. Whether this fund be provided in one way or another does not concern any one else than Complainant and its shareholders.

This record shows that since 1902 this Complainant has had
314 active and untiring competition to meet, in operating its plant in Louisville.

So that the theory that Complainant ought to exact from its patrons a sufficient amount each year to pay all of its operating expenses, all of its current repairs, and provide a sufficient depreciation fund to care for the property when the time comes for its renewal, and over and above all these expenses, to yield to Complainant a fair and adequate return upon its investment is an ideal condition, that can only be approximated according to conditions over which Complainant neither has nor can have control.

The laws under which it is created expressly forbid that it shall either consolidate with or purchase its rival in business. The law demands that Complainant shall to the end exist under conditions which render it utterly impossible for it to obtain a fair reward for the service it renders. It is not a theory, but a condition that confronts it in the conduct of its business in the City of Louisville, and this record abundantly shows it.

The Master, on page 50 of his report, after stating that he is satisfied that a fund to cover depreciation of plant is necessary, and that this fund should come out of earnings, states that because different parts of the plant last longer than other parts, and because the percentage of depreciation on different parts of the plant and property is not subject to a general law or rules, states:

"To establish an average is beyond my power, as the evidence does not aid me in this regard."

Complainant excepts to this part of the report of the Master, and insists that the record does show what amount is necessary and proper within a reasonable degree of accuracy that is necessary to be set aside for the depreciation fund.

Complainant's President, who has been engaged in the business for twenty-five consecutive years, says that:

315 "It will not be found very far from ten per cent. It might be something under that, and it might be something more, but between seven and a half per cent and ten per cent is, in all likelihood, the amount that will be found necessary, and these estimates will necessarily vary, and will be varied from time to time as experience is gained."

Caldwell's first dep., p. 604.

Mr. Hume, the General Manager of Complainant, who has devoted at least twenty-five consecutive years to the telephone business, over an area one thousand miles long and four hundred miles wide, comprising a system of exchanges and toll lines, says that "the proper depreciation is from seven to seven and one-half per cent of the cost of the plant."

Hume's dep., p. 109.

He states:

"Well, that is a matter and a feature of the business that has called for the closest study and attention on the part of the best operating men and the best engineers that could be gotten hold of. I mean, that question of depreciation as applied to telephone properties generally. The same general condition that govern one in reaching conclusions at one place, enter into consideration at another, but the same results are seldom found, because the conditions confronting a plant in one city are, for the most part, so radically different from the conditions that confront the same kind of a plant in a different city. In the Cumberland Telephone & Telegraph Company's system that has been markedly true, because our lines run from up in Indiana and Illinois clear on through to the gulf coast country, but speaking of our experience in Louisville, a ten-year term, and during that time a great deal of the property having been put there as brand new property, you can only judge by your experience generally and by the condition of the plant you had ten years ago, and the relative condition of property that has been put in during that time, these succeeding nine, eight or six years and on down to the present, but taking all of that into account, I am sure that the percentage we are working on is as small as we could dare take with any degree of safety, that is seven or seven and one-half per cent."

316 Mr. Crumb, a telephone engineer, introduced as a witness for Defendant, states that seven per cent of the cost of the plant is proper for depreciation, and this does not include maintenance repairs.

Crumb's dep., p. 80.

Mr. Levings, another witness introduced on behalf of Defendant, states that telephone engineers differ as to the amount of depreciation that should be set aside—that the per cent of the cost of the plant ranges from twelve to fifteen per cent, and when asked to explain what he means by this, says:

"I mean by that expression that there are two ways of considering what is commonly termed depreciation. These two ways are subjects of argument among all engineers, and one way of arriving at a depreciation figure includes certain expenses which other engineers include as maintenance charges. When such a procedure is followed, the depreciation charge naturally is increased over that which is used by an engineer who does not include this disputed maintenance charge. Therefore, I say that some engineers calculate their depreciation with this disputed factor, while I do not."

Levings' dep., p. 56.

Mr. Levings thinks that in Louisville a depreciation charge of five per cent per annum on the cost of the plant would be sufficient.

Levings' dep., p. 37.

Mr. Polk, a telephone engineer, was a witness for the Defendant, and says:

"I would set aside (for) the depreciation account practically five

per cent. of the physical material—physical value. I have set aside fifty thousand dollars a year, and any renewals made I would charge against that account."

Polk's second dep., p. 71.

He further states that it is at last a mere matter of each man's individual opinion of what is sufficient; that engineers differ;
317 that the man who has best knowledge of what is necessary is the general manager of the company.

Polk's second dep., p. 73.

H. Blair Smith, Auditor of Complainant, who has been such for more than ten years, who has of necessity a ripe experience in determining the life of telephone properties, and who, of necessity, has an intimate acquaintance with the cost and method of operating the Louisville plant for the past ten years, states that from his experience in the telephone business, he believes that a depreciation of seven and one-half per cent on the cost of the plant is justifiable.

Smith's first dep., p. 45.

He also states the difference between depreciation and maintenance to be:

"Maintenance is simply the repair of the property.

Yes, repairing troubles, replacing lines that are blown down, adjusting instruments and replacing light repairs like cords on telephones, and cords of switchboards, resoldering connections, replacing micas and fuses that are burned out and things of that kind.

Maintenance is simply the keeping in repair of the property; and reconstruction is caused on account of depreciation, and is a replacement of the property which is no longer serviceable or must be discarded on account of having become useless, because of newer inventions."

He further states that:

"Depreciation is the natural wear and tear that occurs to everything that is exposed, everything except the ground. Depreciation in telephony is the depreciation, or rather the antiquation of the plant, as well as its decay."

Smith's first dep., pp. 44-5.

This witness also sets out in great detail the different things that are included under each heading of expense. These headings of expense show clearly the difference between maintenance and maintenance reconstruction, and it is made clear that this is a difference between the two accounts.

Smith's first dep., pp. 15-17.

318 There is no evidence in this record which in the slightest degree contradicts or varies what has hereinabove been shown to have been said upon this subject.

The Master, on page 51 of his report, says:

"It may be mentioned in passing that during January, February

and to the 6th of March, 1909, Complainant spent only $491.65 for maintenance and reconstruction. This fact may fairly be accounted for by assuming that no great outlay was required for such purpose."

In this the Master has, by inadvertence, misstated the fact. It clearly appears that the item of $491.65 was not for maintenance or reconstruction, but was construction.

Warren's dep., p. 411.
Wilkinson's report, p. 19.

Complainant tendered to the Master the financial operation of the Louisville plant for the whole year 1909, and offered to go into the experience of Complainant with the plant during that year, but the Master stated:

"Right now I am not able to say whether that would be important or not. When we get through with the proof, if we want it, I will take it myself. I will just order that myself."

Counsel for Complainant:

"I merely make the tender so it cannot be said later that we did not bring these things down to date."

The Master:

"I think we had better defer that for the present."

Hume's dep., p. 154.

For these reasons, Complainant insists that while the Master correctly reported that seven per cent per annum of the bare cost of the plant was a proper amount to allow for depreciation, his application of the depreciation fund is entirely erroneous, and to his method of the treatment of the depreciation fund Complainant excepts.

319 VI.

"He will ascertain and report whether the reasonably probable increase from Complainant's plant and property employed in its business in said city will, within the next few years, amount to a fair annual return upon the reasonable value thereof if the provisions of the ordinance approved March 6, 1909, are put into operation."

The Master states that, after having as heretofore stated, found the value of Complainant's plant, the gross and net earnings for 1905, 1906, 1907 and 1908, the percentage of net earnings to the reasonable value of the plant, and a proper allowance each year for depreciation of plant, and probable net loss to Complainant the first and second year, should the ordinance rates be enforced, and basing his calculations upon all these things, and further assuming that the probable value of the plant in 1911 will only be increased less than $50,000, the probable net income of Complainant for 1911 will be at the rate of 8.60 per cent of the then value of the property.

He further finds that in 1912 the net return will probably be ten per cent upon this same value, which he assumes he has found for the year 1910.

The Master states:

"My reasons for so finding are that the increase in the number of subscribers in 1911 and 1912, should the ordinance rates be enforced, will be large, and that the increase in net earnings thereby will more than off-set the loss of earnings that will be caused by the lowering of rates."

Master's report, pp. 54, 55.

Complainant excepts to this finding of the Master, because it is based upon an erroneous assumption of facts, and fails to
320 take into consideration the inherent and essential features of the telephone business.

As has heretofore been pointed out in these exceptions, the Master has proceeded upon a fundamentally erroneous theory of the telephone business. He has failed to take into consideration the fact that as the subscribers increase, the cost of the plant increases correspondingly.

Caldwell's first dep., pp. 606-7-9.
Polk's second dep., pp. 105-111.

Mr. Caldwell says:

"Well, if you increase your subscribers you would be compelled to increase your facilities, and your capital account. You would be compelled to increase your operating force to take care of the greater number of calls that would go over the system; you would have to encounter certainly a shifting of customers from one class of rates to another, which expense you would be certain to meet, but you do not know what it would be. The growth that would take place in that, you could not tell whether it would be on the maximum or the minimum, or in what direction in the city it would be found; it would all be a matter of speculation, so that to forecast the future on that, is a matter of speculation and doubt."

Caldwell's first dep., p. 606.

The Master has failed to take into consideration the fact that as the number of subscribers increase, the expense of conducting the business per subscriber increases.

Hume's dep., pp. 171-2.
Polk's second dep., pp. 118-19.

As was tersely stated by the Chicago Commission:

"It is a tradition in telephone circles that the service per telephone costs more as the number of telephones connected with the plant increases, as the number of telephones increases, each sub-
321 scriber has the opportunity to call upon more people by telephone, and the law of averages would indicate that the number of calls per day from each telephone should increase, thus making the service more expensive to the operating company, provided the service is flat rate service and unnecessary use of the telephone is not deterred by a measured rate charge. This condition seems to have worked out in practice, according to the statements

of telephone companies at Cleveland, Indianapolis, and elsewhere, and flat rate service seems to increase in cost per telephone as the number of telephones attached to a system increases."

Rport of Committee to City Council, p. 74.

There is one witness in the record who has had actual experience in dealing with telephone rates in the City of Louisville, whose testimony is of more service in solving this problem than the theories and opinions of witnesses who have not had experience, however skilled they may be.

Mr. Caldwell, the Complainant's President, says:

"We have tried and experimented with every conceivable class and kind of rates and every theory of rating that those that were best qualified to talk on the subject have suggested, we have tried, and our experience there was that every one of them proved disastrous, disappointing and a failure. In other words, we had poorer results, until this last series of rates which we inaugurated some two years ago—they show a betterment of conditions, the others all showed worse, so that it was not a matter of theory, but it has been a matter of actual experience with us in the City of Louisville."

Caldwell's first dep., p. 607.

Experience gained in operating a plant under certain rates is the only safe guide to follow in forecasting the future upon different rates.

La. R. R. Com. vs. Telephone Co., 212 U. S., 426.

Mr. Polk states that it is a mere gamble as to whether the rates prescribed in the ordinance are remunerative even in a plant only costing $1,300,000, including real estate.

Polk's second dep., pp. 117-18.

322 If, therefore, the value of the plant be added to so as to make its value $1,500,000, and the increased patronage entails a greater expense per subscriber, it is manifest that the net profit would be less on a plant costing $1,400,000 (as the Master assumes it will be—Report, p. 54) than a plant costing $1,300,000.

For these reasons Complainant excepts to this part of the Master's report, and insists that it is based upon an incorrect theory of the telephone business.

The Master should have reported that the certain result of enforcing the rates prescribed in the ordinance would spell disaster, and the more rapid the growth of the exchange the sooner would disaster overtake it.

VII.

"He will, from the testimony, ascertain and report whether the average net income or return from reasonably safe investments in business enterprises in said city, approximately resembling that

of Complainant, is above or below six per cent upon the reasonable value of the plant or property from which said income is derived."

The Master reports that Louisville Home Telephone Company five per cent bonds are selling on a basis of $69.75; the Louisville Gas Company's five per cent dividend-paying stock sells for $95.00 a share; Kentucky Heating Company's five per cent preferred stock sells at $90.00; Louisville Traction Company's four per cent dividend stock at $94.00; Bank of Kentucky pays eight per cent, and usually adds to its surplus fund annually; the Union National Bank pays ten per cent dividends, and adds to its surplus account; the Fidelity Trust Company in 1909 paid twelve per cent.

The Master then states:

323 "It may be permissible to classify all public utility companies—such as traction companies, water companies, gas companies, and lighting companies—with telephone companies. It is doubtful whether banks should be placed in such a class, but certainly manufacturing and industrial companies are not in the same class with telephone companies."

Master's report, p. 56.

Complainant excepts to the statement of the Master in stating that the owner of a telephone property is not entitled to the same rate of return on the value of its plant that is received by banks, manufacturing and industrial concerns.

It is apparent from the evidence that there are no greater risks in banks, industrial or manufacturing concerns than is in the telephone business, and it appears from the Master's report on this branch of the case that while a five per cent dividend paying stock of a gas company sells for $95.00, and a traction stock paying a four per cent dividend sells for $94.00, a five per cent telephone bond only sells for $69.75.

The Master further states on pages 56, 57:

"But it is insisted that unusual risks and hazards attend the telephone business, and that on account of these hazards a greater return on the money invested should be permitted by the rate-regulating powers. It is urged that new capital must be continually put into this business, so that its lines and operations may be commensurate with the growth of the cities where they are located; that otherwise, the business must come to a standstill, and new companies will enter the field and take the new business offered and perhaps the old business. It is urged that eight per cent or perhaps ten per cent on the money invested would, therefore, be a fair return."

The Master then finds that the average net income or return from reasonably safe investments in business enterprises in Louisville approximately resembling that of Complainant, is below six per cent

324 upon the reasonable value of the plant or property; and that if banks be included with telephone companies, the net average income is a little above six per cent.

Complainant excepts to this part of the report of the Master, and

insists that he should have reported that a telephone investment is entitled to ten per cent net return upon the actual investment.

It is shown in the record that as a telephone plant increases its patrons it must increase its capital account, and in order to increase its capital account it must sell its securities, and in order to sell its securities it must show an earning power sufficient to attract new capital to the business.

Mr. Caldwell states a telephone property is successfully financed as follows:

"By an increase from time to time, of its capital stock, has been found the only practical way. Where bond issues have been resorted to, one issue clouds and interferes with subsequent issues, but where additional shares of stock are made and they all stand on the same basis, as they do stand on the same basis, the one issue does not take precedence over or destroy the standing of the next issue, but on the contrary they rather have a tendency to aid each other, and hence that has been found to be the most practicable and satisfactory, and, I may say, the only practical way to finance a telephone system."

Caldwell's dep., p. 609.

He further states that there must be additional capital invested in the business from time to time to meet the growth of the business.

"The growth is continued and continuing; it is no let up, but on the contrary continues to grow, and unless the company meets this growth, its usefulness becomes impaired or lessened, and it at once is on the down grade instead of the up grade. It must go forward continuously, it must meet the public requirements, and to do this it must have continuously additional capital."

325 When asked what effect the earnings have upon its ability to increase its capital account, he states:

"The whole question comes right there. Unless the company is on a profitable basis, and is doing a business that is profitable, it has no credit, and it is necessary for it to have credit. Therefore, in order to attract new capital, it must present sufficiently attractive profits to cause people to put their investments in the telephone business rather than in some other line of business, and, of course, unless it can show a profit in its business, it cannot possibly influence or attract capital to it. That is the key to the whole financial problem."

And he states that the net profit on a telephone property ought to be an actual cash return on its investment of ten per cent.

Caldwell's dep., p. 610

Mr. Polk thoroughly sustains all that Mr. Caldwell says upon this subject. He states that the construction account must be increased year by year; that to get new capital a sufficient return must be shown to attract new investors, and that a telephone property is entitled to at least ten per cent net profit.

Polk's second dep., pp. 111-113

The Chicago committee recommended, and the Council approved, a net return to the Chicago Telephone Company of ten per cent.

Report of Committee to Council, p. 29.

Mr. Levings says that he does not know any one who has money to invest in a telephone plant that will not promise at least eight per cent profit. He is then asked this question.

"Do you regard 8 per cent as a fairly reasonable profit for a man to make on his telephone investment

A. I should say so."

Levings' dep., p. 47.

A committee of the New Orleans Board of Trade, in investigating telephone conditions in that city, recommended that the
326 company be permitted to earn a net return of ten per cent on its investment, and quoted with approval the following taken from the telephone report of the Merchants' Association of New York having under consideration what constituted a reasonable margin of profit for a telephone company. The report says:

"The telephone business demands a continuous accession of fresh capital to satisfactorily serve the public. Having in view the importance to the public of constant improvement and expansion and the greatest possible efficiency of telephone service, as well as the necessity of offering an attractive investment to new capital to provide for such expansion, it is the opinion of this committee that to provide a fair return on capital actually and necessarily invested and a proper allowance for contingencies, 10 per cent margin above operating outlays is a reasonable and proper margin in the telephone business. In the various movements hitherto made for the limitation by law of telephone profits, wherever the permissible percentage of profit has been dealt with, this margin has been accepted as a proper one. It has also been specified by law in the case of some other public service corporations."

Report of Telephone Conditions in New Orleans, p. 77.

Mr. Polk, in his second deposition, states that a telephone company is entitled to a greater return than a steam or street railroad. He states:

"Corporations have different ways of figuring. Street railways, steam railroads, figure five per cent as a safe return. Of course, a concern like a telephone company, I should consider as more than a fixed railroad, because the nature of its business fluctuates, and there are more risks than would be on a trunk line of railroad, and I would say it would have a higher return than a trunk line railroad."

He then says:

"I said I do not think it should be less than 10 per cent."

Polk's second dep., p. 113.

Complainant, therefore, excepts to the report of the Master
327 on this branch of the case, and insists that he should have reported: That Complainant is entitled to earn per annum ten per cent net upon its plant in the City of Louisville.

VIII.

"He will further ascertain and report from the testimony whether the reasonably probable net income of Complainant from its plant and property employed in its business in said city, after making all proper allowances for cost of operation, claims for damages, repairs and depreciation, would, during the years 1909 and 1910, come up to or exceed the said average income upon such other business enterprises if said ordinance should be put into operation, and he will state in his report the results of his estimates and the basis thereof."

The Master states under this heading that his answer to the seventh question is the basis of his answer to this question.

Therefore, Complainant excepts to the report of the Master under this heading for the reasons stated in its exceptions to the Master's report under the seventh heading.

IX.

"He will also, from the testimony, report his conclusions and the basis thereof as to the reasonably probable extension and increase of the Complainant's business in said city within the present and next succeeding year, and the reasonably probable extent and effect thereof, both upon its gross and upon its net income."

The Master, under this heading, states:

"The evidence shows that the Complainant company has thus far constructed its plant with a view to and with the expecta-
328 tion of a substantial increase in the number of subscribers. This policy, under the evidence, I find is wise and prudent, and ought to be approved. The business centers are not apt to be changed. They are generally stable and practically permanent. On the other hand, the residence centers frequently change, and this necessitates a change in telephone lines, and a prudent company will construct its plant so as to be prepared for such changes."

Master's report, p. 58.

The Master also states that Complainant has laid its conduit system and erected its pole lines and equipped the same so as to be in a position to take care of two thousand new subscribers without delay, and this the Master commends as being wise and proper, but adds: "Should the ordinance rates be enforced, the wisdom of Complainant's foresight in providing its surplus plant will be amply justified."

The Master then states that a lowering of Complainant's rates, independently of the natural growth of the plant, will largely increase the number of subscribers, and that such increase will begin immediately after the lower rates are put into effect.

The Master then adds: "The probable extent of such increase in the numbers of subscribers, as well as the increase in net earnings to be caused thereby, is problematical. But considering the statement of the witnesses I am of the opinion that if the lower rates should be enforced in 1911, that by the end of 1912 the probable loss in revenue of about $49,000.00 would not only be wiped out,

but a substantial increase in net earnings would result, without a corresponding increase in expenditures."

Master's report, p. 59.

Complainant excepts to this part of the report of the Master, because the evidence shows that surplus facilities are necessary in every plant, and there must be at all times kept a surplus of facilities to take care of new patrons, and because the Master assumes that increased patronage will not increase expenses and capital account.

329 In reply to a question as to whether or not it is necessary and proper that new business be anticipated, and facilities provided prior to the offering of new business, Mr. Caldwell says:

"Yes, for the reason that it requires quite a length of time to provide additional facilities on an exchange and the customers could not be expected to wait so long a time for the service; hence, it is not only necessary but it is practiced in all companies which expect to meet the public requirements, to keep a certain surplus reserve of facilities always on hand, and as they are used up, to provide others, so that they will be able to meet the demands promptly, and any other method would leave the service open to very grave criticism and reflection, for the old customers have an interest in having new ones connected, have an interest quite as important as the new customer, for every new customer gives an additional value and opportunity to all the old subscribers.

Q. What would be the result, practically, if the company should not provide facilities for future growth before such new business was offered, but should wait until the new business was offered before undertaking to provide the facilities necessary to serve the new patrons?

A. Well, as it would often require a year in which to provide additional facilities, it is quite plain what a disappointment it would be and how far short a company would fall of meeting the public requirements, for the customers usually desire the service at once, and certainly could not be expected to wait longer than a very few days. They rather expect to have the facilities supplied to them within twenty-four or thirty-six hours, and they have been accustomed to that so long, that it is now recognized as a fixed condition. If, therefore, conditions should arise that would make delay in providing service longer than this, the company would be considered as wholly inadequate, and indeed, open to the criticism of being a rather poor affair."

Caldwell's first dep., pp. 593-4.

There is no witness in this record who contradicts or varies this statement in the slightest degree; indeed, the statement itself is so entirely reasonable and self-evident that we apprehend no intelligent witness could deny it.

If, however, this surplus of facilities should be used in sup-

330 plying the additional patrons to be obtained under the ordinance rates, Complainant would have to provide additional surplus facilities to accommodate the new subscribers to be obtained on the normal growth of the city, unless it be assumed that Louisville

is to stop growing and become a finished city, which no one will admit.

The evidence is that there must be at all times a surplus of facilities.

But the Master assumes that the Complainant will find this new patronage at the exact points where the surplus facilities are, and at the same time he says that the new business to be expected will naturally be in the residential sections of the city, as well as in the suburban districts, and that in the business districts there will be smaller increases.

Master's report, p. 59.

The Master overlooks the evidence on this subject. Mr. Polk states that the surplus cable that he is speaking of exists in the conduits, which, of course, are in the central business portion of the city and not in the suburban or residential sections.

Polk's second dep., p. 137.

But in another place, says the cable system covers the entire city.

Polk's second dep., p. 140.

Just what he does mean is left in doubt. But Mr. Caldwell says there is no such surplus cable facilities, and adds:

"We carry and aim to carry a certain excess service to take care of customers, as they would come in the ordinary growth, and I do know that we have some surplus here. It might be that we would have that amount of surplus in some conduit space. We might have it in buildings. We might have adequate space in our buildings, and as I say, in the conduits, but to say that we have that as a
331 complete equipment, ready to take on those customers, that would not be true."

Caldwell's second dep., p. 11.

Mr. Polk was asked to state what would be the additional expense per subscriber if Complainant obtained eight thousand more subscribers at the points where the cables are; and he said, twenty to twenty-five dollars per station; "that is, if the subscribers are right where they can be served so that it would take nothing but the drop to make the installation."

Polk's second dep., p. 140.

What the witness means by the "drop" is the drop wire from the pole or cable to the residence, or business man's house, interior wiring, instrument and the labor and expense of installing it.

But Mr. Polk did not mean to say that this was all the capital that the company would have to expend in obtaining additional subscribers.

Thereafter, in reply to an inquiry as to what new capital would be required to install eight thousand additional subscribers, he states:

"The question, the way it was put to me, as I understand it, was, assuming that there would be no expense except that of running the drop and installing the telephone at the subscriber's station, what

would it cost per station to add eight thousand telephones, and I stated, assuming that those were to be the only expenses, it would cost about $25.00 per line.

Q. What other costs would there be in connection with installing 8,000 new subscribers here in Louisville?

A. The cost would be increased in the switchboards, increased in the trunking facilities between the offices—if 8,000 additional subscribers were added, of course, it would be unreasonable to assume there would be no expense at the outer end; there would have to be a certain number of additional cross-arms put on, a certain number of additional insulators, and a certain amount of aerial
332 wire strung; so the assumption, of course, is an impossible condition that wouldn't exist."

Polk's second dep., p. 145.

And he again states:

"At the present time the switchboard is valued at $203,000, approximately; 10,000 line equipment would make the present average cost of switchboard for one line twenty dollars and a fraction. In order to place 8,000 more subscribers to the system, they would have to have at least 4,000 additional switchboard capacity average, and as these switchboards grow, being of a multiple character, the cost per line will increase; so it is reasonable to assume that these 4,000 additional lines would cost at least $22.00 per average. That would make an additional expense of 22x4,000, which would be $88,000 for switchboards alone. Also, for the expense at the outer end: stringing what additional aerial wire might be necessary, putting on additional cross-arms, and insulators, we will say, $5.00 a station, 8,000 would make an additional of $40,000 expense. I figure that this would probably be a reasonable additional expense assuming that the cable facilities were ample."

Polk's second dep., p. 146.

So that adding the $25.00 per station, as above stated, amounting to $200,000, to the $40,000 and the $88,000, makes the additional construction account expense $328,000.

But the Master also says that the additional subscribers would come largely from the residential and suburban section of the city. Of course, this means more expense in equipping and serving these patrons than would be the expense of equipping and serving a like number of patrons in the business districts of the city, because it means longer wires, further distances for troublemen and other employés to go to repair telephones and wires, and other expenses necessarily entailed in operating the plant.

Caldwell's first dep., p. 597.

This would also mean that the growth of the plant would be
333 upon the cheap rates, and not upon the high rates—that is to say, the growth would be largely upon the residence rates and not upon the business rates. The great reduction in the rate ordinance comes on the business rate, and not on the residence rate. On the business rate it is $2.00, and on the residence rate it is only

$0.50 per month. It is shown that there are 730 patrons in Louisville paying the maximum business rate of $7.50 (which the ordinance reduces to $5.50 per month), and there are 875 now paying the maximum residence rate of $3.50 (which the ordinance reduces to $3.00 per month).

Smith's first dep., p. 39.

The immediate effect of putting into effect the ordinance rates would be a reduction of $2.00 a month on each of the 730 business telephones, amounting to $17,520.00 per annum, and the reduction in the residence rate would only amount to $5,250.00 per annum; so that in order to overcome the loss in business telephones of $17,520.00 per annum an enormous number of residence telephones would have to be installed at even the maximum residence rate of $3.00; and if we assume that the residence rate of $3.00 only yields a fair profit to Complainant, then Complainant could not install enough residence telephones to offset the loss in revenue from the business telephones, because there could not be anything more than a fair profit on the residence telephones at $3.00 per month, regardless of the number installed.

It must be remembered that Complainant's witnesses say that the ordinance rates are unreasonable, and the chief witness for the defendant, Mr. Polk, states that it would be a mere gamble as to whether the Complainant could receive a return on the ordinance rates, assuming no more subscribers to the exchange than at present exist, and assuming the plant to cost only $1,300,000.00, including real estate.

Polk's second dep., pp. 120-1.

334 It is respectfully submitted that no one has the right to hazard an opinion as to what the result would be to Complainant if the rates prescribed in the ordinance should be enforced, so far as forecasting where and what classes of patrons it would receive. There is but one safe rule to follow, and that is the experience of the past, and this rule has received the sanction of the Supreme Court of the United States, as above stated, in La. R. R. Com. vs. Telephone Co., 212 U. S., p. 426.

The Master should have reported that there was no reasonable method by which the future could be forecasted if the ordinance rates should be adopted.

The Master states, on page 59 of his report:

"I am by no means satisfied from the evidence that the increase in the number of subscribers will, on an average, increase the cost of operation per telephone or station. In other words, if the company now has nine thousand subscribers, and two thousand additional subscribers be taken on, I do not believe that the cost per station for eleven thousand will be as great as it is for nine thousand subscribers."

Complainant excepts to this statement of the Master because:

(1) The Master disregards the entire evidence of all the witnesses to the effect that increased patronage entails increased expenses.

Caldwell's first dep., pp. 607-8.
Hume's dep., pp. 171-2.
Smith's dep., p. 43.
Crumb's dep., p. 90.
Polk's second dep., pp. 118-119.
Committee's report to City Council, p. 12.
Pamphlet attached as Exhibit to dep. of Caldwell referred to in Caldwell's first dep., pp. 616-9.

(2) The Master entirely overlooks the uncontradicted evidence in the record to the effect that so soon as the present facilities are used, additional facilities must at once be installed so as to at all
335 times have a surplus on hand to care for new patrons in the business.

Caldwell's first dep., p. 592-4.

(3) The Master also overlooks the fact in forecasting the future that it is problematical as to where new patronage is coming from. Even where a plant is built brand new, by the time the plant is put into operation, conditions are so changed that the company finds itself in the attitude of having surplus facilities in one part of the city, and the immediate necessity of adding additional facilities in another part of the city.

Polk's second dep., pp. 106-7.
Caldwell's first dep., p. 592.

(4) The Master overlooks the fact that it is shown in the record that during the taking of this proof, the paramount necessity of supplying additional cable in certain sections of the city confronted the Complainant.

Caldwell's second dep., p. 11.

Mr. Caldwell is asked to state what would be the effect upon the Complainant's business in the event the ordinance rates should be put into effect, and he states:

"My opinion is that we would have to provide a considerable additional capital outlay; that we would get little or no additional gross revenue, certainly we would not get more than would be off-set by the additional expense. My deliberate opinion is it would be a very losing and disastrous experiment."

Caldwell's first dep., p. 608.

Mr. Polk says it would be a mere gamble.

Polk's second dep., pp. 120-1.

For these reasons it is insisted by Complainant that the Master should have reported that, if the ordinance rates be adopted:

(1) The future of Complainant's plant in Louisville is too uncertain to forecast; and

(2) Complainant's business would be destroyed.

336 X.

"He will also ascertain and report as to any peculiar conditions, if any, of the steady and reliable income the Complainant may have in said city, and also as to any peculiar disadvantages or risks, if any, which it encounters, or may encounter therein, which, with reasonable probability, may affect or offset such advantages, and the extent thereof."

The Master states:

"I find in the evidence no peculiar disadvantages that now affect the earning power of Complainant, or that are likely to do so in the future."

Master's report, p. 60.

The Complainant excepts to this statement of the Master and insists that he should have reported that the active competition which Complainant has, during the past four years, and now encounters, is a very serious disadvantage to Complainant, in causing Complainant to be unable to earn a proper amount upon the value of its Louisville plant.

In the report of the Board of Trade of New Orleans relative to telephone conditions in New Orleans, Louisiana, on page 41, it is said:

"Taken as a whole, the telephone business in this country has not been anything like a complete success. There have been innumerable failures, large and small. Competition has been very keen, and not always honest; in many instances, promoters have swindled the public in telephone ventures; distrust has been created; the financial interests of the country have lacked confidence in the business; and, notwithstanding the fact that the telephone is a public utility, savings banks, trust companies and other like institutions do not invest money or trust funds in telephone securities—one of the reasons for this being that the assets could not be turned
337 to any other use than that for which they were originally intended.

"This brings home the fact that the appliances, plant and structures of a telephone company are of a very unstable nature. The property is essentially perishable, easily damaged, and deteriorates very rapidly. The industry has not yet reached a point of stability, and costly appliances are frequently being superseded by other inventions, and have to be discarded long before they are worn out; radical changes are continually being made in construction methods and in equipment, and all these things have contributed to make the telephone business, taken as a whole, an extremely hazardous one. If a telephone company should cease to do business, it would not be able to salvage more than about 20 per cent of the original cost of construction."

In speaking of the results of competition in the telephone business, this report states, on page 98:

"Competition does undoubtedly improve the service; both companies strive to please their patrons and are courteous and attentive.

Prices are reduced, often to wholly inadequate figures, and the rival companies try, by selling a public utility below cost, to force one another from the field. Thus far, the public appears to be getting the best of it; but from the start the utility of the telephone as a public service is impaired and after the first years, when it is clear that the business is not giving financial returns, fresh capital is impossible to obtain, the very maintenance charges cannot be met, extension is impossible, and 're-organization' ensues. As the struggle has progressed, the service has been getting worse and worse, and the public is made to feel the disadvantages of competition."

In speaking of the effect of competition in exchange telephone service, Mr. Caldwell, Complainant's President, says:

"It produces great dissatisfaction, so that no telephone company is looked upon as agreeable and satisfying by people that are in such a situation, and the various ordinances which have been passed and experimented with by the city authorities have in a very large measure been the outgrowth of that state of affairs, and an effort to try to cure the difficulty, but the difficulty is inherent in the
338 fact that there is competition in a business and that competition is destructive to the business instead of beneficial."

Caldwell's dep., p. 620.

He also states that the expenses are greater under competitive conditions, because the business does not flow in a normal way—"The community, telephonically speaking, does not act in a normal way"—and that this produces abnormal expenses and abnormal conditions.

Caldwell's dep., p. 621.

For these reasons Complainant excepts to this part of the Master's report, and insists that he should have reported:

That competition in the telephone business creates peculiar disadvantages, which must exist so long as competition exists, and that this disadvantage is now being encountered by Complainant.

XI.

"The Special Master will also report his conclusions upon such other facts as the development of the case at the hearings before him may appear to be important to a determination of the issues made by the pleadings."

The Master speaks of the large difference between the witnesses who have testified as to the value of Complainant's plant in Louisville.

While this is true, the Master fails to state that this difference is brought about by a lack of knowledge of the facts by some of the witnesses.

Complainant excepts to this part of the Master's report and insists that he should have reported that there is no substantial difference between any of the witnesses who speak with a due knowledge of facts.

339 Complainant's President, General Manager, Auditor and Assistant Superintendent of Plant do not differ materially as to their estimate of the value of Complainant's plant.

Messrs. Crumb and Levings, two of Defendant's witnesses, show in their evidence on cross-examination that they have not a sufficient knowledge of the Louisville plant to entitle them to express an opinion upon its value. Mr. Polk, the other witness of the Defendant, does not differ materially from Complainant's witnesses whenever he is speaking of matters concerning which he has adequate knowledge.

The differences between Mr. Polk and Mr. Jagoe as to the value of the plant are shown not to be material differences whenever they speak of matters concerning which Mr. Polk has an equal means of knowing the facts.

The most material difference between them is as to the value of the underground conduits. The difference between them on switchboards and other apparatus is with respect to different types of apparatus used for the same purpose. Complainant believes that it is better and safer to purchase its equipment from the Western Electric Company, and Mr. Polk thinks that other equipment, costing much less money, should be used in constructing the plant in Louisville. This difference comes about from the experience of Mr. Polk in building telephone plants. His experience is in building, and not in operating telephone plants; and Complainant's witnesses speak with a knowledge of building and operating plants. Its experience in operating plants has taught its officers to rely upon the Western Electric Company's apparatus. While it is more expensive to purchase, it is believed by them to be more durable and to furnish a more reliable service.

The difference between Mr. Polk and Mr. Jagoe as to cable comes about from the fact that Mr. Polk merely estimates that the plant contains certain quantities and size of cables, whereas Mr.
340 Jagoe gives actual quantities and sizes of cables, and if Mr. Polk's units of value be applied to Mr. Jagoe's statement of quantities and quality of cable, the difference is not material.

Mr. Polk estimates the poles in the plant to be 11,000. Mr. Jagoe states the number of poles to be, by actual count, 13,870. Mr. Jagoe gives the value of these poles, together with the appliances thereon, and the labor of setting them, at what it has actually cost Complainant during the past two years to erect similar poles in Louisville, and also the price that other companies pay in purchasing a half-interest in similar poles. Mr. Polk estimates what, in his opinion, that class of poles should be purchased, equipped and erected for.

For these reasons, the Master should have accepted what the witnesses said who have a knowledge of the facts, and not the statement of witnesses who are shown not to have had a sufficient knowledge of the facts to enable them to place a value upon the plant.

The Master states that several hundred thousand dollars of construction work on Complainant's plant is rested solely upon the Auditor's statement that vouchers representing in the aggregate these

large sums, were approved by him and were entered on the company's books as proper charges against construction.

Complainant excepts to this part of the Master's report because it appears in what has heretofore been said in reference to the cost of Complainant's plant, that the local Manager, and then the Assistant General Manager, while the facts were fresh and errors easily detected, scrutinized these vouchers, and approved them before they were sent to the Auditor to be entered upon the books and records of Complainant.

Hume's dep., p. 105.

The Master refers to the fact that these vouchers bore the
341 notation of some unknown foreman, or gang boss, to the effect that the work had been done and that it was for construction account, and further refers to the fact that the Auditor did not have personal knowledge of a single feature of any such vouchers.

Complainant excepts to this part of the Master's report, because there is no other known way in which construction account can be ascertained. The foreman or gang boss is selected because of his ability to know how to do work, and what work has been done. His notation at the time that the work has been done, and on what account, is the best method by which such facts can be ascertained, and when the local Manager, and then the Assistant General Manager, under whose direction such work has been done, examines and approves the notation of the foreman or gang boss, there is no just ground for criticising the method of keeping such records and accounts.

The Master refers to the fact that the construction account for a number of years consisted "largely of items similar to those just above referred to," and amounts to a large sum in the aggregate. He then states that he is impressed by the idea that it would not be surprising if errors "as to the proper distribution of these vouchers had occurred by reason of the carelessness or ignorance of the agents of Complainant who made notations on the vouchers."

Complainant excepts to this part of the Master's report, because it appears that accountants representing the Complainant and the Defendant had full and free access to all of Complainant's books, records and vouchers; that they examined the construction account, and did eliminate all errors they found and reported the result to the Master. If there were other errors they were not discovered by the accountants representing either Complainant or Defendant; they were not discovered by Complainant's Auditor, and, while it may be true, as the Master states, that there are other errors,
342 yet Complainant insists that the Master cannot assume that any such errors exist which could affect appreciably the result reported by Complainant's Auditor and the expert accountants representing the Complainant and Defendant, and as shown to have been entered upon Complainant's books from time to time as the work was done and the cost thereof ascertained.

The Master states that he has ignored the Supplies Account and the working cash capital in making his estimate of the value of the plant.

He states that supplies are bought and paid for by Complainant and retailed to the exchanges as needed, and the exchanges pay Complainant the cost price and an additional 10 per cent, and also the ordinary expenses of the Supply Department.

Complainant excepts to this part of the Master's report, because it has been shown heretofore under the heading "Cost of Plant," that supplies have been charged against the exchange at the exact cost to Complainant; that the 10 per cent added was not a profit, but additional cost beyond that paid to the manufacturers, and represented the expense of purchasing, handling and delivering supplies to the various exchanges. The interest on the amount of supplies necessary to conduct the Louisville plant has not anywhere been charged either to construction or expense of the Louisville plant.

The Master states:

"The cash working capital is furnished by the Complainant, and the exchange reimburses the Complainant for all the money it uses. The evidence does not show whether interest is charged against the exchange or not."

There is no evidence that any of the expenses of conducting the Louisville Exchange includes interest for working capital. It
343 is true as stated by the Master that the exchange reimburses Complainant for whatever money it furnishes, but Complainant submits that the money Complainant furnishes to the exchange upon which it is operated is a part of the capital employed in the business and should be treated as a part of the Construction Account, or a part of the capital necessary to operate a telephone exchange.

The Master states there is no evidence in the record tending to show that the plant in Louisville is subject to any disadvantages that do not equally apply to all other plants of Complainant extending over several States.

Complainant excepts to the report of the Master, because it does appear in the record that Complainant has encountered active competition in its business in Louisville; that such competition does prevent normal conditions, telephonically speaking, and that it does actually increase expenses.

It is not shown in the record that Complainant has opposition in its 516 additional exchanges, but it does appear that in the City of New Orleans it does not have competition, and for these reasons Complainant excepts to this statement in the Master's report.

The Master refers to the fact that Complainant pays regular dividends upon its stock, which commands a premium in the market, and that "no satisfactory explanation of these conditions is offered."

From the Annual Report of Complainant for the year ending December 31, 1908, which is in evidence in this case, it will be seen that Complainant has outstanding only $19,680,150.00 of stock upon which it pays dividends, and that it has invested in plant $24,381,297.64

344 That it has invested in real estate and buildings $790,163.23
Material on hand 640,861.40
Stocks and bonds 435,599.04
Cash 457,546.49

Or a total value of $26,705,467.80

It appears in the record that Complainant has a comprehensive system of toll lines uniting its 517 exchanges, and from all these sources it derives a sufficient amount to pay a dividend upon stock of $19,680,150.00
And five per cent bonds of 1,000,000.00

For the foregoing reasons, and others to be assigned on hearing, Complainant excepts to the report of the Special Master, and respectfully prays that his findings be disapproved.

Respectfully submitted,

HUMPHREY & HUMPHREY,
W. PRATT DALE,
WILLIAM L. GRANBERY,
Solicitors for Complainant.

345 United States Circuit Court, Sixth Circuit, Western District of Kentucky.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
THE CITY OF LOUISVILLE, Defendant.

Exceptions to the Report and Findings of the Special Master.

And now comes defendant, City of Louisville, and excepts to the report of Henry Burnett, Esq., the Special Master, filed in this cause on the 17th day of November, 1910, and for cause of exception shows:

First. That the Master, in the trial of the cause on the motion of the complainant, and over the objections and exceptions of this defendant, suppressed the depositions of William Kavanaugh, Charles Meriwether and S. M. Wilhite and held the testimony of said witnesses irrelevant and incompetent; when in fact the Master should have overruled the motion of the complainant to suppress said depositions and should have considered said depositions on the hearing of this cause; said witness Kavanaugh having testified to the value and the cost of constructing the telephone plant of the Kansas City Home Telephone Company and the earnings and expenses of said company, the dividends paid by said Company, and the rates charged by said Company, all of which facts were pertinent and relevant on the trial of this cause; and said Charles Meriwether and S. M. Wilhite having testified as to the earnings and expenses of the Louisville Home

Telephone Company, a telephone company doing business in
346 the City of Louisville, Kentucky, which facts were pertinent and relevant on the trial of this cause.

(See Supplemental Report of Master filed Dec. 10th, 1910.)

Second. That the Master in his said report stated and certified that the complainant was entitled to charge as a part of its operating expenses for operating its plant in the City of Louisville an item denominated "instrument expense," amounting to the following sums for each of the following years:

1905	$11,559.76
1906	12,518.70
1907	13,372.49
1908	13,722.52

whereas the Master ought to have found that the complainant was only entitled to charge as part of its operating expenses the following sums for each of said years representing said instrument expense, to-wit:

1905	$4,000.00
1906	4,000.00
1907	4,000.00
1908	4,000.00

it having been shown in the deposition of W. H. Crumb (page 60) and the deposition of W. C. Polk (page 111), and the deposition of H. Blair Smith (pages 324 and 511), that about ten thousand of these instruments are used by the complainant in its Louisville exchange; that said instruments last about eight years; that they cost about $2.00 per instrument; and that said instruments, or instruments equally as good or better, can be purchased in the open market; and, therefore, the complainant was permitted to charge and was allowed as part of its operating expenses for instrument expense about 65 per cent on the value of the instruments, whereas it should not be permitted to charge nor allowed over 20 per cent
347 thereon.

Third. The Master in said report stated and certified on page 43 of his report that the amounts expended by the complainant in connection with the general expense account for operating its telephone system in the City of Louisville were as follows:

$28,152.52 for the year 1905;
$34,888.46 for the year 1906;
$33,749.19 for the year 1907;
$31,513.00 for the year 1908,

whereas the Master ought to have found that the amounts expended under the head of general expense account in operating complainant's telephone system in the City of Louisville were as follows:

$27,319.78 for the year 1905;
$34,078.84 for the year 1906;
$32,911.33 for the year 1907;
$30,710.06 for the year 1908,

the difference being made up of the following items, to-wit:

$832.74 for the year 1905;
$809.62 for the year 1906;
$837.86 for the year 1907;
$802.94 for the year 1908,

which last named items represent the taxes paid by the complainant on its exchange building and real estate in the City of Louisville, other than on its main exchange. The Master having reported on pages 35, 36, 37 and 42 that the complainant treats the real estate which it owns in the City of Louisville as an outside operation and charges against the earnings of the Louisville exchange rent of over 8 per cent on the said real estate, and charges against the Louisville exchange taxes on said real estate and buildings; and that if the taxes were paid by the complainant out of said rent, and not charged against the Louisville exchange, then the complainant would receive over 6 per cent income on the value of its real estate and buildings, which percentage the Master finds to be in excess of what own-
ers of similar real estate usually derive from the use of similar
348 property in the City of Louisville. (See also the deposition of H. B. Warren, pages 491 to 498 and 534 to 536, together with Exhibit No. 8 filed with H. B. Warren's deposition).

Fourth. That the Master has in said report stated and certified that the amounts expended by complainant in the way of maintenance and charged up as a part of the expense of operating its telephone plant in the City of Louisville were as follows:

1905	$49,819.14
1906	52,796.93
1907	65,616.31
1908	54,705.91

whereas the Master ought to have found that the amounts expended by the complainant in the way of maintenance, and the amounts complainant was entitled to as a part of the expenses of operating its telephone plant in the City of Louisville were as follows:

1905	$48,674.49
1906	51,475.63
1907	64,408.96
1908	53,397.61

the difference being the following items:

1905	1,144.65
1906	1,321.30
1907	1,207.35
1908	1,308.30

which last mentioned items represent the insurance paid by the complainant on its buildings in the City of Louisville and charged up as a part of the operating expenses of the Louisville exchange; the Master having found in his third finding of fact (pages 35, 36, 37 and 42) that the complainant treats its buildings in the City of Louisville as an outside operation and charges against the Louisville exchange a rental equal to 8 per cent of the value of said
349 real estate, and also charges against the Louisville exchange as expenses the insurance which it pays on its said buildings; whereas, the said complainant is only entitled to charge against the Louisville exchange the rent which it does charge and should be required to pay out of its said rent the insurance on said buildings. (See also H. B. Warren's deposition, pages 491 to 498 and 534 to 536, and also Exhibit No. 8 filed by said H. B. Warren with his deposition.)

Fifth. That the Master has in said report stated and certified that the total amounts expended by the complainant in operating its plant in the City of Louisville were as follows:

1905	$226,052.32
1906	232,838.37
1907	245,520.89
1908	216,363.07

whereas the Master ought to have found that the total amounts expended by the said complainant in operating its said plant in the City of Louisville were as follows:

1905	$206,615.17
1906	212,288.75
1907	224,203.29
1908	194,559.31

the difference being made up of the items specifically referred to and excepted to in the second, third and fourth exceptions hereof, which are as follows:

Excess instrument.	Expense.	Taxes.	Insurance.	Total.
1905	$7,559.76	$832.74	$1,144.65	$9,537.15
1906	8,518.70	809.62	1,321.30	10,649.62
1907	9,372.49	837.86	1,207.35	11,417.70
1908	9,772.52	802.94	1,308.30	11,883.76

and also the following items:

For each of the years 1905, 1906, 1907 and 1908, the amounts charged up against the Louisville exchange as part of the
350 operating expenses of said exchange, as shown by Mr. Warren's deposition (pages 523, 524 and 525), included the sum representing what the earnings would have been on telephones furnished by the complainant to its patrons in the City of Louisville

free of charge had those patrons paid the regular rates for such services. This item, according to Exhibit No. 6 filed with the deposition of H. Blair Smith, Auditor of the complainant, amounts for each of the years in question as follows:

1905, 1906, 1907 and 1908..... $9,900.00

The finding of fact on the subject of total amount expended by the complainant in operating its plant in the City of Louisville, therefore, should have been the amount represented by the difference between the amounts found by the Master on page 47 of his report as the total operating expenses, and the items mentioned in exceptions second, third and fourth hereof, plus $9,900.00, above referred to, which difference represents the total expenses incurred by the complainant in operating its plant in the City of Louisville, and for the respective years in question is as follows:

1905	$206,615.17
1906	212,288.75
1907	224,203.29
1908	194,559.31

Sixth. That the Master has in said report stated and certified that had the ordinance rates been in effect in 1908, then the amount received by the complainant during the year 1908 would have been $49,721.36 less than the amount actually received by the complainant; whereas, the Master ought to have found that the complainant would have earned and received during the year 1908, had the rates fixed by the ordinance of March 6, 1909, been in force, and had all the subscribers to complainant's telephone service been charged at the rates fixed by the ordinance, $5,793.00 in excess of what complainant did earn and receive under the rates which
351 it charged to subscribers during the year 1908. H. B. Warren in his deposition (page 559), showing that the Accountants reached the said figures ($49,721.36) by making a calculation based on what each subscriber to the complainant's telephone service would have been required to pay had the ordinance rates been in force, eliminating from such calculation all subscribers to the complainant's telephone service who were charged less than the ordinance rates. For instance, where a telephone subscriber had a direct business telephone line and was, during the year 1908, required to pay only $4.00 per month, the Accountants in said calculation did not take into consideration the fact that under the ordinance rates such subscriber could be and should be required to pay $5.50 per month. The said $49,721.36 was, therefore, arrived at on a false basis and on an erroneous calculation.

Seventh. That the Master in said report stated and certified that the complainant's net earnings, should the ordinance rates be in force during the year 1911, would probably amount to $30,000.00 below what the net earnings were under the rates charged in 1908; whereas the Master ought to have found that the said net earnings

for the year 1911 under the ordinance rates would probably amount to $30,000.00 in excess of what the net earnings were found to be under the rates in effect during the year 1908. (See Warren's deposition, pages 539 to 552, inclusive, and also Exhibits 14, 15, 15*a* and 16, filed by said Warren with his deposition, and also Exhibit No. 6 filed by H. Blair Smith with his deposition.)

Respectfully submitted,

C. B. BLAKEY,
Solicitor for Defendant.

352 And on another day of said term of said court, continued and held, to-wit, on January 4th, 1911, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
THE CITY OF LOUISVILLE, Defendant.

This day came the complainant by Humphrey & Humphrey, William L. Granbery and W. Pratt Dale, its counsel. Came also the defendant by Clayton B. Blakey and Huston Quin, its counsel.

This cause coming on to be heard upon the exceptions of complainant and defendant to the report of the Special Master, filed herein, the same were argued in part, and there not being time to conclude same to-day, time is given until to-morrow.

And on January 5th, 1911, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
THE CITY OF LOUISVILLE, Defendant.

This day came the parties by their respective counsel. The arguments of counsel upon the exceptions to the report of the Special Master having been concluded, and the Court not being fully advised thereof, takes time.

353 And on another day of said term of said court, continued and held, to-wit, on January 17th, 1911, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
THE CITY OF LOUISVILLE, Defendant.

In this cause complainant asks leave of the Court for permission to withdraw its exceptions to the allowance asked for by the Master

and the complainant is accordingly allowed to withdraw its exceptions to the Master's compensation.

It is therefore ordered, adjudged and decreed by the Court that said exceptions be, and they are hereby, withdrawn.

354 And on January 24, 1911, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
THE CITY OF LOUISVILLE, Defendant.

The Special Master, Henry Burnett, having filed herein his claim for allowance on account of his services and expenses incurred as such Special Master, and it appearing that complainant's exceptions thereto have been withdrawn, and none having been filed by the defendant, and the Court being advised, it is now ordered that Henry Burnett, Special Master herein, be, and he is, allowed Eight thousand, three hundred and fifty and 15/100 Dollars in full of his services and expenses incurred herein.

It is further ordered that complainant, Cumberland Telephone & Telegraph Company, within ten days, do pay to the Special Master the above named sum and same shall constitute a part of the costs of this action, to be taxed as such, and this order shall in no wise affect the ultimate disposition of the case by the Court as to costs, or otherwise.

The Special Master is directed to file with the Clerk of this court his receipt for said amount when paid.

And on March 17th, 1911, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
THE CITY OF LOUISVILLE, Defendant.

This day came Henry Burnett, Special Master, and filed his receipt for $8,350.15, same being in satisfaction of the allowance to the Special Master for services and for expenses herein.

355 And at another term of said Court held for its March Term, continued and held, to-wit, on April 6th, 1911, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

This case having been heard and submitted on the Master's report and the exceptions thereto, now came on for final hearing, and is now submitted in chief; and upon the final hearing the following records and parts of records were read by the respective parties, to-wit:

On behalf of the Complainant:

1. The original Bill of Complaint and the exhibits filed therewith, being the charter of the Cumberland Telephone & Telegraph Company and other documents;
2. The Amended Bill of Complaint;
3. The Replication;
4. The exceptions filed by the Complainant to the various reports of the Master;
5. The deposition of H. Blair Smith and exceptions numbered 1 to 22, with the exceptions of Exhibits Nos. 7, 8 and 22;
6. The first deposition of James E. Caldwell, together with eight exhibits, one being a printed pamphlet entitled "Why do telephone companies charge more for service in large exchanges than in small exchanges;" one being Exhibit No. 3 showing the number of subscribers in Jeffersonville and New Albany paying the Louisville rate; also Exhibits Nos. 4, 5 and 6, being the annual reports of the telephone company for the years 1906, 1907 and 1908; also Exhibit No. 7, being the report of the American Telephone Company for
356 the year 1908; also Exhibit No. 8, being a circular issued by Goulding Marr.
7. The deposition of J. E. Jagoe.
8. The deposition of Leland Hume;
9. The deposition of E. M. Fisher;
10. The deposition of George Wilkinson and Exhibits Nos. 1, 2 and 3 filed with said deposition, being the joint report of the accountants and the two separate reports of Wilkinson.
11. The deposition of O. D. Green.
12. The second deposition of H. Blair Smith and one exhibit, being the report of the Committee on Gas, Oil and Electric Light to the City Council of Chicago;
13. The second deposition of James E. Caldwell and one exhibit filed therewith, being the annual report of the American Telephone & Telegraph Company for the year 1909.

On behalf of the Defendant:

1. The answer of the defendant and the exhibit filed therewith, marked Exhibit A;
2. The order made on the filing of the Amended Bill;
3. The deposition of W. H. Crumb and two exhibits, one being

his affidavit filed March 29, 1909, and also Exhibit No. 2, being the report of the Special Telephone Commission of Chicago, of April, 1907, but which is contained in the report of the Committee on Gas, Oil and Electricity to the Chicago Council, and it is agreed for this reason that it may be omitted, as it is included in the exhibit with H. Blair Smith's second deposition;

4. The deposition of H. N. Gifford.

5. The deposition of Hardy Burton;

6. The deposition of John H. Brand;

7. The deposition of J. E. Settle;

357 8. The deposition of Isaac Hilliard;

9. The deposition of H. B. Warren and 21 exhibits filed therewith, being numbered 1 to 21 inclusive;

10. The report of the Mutual Audit Company;

11. Two depositions of W. C. Polk;

12. Two depositions of W. H. Casler;

13. The deposition of Charles E. Archer.

14. The deposition of Charles Meriwether;

15. The deposition of S. M. Wilhite;

16. The deposition of James F. Grinstead.

The Master sustained exceptions to the depositions of Archer, Meriwether and Wilhite and excluded them, and did not include them in making up his report and findings.

To this action defendant excepted.

17. The deposition of S. D. Levings;

18. The stipulation in regard to Prof. Jackson's report and Prof. Jackson's report on the valuation of the New England Telephone Company in Massachusetts.

19. The stipulation in regard to the rate charged by the Louisville Home Telephone Company.

20. The deposition of Norton E. Westlake;

21. The deposition of Howard P. Yeager;

22. The deposition of Alice C. Everett;

23. The deposition of Daniel Wagner;

24. The deposition of M. J. Doll;

25. The deposition of T. D. Webb, together with three exhibits attached thereto;

26. The deposition of J. W. Hart.

27. The deposition of Reuben G. Trail.

28. The deposition of Gansey R. Johnston;

29. The deposition of James D. Daniels.

30. The deposition of W. H. Ritterhoff.

31. The deposition of Charles M. Peake;

358 32. The deposition of George M. Welsh;

33. The deposition of Robert Frewin;

34. The deposition of W. J. Kavanaugh.

The Master sustained exceptions to the deposition of W. J. Kavanaugh, to which ruling the defendant excepted.

35. Exceptions to the Master's report.

Exceptions of the defendant to the ruling of the Master on the depositions of Archer, Meriwether and Kavanaugh; also certain

exceptions to certain portions of the deposition of James E. Caldwell and certain exhibits filed by said James E. Caldwell; certain portion of the deposition of T. D. Webb and the deposition of O. D. Green.

In addition to the foregoing, the following portions of the record were also read, to-wit:

1. The report of the Master filed herein November 17, 1910;
2. The first supplemental report filed herein November 25, 1910;
3. The second supplemental report filed herein December 10, 1910.
4. Stipulation in regard to certain exhibits, filed April 10, 1911.
5. All orders in the case.

359 The Complainant's depositions and exhibits are as follows:

In the United States Circuit Court for the Western District of Kentucky, at Louisville, Ky.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
CITY OF LOUISVILLE.

Depositions of Sundry Witnesses Taken at Nashville, Tennessee, Beginning on April 14th, 1909, on Behalf of the Plaintiff in the Above Entitled Cause, in the Presence of Hon. Henry Burnett, Commissioner; Mr. W. L. Granbery, Counsel for the Plaintiff; Mr. Huston Quin, Counsel for the Defendant; and Buford Duke, Stenographer and Notary Public.

Caption, certificate and all foramilties waived.

By Mr. GRANBERY, for Plaintiff:

Before beginning the testimony in this case, I wish to state to opposing counsel that in giving facts from the records of the plaintiff company, I wish him to understand that all the records of the company are open to his inspection, to enable him to verify or explain any fact that may be presented by the witnesses in-
360 troduced to testify on behalf of plaintiff, and full opportunity will be afforded counsel to investigate these records to verify the correctness of the statements made, and to enable him to develop any fact or circumstance that, in his opinion, will in any way aid in the investigation we are now entering upon.

I also wish to state that the plaintiff company consents that the Commissioner in this cause may appoint one or more expert accountants to investigate the books and records of the company, with a view of ascertaining the correctness of any of the statements made by the Company's officials, with respect to its affairs in the City of Louisville, and to enable the Commissioner to ascertain any other facts that may be revealed by the records of the Company which will aid him in reporting upon the matters submitted to him by the Court; and I further agree that the expense incurred may be taxed as costs, and abide the result of the litigation.

I wish to state to the Commissioner that the plaintiff will
361 be pleased to have him ask any questions that may occur to him during the taking of the proof, and that he will request such proof to be made that may occur to him to be proper, and which will enable him to more intelligently report upon the facts submitted to him under the orders of the Court.

H. BLAIR SMITH, being first duly sworn, deposed and testified as follows:—

Direct examination.

By Mr. GRANBERY, for Plaintiff:

1. You are a citizen of Nashville, Tennessee, and Auditor of the Cumberland Telephone and Telegraph Company?

A. I am.

2. How long have you been connected with the Cumberland Telephone and Telegraph Company?

A. More than fifteen years.

3. How long have you been Auditor?

A. About ten years.

4. I will ask you to state whether or not during that time you have investigated the proper methods of classifying telephone expenses and telephone revenues, and investigated accounts relating to the proper keeping of accounts of telephone companies.

A. That has been the main work I have undertaken.

362 Q. Have you attended conventions, and corresponded with other experts in this line of work?

A. I have.

Q. Have you conferred with various experts over the country with a view of ascertaining the best methods?

A. I have.

Q. As the result of the experience and the information gathered, and conferences and attending conventions and other meetings, do you or not consider yourself an expert accountant with reference to telephone accounting?

A. I believe I am.

Q. Are you so considered?

A. Yes.

Q. How many employés are under you in your department?

A. Seventy or seventy-five.

Q. What are their duties?

A. The receiving, auditing and compiling of reports of the business transacted by the company; receiving and auditing and classifying the vouchers for expenditures, making financial reports, and supervising the disbursement of cash. We also employ seven traveling auditors; we have 517 exchanges and those exchanges handle practically the business of the company and these traveling auditors go to all these points, and we have it in view to make every one of those points at least once each year; sometimes it runs over a few months, but more often the exchanges are audited on the
363 average more than once a year. When a traveling auditor audits an exchange, he audits thoroughly the revenues,

checks up the pay-rolls, and in fact, he does all it is possible to do on the ground, to verify the correctness of the books, the expenses, etc., and the reports that have been sent to the general office.

Q. The questions I shall now ask you relate to the period covering the last three or four years. What is the system with reference to the company's affairs so far as your department is concerned, between the general office located at Nashville, Tenn., and the various offices at the 517 exchanges?

A. They all report to the general office, and the general office is the focal point where we get the reports and vouchers for all revenues and expenditures.

Q. What area does the plaintiff company conduct its affairs in?

A. The territory is about a thousand miles long, from north to south; and has a breadth of about four hundred miles.

Q. Covering what part of the country?

A. Covering the southern part of the State of Indiana, and the southeastern part of Illinois, the most of Kentucky and Tennessee, Mississippi and Louisiana.

Q. Does the company also operate toll lines as well as exchanges?

364 A. Yes.

Q. Are all these exchanges connected together with toll lines?

A. Yes, each one.

Q. Are reports received at your office monthly from all of these exchanges and other points where the company conducts its business?

A. Yes.

Q. What do these reports cover?

A. These reports cover the earnings from toll service, rental of instruments and miscellaneous earnings; and there is also a voucher sent in for each item disbursed.

Q. Who passes upon the correctness of the disbursements?

A. That is not entirely in the auditor's office. The final passing is in the auditor's office, but it starts with the granting of authority to incur the expense, the superintendent, the general manager or the president, or the department in fact which incurs the expense, is the first one to pass on it, to explain the expense and then submit the item to the auditor, where it is passed on finally.

Q. Is any expense of any kind incurred, which is not finally passed upon by the auditor and entered upon his records?

A. No.

Q. Is it part of his duties to see that all the receipts and
365 disbursements are entered upon the books of the auditing department?

A. It is.

Q. Is that done?

A. It is done, and in the best way that we know how to do it.

Q. I will ask you to file a statement showing the receipts and disbursements of the Louisville, Kentucky exchange by years, beginning with 1905, and ending with 1908, inclusive?

A. I will do so, and mark it Exhibit No. 1.

Q. Now, from this statement, it appears that the gross earnings for the years 1905, 1906, 1907 and 1908, were as follows: 1905, $278,170.73; 1906, $296,120.51; 1907, $3,116,981.51; 1908, $326,603.54. I will now ask you to state under the different headings from which this revenue or earnings were derived, and explain what is included under each?

A. Under the heading of Exchange service, we include the net rental from all instruments connected with the Louisville exchange, all pay station revenues, measured service revenues, commissions received from telegraph companies and the commissions received for operating lines of other companies; Proportion of Toils Earned by the Exchange, includes for the years 1905, 1906 and 1907, fifteen per cent of the company's toll business originating at Louisville,
366 and the toll stations connected with the Louisville exchange direct; also the telegraph commissions and deliveries and the operating commissions from other telephone companies; In 1908 the classification was changed so that the commissions received for operating done by other telephone companies and the commissions from the telegraph companies, was put into exchange service instead of toll line service. It is, nevertheless, included in the earnings of the Louisville exchange. Miscellaneous Revenue includes charges for moving telephone instruments, profits on sales of material if made, and other miscellaneous profits for work done for others. Advertising includes revenue received for the advertisements displayed on the company's quarterly directory.

Q. Why was the change made for the year 1908 with reference to putting revenue under different heads?

A. The American Telephone and Telegraph Company publishes a circular for the handling and classification of accounts, and their new auditor or comptroller rather, considered it was proper to put it that way, rather than to include it under the toll line head.

Q. The result, so far as showing the total receipts of the exchange, is the same?

A. Yes, sir.

Q. It is merely a matter of whether you include it under one or the other head?

A. It is merely a matter of classification.

367 Q. Now, what do you mean by earnings from exchange service?

A. I mean the earnings which we receive for connecting one subscriber to the Louisville exchange, and to all other subscribers having Louisville exchange service.

Q. Does that include subscribers who are paying a flat monthly rate, pay stations, that is, public pay stations where anyone is at liberty to use the telephone by dropping a coin in the box for the use of the service?

A. It does.

Q. Measured service which is, instead of renting a telephone on a flat monthly basis, you install a telephone and the party pays according to the amount of service he receives?

A. Yes.

Q. Does this also include all revenue received from telephones

outside of the corporate limits of the City of Louisville, but part of the exchange?

A. Yes.

Q. Does it include any part of the revenue received from other exchange located in Jefferson County or across the river in Southern Indiana?

A. It does not.

Q. Those exchanges are separate and distinct, so far as revenue is concerned?

A. Yes.

368 Q. Now, you say pro rate of the tolls earned by the Louisville Exchange. What do you mean by that.

A. That means this, that the toll lines connecting with all other exchanges of the territory, run into the Louisville switchboard.

Q. Now, just there, explain the difference between exchange service and the toll line service?

A. Exchange service is the revenue derived from service rendered subscribers to one exchange, in talking to subscribers of the same exchange. Toll line service is the toll line revenue that is derived from messages between one exchange and another exchange, or between toll stations connected with one exchange and toll stations connected with another exchange.

Q. Are there any such things as toll stations between any two points in the same exchange area?

A. Yes.

Q. Now, with reference to Louisville, are there any toll stations between two different points in the same Louisville exchange area, and if so, is the earnings from these toll stations treated as exchange earnings or toll earnings?

A. There are, and they are treated as toll earnings.

Q. Now, between what points are those toll stations in the Louisville exchange area?

A. Brooks, Ky., Fairmount, Fern Creek, Hubers, Mt. Washington, Newberg, Smyrna and South Park, and during the month

369 of March, the revenue from all those stations, no matter whether to Louisville or outside points, amounted to less than twenty dollars.

Q. Is that a fair average earning per month of those stations?

A. Yes.

Q. Why do you allow the Louisville exchange fifteen per cent of the tolls collected at Louisville, for toll service radiating throughout the entire system?

A. Because that is generally accepted, and we believe to be the fair percent that the exchange earns for handling the business.

Q. Now, the toll line construction is separate and distinct from the exchange construction, is it?

A. It is.

Q. Now what does the plaintiff company pay other companies for handling their toll messages at points where the plaintiff has a toll line but has no exchange?

A. About fifteen per cent. It averages fifteen per cent; not over that.

Q. What do other companies, having toll lines running into the plaintiff company's exchanges, pay the plaintiff company for handling their toll messages?

A. The general per cent is fifteen.

Q. Do you consider this a fair per cent?

A. I do.

370 Q. Now, you connect at Louisville, as well as at other points with the toll lines of the American Telephone and Telegraph Company do you not?

A. Yes, sir.

Q. What does the American Telephone and Telegraph Company pay the plaintiff company for handling its toll messages?

A. The average for the three months, December 1908, January and February 1909, averaged eight and two tenths per cent.

Q. Now, what account do you credit by that percentage received from the American Telephone and Telegraph Company *to*

A. Until 1908 we credited it to toll line revenue. In 1908 we credited it to exchange service revenue.

Q. So that for all the commissions received from the American Telephone and Telegraph Company for handling toll messages radiating from Louisville over their lines, the Louisville exchange was credited with the entire amount received by the plaintiff company for that service?

A. Not only from Louisville, but the check stations from Louisville. Louisville got credit for all of it.

Q. What do you mean by the check stations?

A. The toll stations.

Q. Now, if anyone from Louisville desired to talk over a toll line to any other part of the country, what lines would be employed and what company would get the toll for these conversations?

371 A. Different lines might be employed.

Q. If the plaintiff company had a toll line there it would use its toll line and take the entire charge?

A. Yes, sir.

Q. And wherever the point to be reached from Louisville was not in the plaintiff company's territory, but in some other company's territory where the plaintiff had no line, then the other company's line would be employed?

A. Yes.

Q. Now from Louisville to all points in Kentucky, Tennessee, Mississippi, Louisiana, Southern Indiana and Southern Illinois, whose lines are employed to give service from Louisville?

A. The Cumberland Telephone and Telegraph Company's almost exclusively.

Q. Now when the American Telephone and Telegraph Company's lines are used, it is to talk between Louisville and some point outside of the territory of the Cumberland Company?

A. Yes.

Q. And for the reason that the Cumberland Company has no line beyond the area in which it transacts its business?

A. Yes. In one instance, we talk over joint lines with the Central Union.

Q. That is another connecting company?

A. Yes.

Q. And there the messages are pro rated according to the mileage used by each company?

372 A. Yes.

Q. What is the basis of charges, as between exchange service and toll line service, generally speaking?

A. Generally speaking, exchange service is at a flat rate rental, and toll line is measured, the charges being according to the number of times the line is used and the period of time it is used.

Q. Generally speaking the rate for a toll message is one half of a cent per mile for three minutes of conversation?

A. Yes.

Q. And generally speaking, for exchange service, each subscriber or patron pays a flat rate for unlimited service, per month?

A. Yes.

Q. The exchange service and the toll line service are separate and distinct?

A. Yes.

Q. Do you have separate reports from the various offices for receipts from exchange and receipts from toll line service?

A. Yes.

Q. So that the figures given above for earnings of the Louisville exchange include all the earnings originating or earned by that exchange, including the compensation for all service rendered, for toll line business outside of the Louisville exchange area?

373 A. Yes, the toll line business going beyond the exchange area.

Q. Now for the same years exhibit No. 1 shows that the total expenses per year, were as follows: 1905, $240,263.39; 1906, $247,130.03; 1907, $260,123.33; 1908, $227,495.66. I will ask you to explain what is included under each heading of expense. For illustration, you have under the head of general expense, several items, and under operating expense, several items, and other headings the same. Please take each heading and explain what expense is included under each head or sub-division?

A. Under general expenses, the first item is proportion of general expenses. General office expenses, including the salaries of the president, general manager, treasurer, general counsel, auditor, engineer, chief electrician and other general employés having in charge the various departments of the whole company, and their office forces and office expenses. This general expense is apportioned to the various properties on the basis of operating and maintenance expenses. This is the principle upon which the apportionment is made to the Louisville exchange.

Postage, printing and stationery; this title explains the class of expenses charged to this account. It involves all postage purchased for the use of the Louisville exchange, the stationery and the books used there.

374 Directory; this account represents the cost of compiling, printing and distributing the telephone directory. The Louisville directory has in it directories covering New Albany,

Jefferson and other points, and Louisville is charged with its pro rata.

Taxes; This includes all taxes paid on account of the Louisville Exchange, whether to the State, to the County or to the City.

Legal Expenses; This includes fees paid to counsel for legal services affecting the Louisville exchange, but no part of the general counsel's salary, is charged to this account. It includes court costs and other expenses involved under the heading and growing out of the business of the Louisville exchange.

Uncollectable; This includes the uncollectable accounts charged off as worthless at the Louisville exchange.

Q. You include it first in your revenue as if you had collected every dollar of it?

A. We include the revenue as it is earned.

Q. And then charge as expenses that part of the revenue which cannot be collected?

A. Yes, sir. Then, Operating; Salaries and Wages, represents a proportion of the salary of the manager at Louisville, his office force, cashier's salary and his clerks engaged in Louisville business; Rent, light and heat account, and in this connection it would be proper to explain the following: first, the real estate owned by the com-
375 pany in the Louisville exchange is not included in the cost of plant as shown in Exhibit No. 1. The rental which the company would have to pay for the quarters occupied if leased from other parties, is estimated, and this rent is apportioned between the various items of expense on the basis of space occupied. The operating, rent, light and heat account, includes its proportion of this rental for the space which employés engaged in the operating department occupy. Also, the fuel, light, etc. used by them;

Advertising and canvassing account; this account includes the salaries of the traffic men, solicitors—in fact, those dealing with the public, receiving orders for installations and removals and investigating the service rendered by the operating force, together with advertising in the newspapers and periodicals in the Louisville exchange.

Incidental; this account is charged with laundry, ice, toilet supplies, electric current for fans and other small items pertaining to the exchange, which cannot be otherwise classified.

Maintenance; this is divided into two accounts, one known as current repair and the other as reconstruction; maintenance current repair, salaries and wages, includes the salaries of the foreman, linemen, trouble men, electricians or employés engaged in keeping in repair and operating condition the local properties of the com-
376 pany at Louisville; Rent, light and heat, includes its proportion of the rental paid for space occupied by these forces, together with their proportion of the heating and lighting. Material account, represents current for storage batteries and miscellaneous items such as cords and plugs and renewals of those parts whose normal life is less than a year.

Traveling account; this includes the cost of horses, vehicles and automobiles used for the purpose of repairing troubles, that is, keeping the plant in repair. Conduit, pole and roof rent; this represents

the amount paid for attachments or exchange wires to the poles or roofs belonging to others and rented by the company.

Insurance; this is the cost of insuring the property in the exchange against fire.

Damage and compensation; this includes cost of damages from injuries to employés and the public through fault of employés; also for operating damages, failure to deliver messages on time and incidental expenses in connection therewith, including attorneys' fees, court costs, etc. Legal, does not include the attorney's fees or court costs in case it is a damage case, as that is charged to compensation and damage account.

Incidental; this includes miscellaneous items connected with the current operating expenses which cannot be classified under the other headings.

377 Maintenance reconstruction, salaries and wages; this represents payments for services to employes engaged in reconstructing the properties of the exchange: Rent, light and heat; this includes the proportion of rent paid, light and heat used by the force engaged in reconstruction; Material; this represents the cost of material used for reconstruction purposes, that is, in case the life of the material is reckoned at exceeding one year. Traveling, represents the delivery and other traveling expenses necessary for the forces engaged in reconstruction work. Incidental, includes expenses of this class which cannot be properly charged to the other accounts.

Instrument rent: This company does not own the telephones and transmitters which are used by it. These are owned by the American Telephone and Telegraph Company, and for the use thereof and for expert engineering services and expert advice, the company pays to the American Telephone and Telegraph Company a rental of four and one half per cent on the gross receipts derived from the use of these instruments.

By the COMMISSIONER:

Q. Are those instruments maintained in condition by the plaintiff company?

A. The instruments are maintained, so far as current repairs can keep them in service, but if an instrument becomes unservicable, it is removed from the plant and shipped back, and the only

378 cost to us is the freight from the factory, and new ones are supplied on requisition.

Q. You spoke awhile ago of charging off uncollectable accounts. Is that an appreciable item?

A. For the year 1905, it amounted to $1,679.39; about one half of one per cent; for the year 1906, it was $1,519.41, about one half of one per cent; for 1907, it was $2,344.94, about seven-tenths of one per cent; for 1908, it was $3,707.34, about one per cent.

By Mr. GRANBERY, for Plaintiff:

Q. Those last two years were during the panic, were they?

A. Yes.

Q. How do those accounts become uncollectable?

A. Just from inability to collect them. We put in telephones for practically anyone who gives an order for it. The first payment is in advance, and the second payment will be at the end of the period, if they collect. He will give service for a month on credit, and then extend the time as far as twenty days. For the month and twenty days we are sometimes caught and cannot collect. At the end of that period, unless we have assurances that the account will be paid, the instrument will be removed.

By Mr. GRANBERY, for Plaintiff:

Q. I will ask you to state whether or not you regard this
379 contract with the American Bell Telephone Company by which you obtain the instruments as stated, rather than buying them and maintaining them, an advantageous contract for the company?

A. I do.

Q. I will ask you to state whether or not that same contract with the Chicago Telephone Company was carefully investigated and considered by the Commission appointed by the Chicago City Council and approved by that commission?

A. According to that report it was.

Q. I will ask you to state as a part of your deposition, the report of this commission with respect to the contract which is identical with the one the plaintiff company has with the American Bell Telephone Company?

A. I will, and it is as follows: "In our opinion the advantages derived from this contract by the Chicago Telephone Company are worth a very considerable sum of money. We are not prepared to make an exact estimate of its value without time for additional investigation."

And after referring to another contract, separate from this, the Commission says: "It is our opinion that the aforesaid two contracts which the Chicago Telephone Company has heretofore made, respectively with the American Bell Telephone Company and with the Western Electric Company are not harmful, but enable the Chicago Telephone Company to improve its service and purchase its supplies at a less expense than it otherwise could."

380 Q. Have these statements with reference to earnings and expenses been made up by you from your books and records?

A. They have been made up under my supervision.

Q. Were they taken from your books and records?

A. They were.

Q. Were they prepared under your direction, without any direction or control or suggestion from any of the other officers of the plaintiff company?

A. Yes sir.

Q. I will ask you whether or not your records show original reports, giving every item of receipts, and vouchers for every item of expense contained in Exhibit No. 1?

A. Yes.

Q. Will you offer them to the defendant's counsel for examination?

A. Yes.

Q. And ample opportunity to investigate them?

A. Yes.

Q. I will ask you to state whether or not there is any item of expense included in Exhibit No. 1 which in your opinion is improper or could have been avoided with the usual prudence and skill shown by business men in their own affairs?

A. There is no such item included therein.

Q. Now, as a result of the operations of the Louisville
381 exchange by the plaintiff company from 1905 to 1908, by years, shows a balance of revenue over expenses as follows; 1905, $37,907.34; 1906, $48,990.48; 1907, $56,855.18; 1908, $98,107.88. I will ask you to state how you explain the large increase in balance in 1908 over former years?

A. The principal cause of it is the reconstruction done during the year 1908 cost the company $19,535 against about forty or forty-four thousand dollars in years previous.

Q. In other words, the company expended about twenty-five thousand dollars less in 1908 on reconstruction than it did in the former years?

A. Yes.

Q. Exhibit No. 1 sets out the cost of the Louisville exchange year by year; in 1905 the cost of the exchange was $1,556,106.38; in 1906, $1,638,264.66; in 1907, $1,693,651.25; in 1908, $1,702,221.17. I will ask you to state how you arrive at the cost of the plant and what your records show in this regard?

A. The cost of the plant is arrived at by beginning with the cost of the plant purchased from the Ohio Valley Telephone Company, and month by month, and year by year, adding to that cost the actual construction done.

Q. You mean the actual additions added to the plant year by year?

A. The actual additions added to the plant year by year.
382 In case the property, or any part of it, was reconstructed, the cost of reconstructing in like manner, was charged to expense.

Q. And if, for instance a twenty-five foot pole was replaced with a fifty foot pole, the expense would be divided between new construction and re-construction in proportion that the cost of the twenty-five foot pole would bear to the fifty foot pole. Is that correct?

A. Yes.

Q. I will ask you to file a statement showing the actual cost of the Louisville plant when it was purchased by the plaintiff company from the Ohio Valley Telephone Company, and the amount added to that cost year by year down to and including the year 1908?

A. I will file a statement as Exhibit No. 2.

Q. Has it been compiled by you in your office, from your records?

A. Yes sir.

Q. What was the actual cost to the plaintiff company of the Louisville exchange when it was purchased from the Ohio Valley Telephone Company?

A. $687,354.69.

Q. What was the cost of the plant at the end of 1908?

A. $1,700,045.26.

Q. Now, the difference between those two amounts is the new construction and additions to that plant from time to time,
383 from the time of the purchase in 1899 to 1908?

A. To the close of 1908, yes.

Q. You have that statement classified so as to show the aerial construction and the equipment, and the underground construction, and the poles and office furniture and fixtures?

A. Yes.

Q. Now, I will ask you to state what is included under each heading?

A. Under the heading of aerial construction is included the cost of pole routes, open wire, cables, including cross-arms, guys, braces, supports, insulators, brackets, pins, etc. plus the cost of putting it in place and ready for service; equipment is the cost of central office apparatus, including switch-boards, route-boards, power plants, storage batteries, subscribers' station equipment, including the bells, backboards, extension bells, desk stands, booths, pay station apparatus, etc., and the labor and other expenses incident to putting the apparatus in condition and ready for service. Underground, represents the cost of underground conduits, manholes, repaving, and the cost of cables, bonding, which is the method of placing a copper wire alongside of the cable to take the stray currents of electricity which permeate the earth from the cable and which would eat holes in it, if it were not there; drawing cables into the duct, connecting them up; cable boxes and labor and expense in getting cables
384 into the service ready for use. Tools and teams, includes the cost of live stock, vehicles, automobiles, and tools used in the plant. Office furniture and fixtures, includes the cost of desks, chairs, etc., in the Louisville office.

Q. Please explain why your capital account increased year by year? Is this necessary; if so, why?

A. It is necessary, and it is a feature of the telephone business. Every new subscriber added to the plant practically requires a new pair of wires leading to his house from the central office. When instruments are given up, after having been once installed, some part of the wire remains on the pole, but it is very likely the use of that wire can not be needed until a subscriber in the same neighborhood installs the service. With most of the new installations it is necessary to furnish a new circuit and this increases cost of the plant and legitimately so.

Q. What about your switchboard?

A. When switchboards are installed, they have some margin of unused apparatus ready for service, but in time these socalled sections are filled up and then it is necessary to add an additional section. Each additional section costs considerably more than the

preceding section and the reason for this is that each section of the switchboard, while the operator on each section answers a certain number of calling subscribers, she must have before her
385 apparatus which will enable her to connect with any subscriber connected with the same exchange, and this same switchboard apparatus must be in each position and each position must necessarily be connected with every other position. The first position, you can see, would be comparatively simple; the second position would be just half as easy and the third position becomes even more complicated, and on the last position, in big exchanges like Louisville, the complication is great.

Q. Well, what has happened with reference to taking care of the increased patronage from 1899 to the present time in the Louisville exchange?

A. They have not only added sections to the main switch board, but we have built three other central offices in Louisville, known as South, East and West.

Q. Why was it necessary to build additional exchanges in the City of Louisville, rather than add to the one exchange to take care of the growth of the business?

A. It is impossible to build one switchboard big enough for this, and operate it at the same time. The reach of the operator is insufficient to make connections with such a switchboard.

Q. The expense of giving service to such a large number of people in one switchboard would be very much greater than giving it over three or four different boards?

A. The expense of building the board would be greater, and the expense of operating it would be more.

386 Q. Is this the approved method of caring for a large number of subscribers in large cities?

A. Yes.

Q. How many telephone exchanges has the Chicago Telephone Company in the City of Chicago, if you know?

A. I think it is seventeen.

Q. Do you know how many the City of New York has?

A. About thirty.

Q. How many has the plaintiff company in Nashville, Tenn.?

A. Three.

Q. How many in Memphis?

A. Two.

Q. In New Orleans?

A. Five.

Q. Louisville?

A. Four.

Q. So that is the approved method of developing a telephone exchange, is it?

A. Yes.

Q. Now, this capital account at the end of December 1908 appears to be less than at the end of 1907, or, over four thousand dollars less. How does this happen?

A. We lost a good many subscribers during that period and when-

ever a subscriber's station is discontinued, his apparatus is
387 credited to the plant and put into supply.

Q. Has there been a large increase in the number of subscribers in the Louisville exchange since 1899?

A. Yes.

Q. Please file a statement showing the increase in subscribers from the year 1899 to 1908, inclusive?

A. I will do so and mark it Exhibit No. 3.

Q. Exhibit 3 shows that the subscribers increased from 3536 in 1900 to 10,768 in 1908?

A. Yes.

Q. Now I observe that you also have on Exhibit No. 2, what you call the number of put ins and the number of take outs, and the net gain or loss year by year. What do you mean by that?

A. That represents the number of new subscribers secured during the year and we call those put ins; the number of subscribers lost during the year we term, take outs.

Q. So that the net gain or loss is the difference between the two, in one year?

A. Yes.

Q. So, it appears from 1900 to January 1st, 1909 you put in 27,004 telephones and you took out 20,883, making a net gain of 7,387 telephones?

A. Yes.

Q. That meant you had to handle about 48,000 telephones in order to make a net gain of 7,387?

388 A. Yes.

Q. Now that brings me to the question of whether it is possible to build a telephone plant with reference to future subscribers and the future needs of a community. Is that possible?

A. Not at the start; you must build it as the need develops.

Q. Is it possible to look into the future and determine how an exchange ought to be built?

A. No more than to determine the length of your life.

Q. Now, after you first lay out an exchange with reference to the then existing patronage, what happens as the years go by with reference to the construction of the plant?

A. The construction must be changed from time to time to take care of the drift of the population. That is the business center will change and the residence centers will change, and telephones that were in use in certain centers are given up, and the telephone population moves to another district and you must follow that and take down cables in the old districts and put them up in the new districts, or build new ones to them. There is a continuous shifting.

Q. Now it appears that there were a great number of put ins and take outs, year by year. Was that peculiar to Louisville or is it peculiar to the telephone business?

389 A. It is peculiar to the telephone business.

Q. I hand you what purports to be daily statements sent to the president by the local managers of the East Tennessee Telephone and Telegraph Company, and the plaintiff company, for the

month of February 1909, coming from Paducah, Ky., Louisville, Ky., New Orleans, La., Nashville, Tenn., Knoxville, Tenn., Chattanooga, Tenn., and Memphis, Tennessee. They are the larger exchanges of the territory that the plaintiff company transacts its business in, are they?

A. Yes.

Q. Now please explain what these reports are and what they show with reference to the question of put ins and take out?

A. These are daily reports which are sent to the president by the local managers, representing the number of instruments put in for each day of the month, and the number taken out. Also, the net gain or loss.

Q. As I understand, these reports close on the 22nd of the month?

A. The rental earnings reports close on the 22nd to enable the reports to get into Nashville on time.

Q. Now, take the 22nd of February, as to Memphis, and state the number of take outs and put in up to that time, for the month?

390 A. The Memphis report shows that from February 1st, through the 20th, there were 117 put ins and 52 take outs, a net gain of 65.

Q. Now, Chattanooga, Tenn.?

A. Chattanooga shows new put ins, 104, take outs, 69; net gain, 35.

Q. Knoxville, Tenn?

A. Knoxville shows 111 put ins, 61 take outs; net gain, 50.

Q. Paducah, Ky.?

A. 43 put ins, 30 take outs; net gain 13.

Q. Nashville, Tenn.?

A. Nashville shows new put ins 149, take outs 114, net gain 35.

Q. New Orleans, La.?

A. 207 put ins, 129 take outs; 78 net gain.

Q. Louisville, Ky.?

A. 103 put ins, 158 take outs; net loss, 55.

Q. Will you exhibit to the Commissioner and opposing counsel those daily reports from all those cities from which you have been reading, for their examination?

A. Yes.

Q. And if either desire them filed, you will file them as exhibits to your deposition?

A. Yes.

Q. I will ask you to state whether or not your familiarity with the Louisville exchange enables you to testify with respect

391 to its present value?

A. Yes.

Q. I will ask you to state whether or not in your opinion the Louisville plant is worth $1,700,045.36?

A. I consider it to be worth that.

Q. I will ask you to state whether or not in your opinion it can be reproduced for a less sum of money?

A. I do not think it can.

Q. Please explain the difference between the cost and the value of the existing plant in Louisville and a new plant that would be constructed without reference to the growth of the business year by year, as this plant has been constructed. What would be the difference between the two?

A. I consider that no two plants, for the same town would be constructed alike, if constructed at different periods. You must take into consideration at the time you construct the plant, the location of the premises to be served, and as the location of those premises shift, then your plant shifts.

Q. Does that capitalization include the value of any of the real estate owned by the plaintiff company in Louisville, and used in its business in Louisville?

A. No.

Q. What is the value of that real estate and the improvement thereon, if you know?

A. It is —.

392 Q. Is that the cost, or the present value?

A. That is the cost.

Q. Is it worth more or less than it cost?

A. I should say it was more valuable.

Q. Especially the central office of the main exchange that was purchased in 1900?

A. That would be my opinion.

Q. You think the main exchange property in the central part of the city has appreciated in value since it was purchased in 1900?

A. Yes.

Q. I will ask you to file a statement showing the construction accounts of the cost of the exchange of the plaintiff company at New Orleans, Memphis and Nashville, Tenn., and compare them with Louisville, Ky.?

A. I file said statement as Exhibit No. 4.

Q. Now, it appears that in New Orleans the cost per subscriber is $188.79; at Memphis, $142.48; Nashville, $170.72; Louisville, $176.04?

A. Yes.

Q. That is the actual cost of these plants built by the plaintiff company and now owned and operated by it?

A. That is correct.

Q. Is it possible to construct a telephone plant with reference to the number of subscribers that you expect to receive, upon opening the plant?

A. No, indeed.

393 Q. What is the practice, and what is necessary in this respect?

A. The practice is to construct it so that a considerable amount of new business can be taken without putting in new switchboards and new cables.

Q. Is this necessary in the business?

A. It is very necessary to the business.

Q. Why?

A. If a new station, or telephone, is ordered by a subscriber, he

expects to have it put in at once, and not wait until the manufacturing concern can make a different switchboard or wait until you can hang cables, splice it open and put it up ready for service. Unless additional facilities are provided in advance, certain and serious delays, and annoying delays, are caused subscribers.

Q. How far in advance must the telephone man look, with reference to future subscribers?

A. He must look at least five years in advance.

Q. How long would it require to obtain new equipment, and establish it ready for service?

A. I should say at least a year.

Q. I will ask you to state whether or not it is more economical to look ahead and prepare for future business as you have indicated, or to take care of the business as it is offered?

A. It is cheaper to construct it wholesale than it is retail.

394 Q. So that both from the standpoint of economy and convenience to the community, it is necessary that the plant be constructed with a view to the future and not to the present needs?

A. Absolutely so.

Q. Mr. Smith, I will ask you to file a statement giving the name of every person, as of January 1st, 1908, paying for exchange service in the City of Louisville or to the Louisville exchange, and a similar statement with reference to April 1st, 1909?

A. I will do so, marking those of January 1st, 1908, as Exhibit No. 5; and those of April 1st, 1909, as Exhibit No. 6.

Q. Now, do those statements show every person on the books of the company as of January 1st, 1908, and the amount they are paying?

A. I believe they do.

Q. And the same thing is true with reference to April 1st 1909?

A. Yes.

Q. Now then, the two lists will vary very greatly, will they not?

A. Yes, sir.

Q. Depending upon the change in the subscribers between those two periods?

A. Yes.

395 Q. How do you get reports from the various exchanges as to the revenues or monthly receipts?

A. The most economical method we have ever been able to devise for getting in accurate reports, are as follows:: The rates of the various subscribers are classified according to the amount paid. Our months run from the 23rd of one month to and including the 22nd of the following month; this we have found very convenient and practically necessary to enable us to get the reports in on time and to enable the local office to make them up while they are not otherwise necessarily, absolutely occupied. To get the earnings from exchange service for the month of January, we take the classification as of December 22nd, and we multiply the rate by the number of stations at such rate, and to the total of this we add the revenue for new put ins between December 23rd and January 22nd, but the rental included is up to January 31st. We also add the amount earned on account of rates increased and we deduct the revenue lost

through instruments removed and rates decreased. The reports sent in by the Louisville office show the classification according to rate, the number of stations at each rate, and the report itemizes the date of installations or removals or change, the call number, the name of the subscriber affected, and his rate and figured individually, the increase or decrease in earnings, because of the installation, removal or change.

396 Q. Do similar monthly reports come to your office from every exchange in the entire system from month to month?

A. Practically so, the big exchanges follow one system, which is a little more in detail than that required of the small offices.

Q. The same kind that come from the Louisville exchange come from all the larger exchanges in the system to you, do they?

A. Yes.

Q. I will ask you to file those monthly statements sent to you from the Louisville Exchange, showing the entire earnings of that exchange, month by month, from January 1908, down to and including March 1909, for rentals?

A. I will do so, marking it Exhibit No. 7.

Q. Those statements marked Exhibit No. 7 show the exchange receipts in detail. Now, do you receive any reports with reference to tolls, that is, long distance business from the Louisville office, month by month?

A. We do.

Q. Have you those detail reports for the same period?

A. Yes.

Q. Will you file them as Exhibits No. 8 to your deposition?

A. I will.

Q. I observe in some of those exhibits that the Southern Railway, for instance, paid directly to the general office. Why is that?

397 A. Some subscribers of ours, for convenience, provided they have instruments connected with different instruments, request the company to render them one bill for all the instruments. In such cases we do the billing from the Nashville office, but we include the earnings in those of the exchange where the instruments are located.

Q. For instance, the Southern Railway office is located at Washington, D. C. and they have agents who have telephone service at various exchanges throughout the system?

A. Yes, sir.

Q. And it requests, for their convenience to have the bill rendered them at Washington for the exchanges all over the system?

A. Yes, or they may confine it to any district.

Q. And you comply with the request, but credit the exchange with the revenue derived from the use of the instrument at that exchange?

A. Yes.

Q. Please give us the rates that were charged for exchange service in the City of Louisville by the Ohio Valley Telephone Company, and the average revenue per month that that company derived from exchange service prior to the time it was purchased by the Cumberland Company?

A. I file the rates charged by the Ohio Valley Telephone Co. as Exhibit No. 9.

398 Q. Have you the rates for the first half of 1899 before the Cumberland Company purchased the Ohio Valley Telephone Company?

A. Yes, the rates were the same then as for 1898.

Q. What were the rates for 1898?

A. That is also shown on Exhibit No. 9.

Q. Now, what was the average rate?

A. The average monthly rate for the year 1896 was $6.20; for 1897, $5.86.

Q. Now, can you file a statement showing the different rates, year by year, that the plaintiff company has charged for exchange service in Louisville since it purchased that plant?

A. I file said statement as Exhibit No. 10.

Q. Now, I will ask you to file statement showing the average of subscribers each year and the average monthly rate charged, year by year, from 1900 down to and including 1908, as Exhibit No. 11?

A. I will do so.

Q. I observe that Exhibit No. 11 shows that in 1900 the average number of subscribers were 4277 and the average monthly rate per subscriber was $4.76, and in 1908 the average number of subscribers were 10,064, and the average rate per month was $2.56. That is correct, is it?

A. Yes. There is thirty-seven cents included in that average on account of the change in classification of earnings.

399 Q. How many patrons did the company have in the Louisville exchange, December 31st, 1908, paying the $7.50 net monthly business rate?

A. 730.

Q. And how many paying the $3.50 net residence rate in the Louisville exchange?

A. 875.

Q. Now, I wish you to file a statement, marked Exhibit No. 12, showing the maximum business and residence rate in Louisville, Ky., Memphis, Tenn., Nashville, Tenn., and New Orleans, La., as of December 31st, 1908, and give the number of business and residence subscribers at those maximum rates, and also the total number of stations in each exchange?

A. I will do so, marking the same Exhibit No. 12.

Q. The maximum residence rate in Louisville on December 31st 1908 as shown by Exhibit No. 12 was $3.50 net for residences, and $7.50 net for business. Now when the exchange rates in Louisville were $7.50 net and then the $6.50 net rate for three year contract was in force, how many business telephones were there at those maximum rates in the Louisville exchange?

A. There were 583.

Q. And how many when the residence rate was $2.00 net within a mile of the court house, and $2.50 a month outside of the mile radius and within the city limits, how many were paying the

400 maximum rate at that time?

A. 1499.

Q. Divided how?

A. Within the mile radius from the court house, 488; within the city limits, outside of the mile radius, 1011.

Q. So it appears that it was not an increase in the rates that caused such a small number of subscribers to pay the maximum rates?

A. No.

Q. During 1908, what service did the subscribers to the Louisville exchange receive. I mean, excluding pay stations and measured service patrons?

A. They received unlimited service to all exchange stations connected to the Louisville exchange, to New Albany, Jeffersonville, and to subscribers to other exchanges in Jefferson County who paid a rental for Louisville exchange service. Those exchanges are, Anchorage, 42 subscribers; Harrods Creek, 42; Jeffersontown, 36; Pleasure Ride Park, 41; St. Matthews, 63. There are also some at Pewee Valley and at West Point, and these two exchanges are outside of Jefferson County, and Sheapardsville.

Q. To all the subscribers having Louisville service at these various exchanges you have just named, the Louisville subscribers have the right to talk free for the rates they pay for Louisville service?

401 A. Yes.

Q. Now, is any part of the construction cost or capital account of those exchanges included in the capital account of the Louisville exchange?

A. No, sir.

Q. Are any part of the expenses of those exchanges included in the expenses of the Louisville exchange?

A. No.

Q. Now, I will ask you what is done by the company, if anything, with reference to ascertaining the volume of business that is handled at an exchange?

A. In order to make intelligent operating schedules, it is absolutely necessary to know the number of incoming calls to each exchange and to place the lines so that there will not be a minimum or a maximum number of calls coming to one operator. That is, an operator is recognized as being able to handle a certain volume of business and the lines and the operators are so placed that they will handle that volume of business as nearly uniformly as possible.

Q. Now, in order to see how that is, what do you do?

A. In order to do this, there is taken what is known as monthly peg count, which shows the number of calls coming into each position on the switchboard during each hour of the day.

Q. I will ask you whether or not those peg counts are made monthly from all the principal exchanges in the company's

402 system?

A. They are.

Q. I will ask you to file the last three peg counts for the Louisville exchange, being January 11th, February 10th, and March 10th, 1909, as Exhibit No. 13 to your deposition?

A. I will do so.

Q. I will ask you to give a statement showing the difference in revenue at present obtained by the company on the existing rates it

is charging and the revenue it would receive if it applied the rates provided in the ordinance involved in this litigation, applying the reduction solely and alone to the subscribers to the Louisville exchange residing and having instruments wholly within the corporate limits of the City of Louisville, and mark the same Exhibit No. 14?

A. I will do so. The revenues would be reduced $3,266 per month, or $39,192. In making up this statement we consider the rates of the ordinance as net rates.

Q. Now, in the bill in this case it was stated that the reduction would be little over $33,000?

A. Yes.

Q. You now state it is $39,192?

A. Yes.

Q. Where does the difference come in?

A. We examined our table which was first made up and found in that there were rates made charitable institutions and em-
403 ployés which we had considered would be increased, but those will not be increased, and could not be increased, so in making up the new schedule we have adhered to the rates which would be reduced.

Q. Now, I will ask you to state what expenses the company could dispense with if it were to apply the schedule of rates prescribed in the ordinance, over the expenses it now incurs on the schedule of rates it is using?

A. It could not eliminate any expenses without impairing the service.

Q. Would the reduction of rates have any effect on the question of expense?

A. None whatever; the only reduction in expense would be on the rental of the instruments.

Q. How much would that reduce it?

A. It would be four per cent on the reduction.

Q. Four per cent on the $39,000?

A. Yes.

Q. Please state the amount paid by the plaintiff company at the Louisville exchange for claims for damages for personal or other injuries for the years 1905 to 1908, inclusive

A. 1905, $2951.63; 1906, 5970.20; 1907, 220.85; 1908, $1945.81.

Q. Please state the per cent of net revenue to capital account or cost of plant, for the years 1905 to 1908, leaving out of con-
404 sideration any amount reserved for depreciation of plant. In other words, using the balance of revenue over expenses paid, and applying that to the actual cost of the plant year by year?

A. 1905, 2.43 per cent; 1906, 2.99 per cent; 1907, 3.36 per cent; 1908, 5.76 per cent.

Q. What do you mean by depreciation?

A. Depreciation is the natural wear and tear that occurs to everything that is exposed, everything except the ground. Depreciation in telephony is the depreciation or rather the antiquation of plant, as well as its decay.

Q. What do you mean by antiquation of plant?

A. Telephony is by no means a developed science. The strides have been very rapid indeed, the improvements many, and the necessity of discarding old apparatus, but still servicable, for newer apparatus is one of the items of expense which must be recognized and is one of the big items.

Q. What is the difference between maintenance and depreciation?

A. Maintenance is simply the repair of the property.

Q. Keeping it in operating condition?

A. Yes, repairing troubles, replacing lines that are blown down, adjusting instruments and replacing light repairs like cords on telephones, and cords of switchboards, resoldering connections,
405 replacing micas and fuses that are burned out and things of that kind.

Q. Now, what is the difference between maintenance and depreciation?

A. Maintenance is -imply the keeping in repair of the property; and reconstruction is caused on account of depreciation, and is a replacement of the property which is no longer servicable or must be discarded on account of having become useless, because of newer inventions.

Q. From your experience in the telephone business, are you able to testify as to what is a proper per cent of the cost of telephone property to allow for depreciation per annum?

A. Necessarily the amount of depreciation is an estimate based on past experience and future outlook. The past experience leads us to believe that a depreciation of seven and one half per cent on the value of the plant is justifiable. This depreciation would partly be spent from year to year and part of it would go into the reserve account.

Q. For what reason?

A. Because the depreciation cannot be possibly taken care of from day to day or year to year. If we take any one class of property, the switch-board for instance, it can be repaired from day to day so it will remain in operating condition, but the time will come when the board is either worn out or a newer board, more up-to-date, must be substituted, and then the old board must be thrown away
406 or junked, and at such time it is necessary to have a fund ready to purchase a new board, or, at least, provide for the cost of the old board.

Q. What per cent of the cost of the plant does the plaintiff company use for depreciation?

A. It uses seven and one half per cent.

Q. Do you consider that fair and reasonable and just?

A. I do, if it is applied as it is calculated to be applied.

Q. If applied as the plaintiff company applies it?

A. Yes.

Q. Now proceed?

A. The depreciation can be applied so as to very greatly complicate accounts. We have, in calculating our depreciation used a percentage, to be applied in the simplest way possible, that is, that the first cost of the property is the amount on which the depreciation

must be applied from year to year and the unused part of the depreciation fund must be considered as a trust fund to be borrowed from by the company and the trust fund must be made to earn interest so as to further accumulate and grow, to be large enough at the time it is necessary to use it. The depreciation fund if reinvested is treated exactly as borrowed capital. When the time comes to replace it, then the depreciation fund must receive its reimbursement from capital. For instance, the depreciation is kept
407 on the books of the company as a fund. The part of it which is not expended, as I say, is reinvested or invested, so that the amount of the depreciation fund will grow from the interest that it earns. As the depreciation is invested in plant, when you need the money to construct a part of the plant, you cannot sell any part of the plant to get that money, and therefore we get the money from capital. We repay the depreciation fund from capital.

Q. Now, let me see if this is correct. We will assume that this year you set aside out of earnings, ten thousand dollars, which is a depreciation fund, which is not needed to take care of the depreciation that year, but which will be needed five years hence to take care of the depreciation when the time comes for reconstruction of that property. Now, that ten thousand dollars, you simply credit on your books to depreciation fund and you take that fund and use it in the business. Now, at the end of five years, instead of it being ten thousand dollars, we will say it amounts to $12,500. Now the $12,500 at the end of five years you get from some other source to take the place of the $10,000 and accumulations which you have used in the meantime?

A. Exactly.

Q. In other words, to get along on as low a per cent as seven and one half per cent of the original cost of the property, you must allow that money to accumulate interest, otherwise you would have
408 to use a larger per cent for depreciation?

A. Exactly.

Q. Now isn't it a fact that some companies, by having more complicated accounts, use a higher system for depreciation and loan that depreciation fund out on low rates of interest, which accumulates at a less rate of interest than you allow it when you use it in your business?

A. Exactly.

Q. So, if you put the money in your treasury and do not use it, you must use a higher per cent than seven and one-half per cent for depreciation?

A. Yes.

Q. And, in order to get along on seven and a half per cent, you must use that unexpended portion of it in your business?

A. Yes.

By the COMMISSIONER:

Q. Suppose that depreciation account is a mere credit on your books and you allow it interest. Now, suppose the time comes when

you need that amount, plus the interest, where do you get it. You say you take it from capital, that is what I didn't understand.

A. We would have to borrow money on notes, or issue stocks or bonds in order to get the amount of money we need.

409 Q. You don't do that, however,—you don't add that to the value of your plant. You don't make any increase in the value of your plant, on your books, do you?

A. We do. Any amount of money that is expended, any additions or improvements in the plant, is added to plant, and if we did not do that and add it to plant, we would not make it earn any money.

By Mr. GRANBERY, for Plaintiff:

Q. That is not the question; do you add to your capital account twice, or just once?

A. Only once.

Q. When did you add to the capital account this money?

A. As the money is expended in improvements or extensions.

Q. When you replace that money do you add it to your capital account?

A. We do not.

Q. In other words, it is simply a system of book-keeping at last.

A. Book keeping, to fit the conditions which are the most economical.

Q. I will ask you to state whether or not the company's capital account is increased in any wise on account of the depreciation fund?

A. It is not.

410 By the COMMISSIONER:

Q. That is not clear in my mind, and I would like for you to explain one matter right here. You say the unexpended depreciation fund, as illustrated by Mr. Granbery, would be ten thousand dollars. To what account is that placed in your books?

A. Reserve for deferred maintenance.

Q. In what is that invested?

A. It is invested in plant extensions.

By Mr. GRANBERY, for Plaintiff:

Q. Treated precisely as any other borrowed money?

A. Yes; if we went to the bank and borrowed ten thousand dollars, we would use it in extending the business.

Q. And then, when that note matured, for the money you borrowed from the bank, you would replace it from some other source?

A. Yes.

Q. And depreciation, you would borrow it from this, and replace it in the same way?

A. Yes.

By Mr. COMMISSIONER:

Q. Suppose the line from Hopkinsville, Ky., to Nashville, Tenn.,

becomes useless by reason of decay of some sort or by sudden accident or otherwise. Now, you have to rebuild that one line, from here to Hopkinsville. Do you add that—I mean, do you
411 do that out of your reserve fund?

A. We do that and charge it to reconstruction. Now, there is one point I think I should make plain in regard to the method of applying the per cent for depreciation. If you start out with a new property, the first year we set aside seven and a half per cent, or, we charge up to the expense of the property, seven and one half per cent of its cost as depreciation. Part of that may be spent. The next year we must use the same value if the property has not been increased, and must charge up seven and a half per cent of that. We must not reduce the original cost by seven and a half per cent and the next year reduce the original cost again by seven and a half per cent of that, as, in that way, you never would wipe out the original property and it complicates the account so you never would know exactly what any piece of property in your plant cost you. If you apply it that way, you must know how much depreciation has been charged and you get the accounts into such complicated condition that you cannot apply it.

412 By Mr. GRANBERY, for Plaintiff:

Q. What do you mean by reconstruction?

A. Reconstruction is replacement. A reconstruction of a poll line would be the removal of the old poles and the substitution of new poles.

Q. To what would you charge that reconstruction?

A. If the new pole line was of no more value, had no higher poles, no more circuits, no greater capacity than the old poll line, the cost of replacement would be charged entirely to maintenance reconstruction, coming out of earnings.

Q. And no part be charged to capital account?

A. No.

Q. Suppose, as often happens, you replace a pole route with a very much larger pole route, costing very much more than the original pole route, how do you handle that?

A. The exact method is to value the old pole route at its original cost in service, to construct the new pole route, keeping an exact cost of doing so; the work being completed, the difference between the cost of the new pole route and the old pole route, coming out of service, is charged to capital; the cost of the old pole route that has been removed is charged to maintenance reconstruction. If there is any salvage from the old pole route, that is charged to supplies and credited to reconstruction.

Q. In other words, you value the old pole route at exactly what it cost you?

413 A. What it is on the books at.

Q. And you then find out the cost of the new pole route, assuming it to be a much better one and larger than the old one?

A. Yes.

Q. The difference between the cost of the new pole route and the old pole route goes to capital?

A. Yes.

Q. Because you have improved your line to that extent?

A. Yes.

Q. Now, whatever salvage you get out of the old poles and wires you credit that against the amount you charged to maintenance reconstruction?

A. Yes.

Q. In other words, for instance an old pole route cost as much as say ten thousand dollars; you replace it with a much better structure and one requiring more wires and larger poles, because of the increased business of the company, say costing twenty thousand dollars. Now, you charge ten thousand dollars to your capital of that?

A. Yes.

Q. And ten thousand dollars to maintenance re-construction?

A. Yes.

Q. Suppose you sell the old poles and wires out of that for a thousand dollars, what happens?

A. We credit maintenance reconstruction with one thousand dollars.

414 Q. Which means you only charge to that account, nine thousand dollars net?

A. Yes sir.

Q. And you charge to capital account the ten thousand dollars additional?

A. Yes.

Q. Now, suppose you have a pole route costing ten thousand dollars, and that is replaced with another of the same character, costing ten thousand dollars, what happens then?

A. The whole amount is charged to maintenance reconstruction.

Q. And no part to capital?

A. No.

Q. And I take it as in the growth of the business you find usually whenever you replace a piece of property, that the business necessities requires a larger and better structure than the former?

—. ——.

Q. So that practically you are adding to your capital account at the time you are reconstructing some of your plant?

A. That is usually the fact.

Q. Now taking an exchange, different pieces of that exchange deteriorate more rapidly than others?

A. Yes.

Q. For instance, underground conduits deteriorate probably the least of all of your appliances?

415 A. Yes.

Q. Now, the per cent of depreciation for that particular item would be very small?

A. Yes sir.

Q. Now you take switchboards, and their life would be not so long, therefore you would have to have a larger per cent of their cost for depreciation?

A. Yes.

Q. And so on, for poles and wires and other things?

A. Yes.

Q. Now, this seven and a half per cent is figured as the average of all, is that correct?

Q. Yes.

Q. So that many parts of the plant are replaced several times before you replace some other part?

A. Yes.

Q. For instance, you would replace a pole route several times before you would replace an underground conduit?

A. Yes.

Q. So, this question of replacing or reconstructing your plant goes on, after the first few years, year by year?

A. Yes.

Q. Now, taking the plant at Louisville, that has been in existence twenty-five years, many parts of that plant have been reconstructed more than once?

A. I take it so.

416 Q. So that from year to year you use part of this seven and one half per cent depreciation fund to reconstruct parts of the plant?

A. Yes.

Q. And the amount you would carry forward would be the difference between seven and one half per cent, and the actual amount you have used in reconstructing that particular year?

A. That is it exactly.

Q. Say that during 1908, for illustration, you had used four per cent of the original cost of the plant in reconstructing parts of the plant, you would then only use to carry forward of the depreciation fund, three and one half per cent.

A. Yes.

Q. Instead of seven and one half per cent?

A. Yes.

Q. Now, it very often happens, I assume, that you use more than seven and one half per cent in one year in reconstruction?

A. Yes.

Q. In that kind of a case, you would have nothing to carry forward to your depreciation or maintenance reserve?

A. Instead of carrying something forward, you would have to take something from it.

417 Q. And if you used exactly seven and one half per cent, you would have nothing to take from or add to it?

A. Exactly.

Q. Now, is it possible to operate a telephone plant any length of time without reconstructing parts of it year by year?

A. No, indeed.

Q. Now, take the plant at Louisville; some of it is new, and some

of it is old. The underground conduits, I take it have not been reconstructed at all, as they were started in about 1891. The old switchboards in the main office were removed in 1895 or 1897 and the new main switchboard has been in service since that time?

A. Yes, and the switchboards east and west and south have been put in and never been reconstructed.

Q. Now, you have pole routes in Louisville, I take it, of different ages?

A. Yes.

Q. Some have been reconstructed and some have not been reconstructed?

A. Yes.

Q. I will ask you to state whether it is possible to ascertain the exact value of the Louisville plant without an accurate inventory of the property?

A. No.

Q. And a personal inspection of every piece of property in the system?

418 A. No, and the most minute inspection would be required.

Q. How long do you think it would take to make that inspection?

A. It would take two or three months at the least, with a pretty good size force and a good, organized force, to do it and get good results.

Q. Now take a line of poles for instance that have been up five years, those poles, of course, have a shorter life than poles that were constructed and erected just one year. That is so, isn't it?

A. Yes.

Q. But, that pole route five years old is just as serviceable and performing the same duties that it did the first year it was constructed, is it not?

A. Yes sir.

Q. Is the maintenance on that pole route appreciably more the fifth year than it was the first?

A. Hardly so.

Q. Now, that pole route stands until its replacement or renewing or reconstructing?

A. Yes sir.

Q. Now, until the time comes to reconstruct that pole route it is just as serviceable as it was when first erected?

A. Yes. In the City of Louisville we have a good solid foundation to set a pole in. Out in the suburbs it would be probable that the poles would have to be straightened and possibly guys put on it.

419 Q. You mean, on account of wind and rain and moisture, the poles would sometimes lean and not be in the exact position they were when first set?

A. Yes, but I should say that the setting would become firmer and firmer as years went on.

Q. For instance, a wind storm would come along and push or pull a pole over at an angle, say, of forty-five degrees. Now, when

your men go and straighten that pole up, what would you charge that to?

A. Current repairs.

Q. That is, keeping the pole line in an operating condition?

A. Yes sir.

Q. Now, I will ask you whether or not work is constantly being done on these switchboards?

A. There is a force engaged always on the switchboards.

Q. Have parts of them been renewed from time to time since they have been erected?

A. Yes.

Q. Now, I will ask you whether or not the company has set aside for Louisville, and if so how much, of a depreciation fund, unexpended?

A. The company never earned enough money in Louisville to set aside any fund.

Q. So that as far as the Louisville plant is concerned it has been reconstructed out of earnings from other parts of the system?

A. That ought to be answered in this way: Either it has
420 been reconstructed on borrowed depreciation fund, or the dividends paid were not earned in Louisville.

Q. So that no part of this unexpended depreciation fund has gone into the capital account of the Louisville exchange?

A. It has not.

Q. And whatever property the plaintiff company has in Louisville represents actual investment and not borrowed depreciation fund?

A. Yes.

Q. I will ask you to state whether or not any part of the plaintiff's property in Louisville would cost more to reproduce it now than when it was constructed?

A. I should say almost every part of it would cost more.

Q. Why?

A. The underground conduits are doubtless now under different streets which at the time they were put down were only macadamized, but are now paved, and the cost of placing those now would be considerably greater than it was several years ago. The cost of practically every item of material has increased; labor has increased also.

Q. So that to replace the plaintiff's property in Louisville today you think would cost a larger amount than the company has expended in constructing it?

A. To reproduce it as it was constructed, would do so.

421 Q. Do you think that any depreciation that has taken place on the property would be offset by this increased cost of reconstructing it at the present time?

A. Well, there would be some of it.

Q. I say, whatever the amount the property has depreciated that has not been taken care of, so that however much less the property might be worth today than it was when it was originally construct-

ed, would that be offset by the increased cost of reproducing the plant?

A. I think it would be very largely offset.

Q. I will ask you to state if in your knowledge there is anywhere in the United States a telephone community receiving as broad and comprehensive a servicee on flat rates, as the patrons *to* the plaintiff company in the City of Louisville?

A. I know of no point, no exchange in the United States that receives as broad a service.

Q. Take the cities of Nashville and Memphis, Tenn., New Orleans, La., and other cities where the plaintiff company operates exchanges, is there *a* one of those exchanges having as broad or far-reaching a service as Louisville?

A. Not one of those exchanges has messages to another exchange without additional cost and not one has as broad a service as Louisville.

Q. Would it be fair to take any toll receipts arising from long distance toll business of the company and apply it on a per-

422 centage basis to each of the exchanges?

A. No, indeed.

Q. Why not?

A. Because the amount of business done throughout the territory has nothing at all to do with the amount of business done locally at any one point. The business done at a point is governed by the number of lines leading into that point, by the amount of business transacted at that point over the long distance lines, and it would be eminently unfair to give one exchange the earnings that accrued in an altogether different locality.

Q. You think the only fair way is to do it like your accounts show, to take a part only of the toll line receipts at that particular exchange?

A. That is the only basis that I have ever seen satisfactorily followed.

Q. Is that the usual method?

A. Yes.

Q. So that if you were to take the gross toll receipts and pro rate it on each exchange, you would leave out of consideration the two important elements, one, the number of toll lines reaching the exchange, and the amount of toll business radiating from that exchange?

A. Yes.

Q. And you think that would be unfair?

A. I cannot see on what basis you could possibly divide

423 them. You could not divide them on subscribers' or exchange basis or any other basis I can think of.

Q. Now, with reference to the exchange in the City of Louisville, does the exchange cover just the territory inside of the corporate limits of the City?

A. No.

Q. How is the exchange treated?

A. The exchange is the business in and around Louisville. It

includes lines to all points nearer to Louisville than any other point.

Q. In other words, you build an exchange to serve a community of people and not to serve the residents within the corporate limits of the town or city?

A. Yes, exactly.

Q. Now, would it be possible to separate the earnings inside of and outside of the corporate limits of Louisville, that is, the exchange service?

A. It would be possible to determine the gross revenue but not the net revenue.

Q. Why?

A. Because the operators on the switchboard are answering those outside and inside and they are connecting those on the outside with those inside, and vice versa. The switchboard men in the Central office are handling both classes of lines without probably knowing whether the subscriber is located inside or outside of the corporate limits. The trouble men work in districts, and it would
424 hardly be possible for him to know what part of his time is chargeable to those outside of the city limits or inside of the city limits, as he has to go out there before he can do anything. In fact, every employé of the exchange from top to bottom, handles both classes.

Q. Now, what about the service that the patrons receive? Do they pay any attention to the corporate limits?

A. Not the slightest.

Q. So, telephonically speaking, the exchange does not know corporate limits?

A. It does not, except in rates.

Q. The rates for service beyond the corporate limits are higher than those inside of the corporate limits?

A. Yes.

Q. Why is that?

A. For the reason it requires longer lines to reach them, requires longer pole routes, requires more time for repairs than are necessar-, etc.

Q. And, I presume that you have to have some limit with reference to the area in which you will give the service on certain rates?

A. Yes.

Q. And for convenience, you take the corporate limits in large cities?

A. Yes sir.

425 Q. What about small places, where towns are small?

A. In small places we make a radius of a mile and a half from the central office.

Q. Regardless of corporate limits?

A. Yes. If the small town has corporate limits exceeding that, we take the corporation limits.

Q. But generally speaking, a radius of a mile and a half from the exchange not only includes the corporate limits, but the suburbs as well?

A. Yes.

Q. Those rules are all more or less arbitrary, but selected as being the nearest basis that can be determined?

A. Yes, and they are general in their character.

Q. You have competition, have you, in the City of Louisville?

A. We have.

Q. Both in exchange and toll line service?

A. Yes sir.

Q. How long has that competition been going on?

A. About seven years.

Q. What are their rates, if you know?

A. Business $4.00; residence, $2.00 within one mile; $2.50 over a mile and within the city limits.

Q. The telephone directors for each exchange, or taking the Louisville exchange, how often is that telephone directory published?

A. Generally four times a year.

426 Q. Why is it published so often?

A. Because of the new installations and the removals are sufficient in number to require revision.

Q. And necessitates new subscribers' lists in order to enable subscribers to communicate with each other easily and properly?

A. Yes.

Q. Now, what is included in that directory?

A. The Louisville part of the book includes the names of all subscribers to the service, those that rent instruments, those who are joint users, that is, those who have one dollar a month additional, have their names listed with some other subscriber and use the telephone jointly with him. Also, additional names which are put in the books for convenience and advertising. That is for instance, Smith & Jones may wish to appear also as Jones & Smith and for that service or advertisement they pay a small fee.

Q. So that, taking the list of names in the book will not indicate the number of subscribers paying the regular straight rates?

A. By no means.

Q. Now, for instance, if Jones & Smith, as a firm, having No. 500, they might appear three times, might they not? For instance it might appear Jones & Smith, No. 500, then it might appear W. M. Jones, No. 5, and J. B. Smith, No. 500?

427 A. Yes, and it might be Smith & Jones also, and appear four times.

Q. Now, is that an exaggerated statement or illustration?

A. I think that one is somewhat exaggerated, but there are many firms that have it in two or three times, and some employés of firms, lawyers, who are not partners and who would wish to show their names in the directory.

Q. Do you remember a Mr. Munster, an expert accountant of Cincinnati, Ohio, that investigated the records of the company with reference to a report to the Committee of the Louisville Board of Trade during 1907?

A. I remember him well.

Q. How long was he engaged in making the examination of the records in your office?

A. He was in my office ten days.

Q. Did you give him access to all records you had, to enable him to investigate the Louisville exchange?

A. Everything.

Q. Did you withhold any book or paper from him?

A. Not a thing; gave him more than he asked for.

Q. Did he make requests of you for any information?

A. He asked me for quite an amount of information, all of which I furnished him as promptly as possible, and entirely accurate.

Q. Did you misstate any fact or circumstances to him in any way?

428 A. Not a thing.

Q. Did you know what his report was or know what it would be, in advance of the committee's action?

A. I did not.

Q. Did you see it or know what it was, until after the committee had reported?

A. Not until sometime afterwards.

Q. Did you mislead or deceive him in any way?

A. Not in the slightest.

Q. Was Mr. Munster apparently an expert and competent accountant?

A. I think he was very competent.

Q. Had he had experience in the examination of telephone accounts?

A. I cannot say so much about telephone accounts, but he had had a great deal of experience in street railroads, electric light and gas companies and other public service corporations, so he told me.

Q. Was he diligent during the time he was in your office making an investigation?

A. He was.

Q. I believe your accounts are audited by an expert telephone auditor every year, are they not?

A. They are.

Q. That is done at the instance of certain of the stockholders?

A. Yes.

429 Q. Independent of the management of this company?

A. Yes.

Q. And they report to the stockholders who employ them, direct?

A. They do.

Q. So that aside from anything you may do, you know your books have been, and will continue to be, audited year by year, by expert telephone auditors?

A. Yes.

Q. I will ask you to state whether or not you know whether they have discovered any material discrepancies or errors in your books, of any kind?

A. They have not.

Q. State whether or not they have, from year to year, reported upon the accuracy of your books and accounts?

A. They have.

Q. Have they reported them to be correct and properly kept?
A. They have.
Q. And that is for the entire system, is it?
A. For the entire system, yes.
Q. Including the City of Louisville and suburbs?
A. Yes.
Q. What do you mean by a flat monthly rental for exchange service in Louisville?
A. We mean that the subscriber is entitled to as many outgoing and incoming calls as it is possible to make.
430 Q. He has the privilege of sending and receiving as many calls as he likes, during the month?
A. Yes.
Q. And in any day?
A. Yes.
Q. Now, what do you mean by limited exchange service in Louisville?
A. Limited exchange service is a service which, for a small rental we place an instrument in the premises of the subscriber and allow, without additional charge a fixed number of calls per month, and for each call additional to that number, he pays two cents per call.
Q. What do you mean by pay stations?
A. Pay stations are stations located conveniently for the general use of the public where service will be given at the rate of five cents per outgoing call. Usually there is an automatic device at the instrument to receive the five cent piece.
Q. That is intended for strangers and people who have no telephones and don't wish to impose on their neighbors and friends?
A. Yes.
Q. Now, I will ask you to state whether or not it is necessary in the telephone business in a city the size of Louisville to have many different kinds of rates and service?
431 A. It is very necessary, for the reason that there are all kinds of people; people with big pocket books and people with little pocket books. Those who want the best class of service that can be rendered, and others who are willing to put up with that which is not so good and more limited in its convenience, and we might say, a little more annoying. A party line is not considered a first class service and the direct line is.
Q. What is the theory or difference between the direct service and the party line service?
A. The direct service gives to the subscriber an individual, exclusive circuit which is two wires running all the way from his instrument to the switchboard. Those wires are used only when his station is calling or when he is called. The party line is a circuit on which more than one instrument is placed, those instruments being located in different offices or buildings and being used by different people.
Q. Now, the theory of a party line is that because of the less amount of apparatus employed, two or more people in the same neighborhood can use the same pair of wires to the switchboard?

A. Yes.

Q. And in that way the service can be given cheaper than for one instrument on a pair of wires?

A. Yes.

432 Q. Now, is it a fact or not that it often happens that where you have, say four parties on a line in a neighborhood, one or more of those parties give up the telephone and then what happens until you can find others to take their place?

A. The majority of party lines, four-party lines and two party lines are not full, that is, have not the authorized number of instruments on it. When a party line has the designated number, or is full and if any subscriber gives up his telephone, you must wait until some other customer in the same neighborhood desires that kind of service before you can fill that party line to its proper number.

Q. Now, is it or not the policy of the company in Louisville, or elsewhere, to keep these party lines full up as much as possible?

A. Yes.

Q. Is it the practice or not to pretend to give party line service and keep others off the party line, except one favored person?

A. It is not the practice.

Q. If that is discovered, state what takes place?

A. I know of one manager who lost his position on account of it.

Q. In running the business and employing so many people, five or six thousand, you do encounter occasionally, employés who
433 for the purpose of their own interests, violate the rules of the company and do favor patrons do you?

A. We do, yes, just as insurance companies and others do.

Q. And whenever you discover it, it is corrected, is it?

A. Yes, and all our contracts state that the terms of the contract cannot be waived by anyone except the general manager or the president.

By the COMMISSIONER:

Q. Does the company pay the same rental to the Bell Telephone Company for the pay station telephones and party lines as they do for the regular instruments?

A. You see the rates charged control that, as it is based on the receipts.

Q. It is four and one-half per cent on the receipts?

A. Gross receipts, yes.

By Mr. GRANBERY, for plaintiff:

Q. Now, when the Ohio Valley Telephone Company was operating the Louisville Telephone exchange, did they have all these different kinds of rates?

A. They did not.

Q. What rates did they have?

A. In 1895 they had a private line, business, and a two station business and only a private line grounded. No party lines and no limited service, and no pay stations. In 1896 they had the
434 same classes of service and also in 1897 they still had the same classes.

Q. Now when the Cumberland Company purchases the Ohio Valley Telephone Company, how soon after this purchase did they change the rates?

A. Immediately.

Q. Did they increase them or decrease them?

A. They decreased rates for like service and increased the classes of service which could be secured.

Q. In other words they offered to the people of Louisville a more varied classification of service, suitable to each patron's desires and wants?

A. Yes.

Q. And at a lower price?

A. Yes.

Q. What do you mean by metallic, circuit, and grounded circuit?

A. Metallic circuit is one of two wires that carries the current and brings it back; a grounded circuit uses one wire and uses the earth for its return.

Q. Which is the more expensive?

A. The metallic is far more expensive and far better.

Q. Why is it more expensive?

A. Because it requires a second wire?

Q. What about the cost of installation?

A. The metallic circuit has always had a high-class instrument, a higher class instrument than the grounded circuit.

435 Q. And in addition to that, requires two wires instead of one, from the central exchange to the patron?

A. Yes, and then the switchboard used with that system is more expensive.

Q. And costs more to operate and maintain?

A. Yes.

Q. What advantage has that over the old switchboard used with the grounded circuit?

A. It has the advantage of time in answering the calls, and more prompt service.

Q. And more distinct and clear?

A. The whole apparatus combined is much more distinct.

Q. And more pliable?

A. Yes.

Q. How many patrons did the Ohio Valley Telephone Company have connected, who could receive and send messages to each other on the rates you have indicated, in Louisville?

A. December 31st, 1895, 2550; December 31st, 1907, 2525.

Q. Do you know the number they had on December 31st, 1898?

A. No, I do not.

Q. Is it an advantage or disadvantage to each subscriber to be connected with a few or a large number of persons?

A. It is very necessary in conducting a satisfactory and up-to-date exchange, to have a comprehensive telephone service.

Q. What brought about the expression that the telephone is
436 a public necessity?

A. The immense use that is made of it, the time saving qualities.

Q. Was it a public necessity when the patrons were few?

A. It was not, because the wants of many could not be satisfied through telephone communication.

Q. So that when you rent a subscriber an instruments that is of no advantage to him is it, its only advantage being that he can employ it to reach a number of other people?

A. Exactly.

Q. And the more people he can reach the more advantage it is to him?

A. Yes. It is as though a man knows a foreign language and cannot talk to anybody. If he knows the same language or is connected with the same exchange, everybody is connected with it, he can talk to everybody.

Q. And of course, the advantages are according to the more people he can talk to with it?

A. The advantages are greater and the uses are greater, the more people he can talk with.

Q. I will ask you to state how the number of calls increase or decrease with the increase of the number of subscribers to an exchange?

A. The records all show that the greater number of subscribers, the greater the number of calls per subscriber.

Q. In other words, you — a man connected with five hun-
437 dred persons will use his telephone say five times a day, and if he is connected with ten thousand, will he use it only five times a day?

A. He will use it probably ten times a day.

Q. So, the greater use he makes of the telephone when he is connected with a large number of people?

A. Yes.

Q. What is the minimum charge throughout the United States for measured service?

A. Two cents for each call, I think.

Q. Suppose the plaintiff company received two cents for each call in the Louisville exchange during the year 1908, what effect would it have on the receipts?

A. The revenues would have been far greater.

Q. So that the people of Louisville on an average are receiving telephone calls at less than two cents each?

A. Yes.

Q. What would you say is about the charge per call on the rates in force in Louisville?

A. I think it would average about one-half of a cent.

Q. Are you in a position to state whether or not the management of the plaintiff company exert themselves to give efficient service and develop the telephone business in the City of Louisville in a proper, intelligent and skilfull manner?

438 A. I believe so. I don't think there is any doubt of it.

Q. I will ask you whether or not the expenses are held down to a low point as is consistent with good service and proper facilities?

A. The supervision of the expenses, not only of Louisville, but of

the whole company, is given the strictest attention. There is no money spent until we know that it is being spent properly.

Q. How do the expenses of the plaintiff company in Louisville and elsewhere compare with the expenses of telephones generally throughout the United States?

A. Our expenses are less than is generally the case with other companies. I know of no company which has a smaller expense.

Q. Is it an advantage or a disadvantage to the Louisville exchange to be under the management or be connected with a system or part of a system with respect to expenses?

A. It is undoubtedly of advantage.

Q. In what respect?

A. The materials all are bought at wholesale; the fact that it is connected with a great system enables it to get the very best advice that can be gotten, at the cheapest possible cost.

Q. What about the general office expenses, is that pro rata to Louisville less or greater than it would be if it had an independent management?

439 A. It is less.

Q. Appreciably less?

A. Yes. Then too, I will say, the uniformity of service given from Louisville to every point is an advantage.

Q. Has each patron in the City of Louisville, regardless of the rate that is being paid, access to the toll lines without extra charge, from their station?

A. He has.

Q. Is there any charge for connection with the toll lines to the individual station?

A. If he uses them, there is for the toll service.

Q. I mean, is there any extra charge over those not having instruments or not being subscribers?

A. Not at all.

Q. In other words, any patron of the exchange gets toll service at precisely the same rate as if he should go to the central office and use the toll lines?

A. Yes.

440 In the United States Circuit Court for the Western District of Kentucky, at Louisville, Ky.

CUMBERLAND TELEPHONE AND TELEGRAPH CO.
vs.
CITY OF LOUISVILLE.

The Cross-examination of H. BLAIR SMITH, Taken at Nashville, Tennessee, in the Above Styled Cause, on This the 30th Day of August, 1909, at Ten O'clock A. M.

Present, Mr. W. L. Granbery, Attorney for Plaintiffs; Mr. Clayton B. Blakey, Attorney for Defendant; and Buford Duke, Stenographer and Notary Public.

H. BLAIR SMITH, called, and previously sworn, further deposed and testified as follows:

Direct examination.

By Mr. BLAKEY:

Q. Mr. Smith, your deposition in this case deals somewhat with the value of the property used by the Cumberland Telephone Company in connection with its system at Louisville and the joint report of the two accountants, differ somewhat from the statement contained in your deposition. For instance, in your deposition
441 you state that the value of the plant, or rather the cost of the plant when purchased from the Ohio Valley Telephone Co. was some six hundred and eighty seven thousand dollars, whereas the accountants find that according to your books, the plant appears to be valued at six hundred and seventy eight thousand dollars—I leave off the smaller figures. Can you explain that difference and explain which statement is correct; whether the accountants' statement in regard to your books is correct, or whether your statement is correct?

A. You say accountants; there were two——

Q. Yes and they made a joint report?

A. Now, I think the statement I presented, showing the cost of the Louisville part of the Ohio Valley Company plant at $678,354.69 is correct, and I think one of the accountants, at least, agree in this. In the joint report, they have included this sum in the total construction account of Louisville, amounting to $1,702,391.68.

Q. On page twenty-four of your deposition, question 86 as I have it here, the question was asked:

"Q. What was the actual cost to the plaintiff company of the Louisville exchange when it was purchased from the Ohio Valley Telephone Co.?

A. $687,354.69."

A. That is a typographical error of the stenographer, a trans-

position of the figures. It should read, $678,354.69, and the
442 correct sum was included in the construction cost.

Q. Now as I understand you then, the Cumberland Telephone Company paid the Ohio Valley Company $678,354.69 for its plant in Louisville, Ky.?

A. The Cumberland Company didn't buy the Louisville plant separately. The two companies were merged as a whole.

Q. Did the Cumberland Company pay out any money to the owners of the Ohio Valley Telephone Co., for its plant?

A. They didn't buy the plant.

Q. What did they buy?

A. They bought it through stock ownership.

Q. They bought the stock of the Ohio Valley Telephone Company, did they?

A. Yes, sir.

Q. What did they pay for that stock?

A. They brought some of the stock in the open market paying therefor.

Q. Just state how much they bought and the price they paid for it?

A. They bought 702 shares at $140 per share, $98,280, and 2855 shares at $141.00 per share, $402,555, making the total purchase, 3557 shares for $500,835.

Q. Is that all they purchased?

A. That is all that was bought for cash.

Q. Did they acquire the other stock in the company?

A. Yes.

—. ——.

443 A. They swapped share for share, stock of the Cumberland Telephone and Telegraph Company for stock of the Ohio Valley Telephone Company for the balance of 1937 shares.

Q. What was the par value of the Cumberland Co. stock?

A. The par value was $100.00 a share.

Q. At one hundred dollars a share, how much would that amount to?

A. The par value would be $193,700.

Q. Did the Cumberland Company pay out anything more or anything in addition to the amounts you have stated there as the consideration for the property of the Ohio Valley Telephone Company?

A. In cash nothing further, than this, its liabilities.

Q. What were its liabilities?

A. Those shown on the books were,

Bonds	$16,000
Various Reserve accounts	70,049.75
Bills Payable	221,005.09
Miscellaneous	63,755.16

Q. That makes a total of how much?

A. $370,810.

Q. Did the Cumberland Company assume the payment of the sum you have just mentioned.

A. It assumed all of the liabilities on the books and outstanding.

Q. What became of those bonds?

444 A. They have been retired.

Q. Redeemed at par, more than par or less than par?

A. They were redeemed finally at par, after paying six per cent per annum interest.

Q. Now, what items go to make up the various reserve accounts?

A. Reserve for taxes, $4,000.00——

Q. Now hold on, before we go any further we might as well take up each item separately as we go along. Did the Ohio Valley Company owe any taxes at that time?

A. I think it would be considered they did, a full year's taxes.

Q. Do you know as a matter of fact whether they did owe any taxes?

A. It would be a matter of opinion.

Q. Did the Cumberland Company ever pay that item of four thousand dollars?

A. It pa'd that and more.

Q. Then it did owe that much, did it?

A. I think it owed more than that.

Q. Did it owe that much in taxes?

A. Every bit that much.

Q. I thought you said it was a matter of conjecture?

A. I said it would be a matter of opinion, not conjec-

445 ture to me.

Q. Can you furnish any data or voucher showing you paid that four thousand dollars in taxes?

A. I can.

Q. I will get you to do that if you can?

A. Yes. I will have to look through the vouchers for that year.

Q. I will withdraw that request for the present. Now, when did the Cumberland Company first purchase any stock of the Ohio Valley Co.?

A. I think it was in June 1899.

Q. In whose name was that stock purchased?

A. I cannot say.

Q. Will your books show at all?

A. I cannot say.

Q. When did the Cumberland Company begin to operate the Ohio Valley Co.?

A. The consolidation was effected January 27th, 1900.

Q. That is not the question I asked. Please read the question to him.

(Question read.)

A. I can not give any other information answering your question better than that.

Q. Do the records of the Ohio Valley Co. show when Mr. Caldwell became president of that company?

A. The auditor's records would show his salary, if he got one, but I don't recall it.

446 Q. Did the Cumberland Telephone Co. begin to operate it from the time Mr. Caldwell became president of the Company?

A. I would say Mr. Caldwell began then; I could not say the Cumberland Company did it.

Q. Does not the operations of the Ohio Valley Co. appear as the operation of the Cumberland Company from the time Mr. Caldwell became president?

A. No, it does not, that is, provided he became president before the consolidation.

Q. Where were the records of the operations of the Ohio Valley Company kept subsequent to the time Mr. Caldwell became president of the company and prior to the time the consolidation took place?

A. The records were kept in Louisville.

Q. Were they kept in the same set of accounts that they had been kept in theretofore or kept in a separate set of accounts, or were they kept as part of the accounts of the Cumberland Company?

A. I know they were not kept as part of the accounts of the Cumberland Company. As I recall it, some time prior to the consolidation of the two companies, the records were sent from Louisville to Nashville, and those records were continued until the consolidation or until January first. In fact, they were kept separate through January.

447 Q. Will you ascertain when that procedure began that you have just mentioned?

A. What procedure?

Q. Sending the records to Nashville?

A. I can do so, possibly, by the handwriting on the books.

Q. When they were sent to Nashville, were they transferred on to the books of the Cumberland Co.?

A. They were not.

Q. Where were they kept?

A. Kept entirely separate.

Q. You can tell then from an examination of those records when they began, can't you?

A. An approximate date.

Q. Then will not those records show the date of the first report made to Nashville?

A. Well, I don't know that any reports were made to Nashville. I don't recall any.

Q. You just stated prior to the consolidation reports were made to Nashville from the Louisville office?

A. No, I did not. I said the books were sent to Nashville.

Q. Were reports sent to Nashville prior to the consolidation?

A. None that I recall.

Q. Will you ascertain whether or not any such reports were sent here?

448 A. Will you give me the nature of it; it might have been sent to the Secretary, might have been sent to the treasurer, or the president or to the general manager. I cannot determine and I would have to go through every record the company has if I am to determine from the company's records.

Q. The operations of the Louisville System are reported to Nashville now, are they not?

A. They are.

Q. Were reports somewhat similar to the present reports kept by the Ohio Valley Co. prior to the consolidation?

A. The books are practically the same.

Q. If the books were sent to Nashville then, it would be difficult to have any sort of record made on those books, after they were sent to Nashville, unless reports were sent here?

A. The vouchers for expenditures were sent here from time to time, from the time the books were sent here and revenue vouchers, of course, came in. The system was practically the same, the changes would have been immaterial as far as the accounting was concerned, or as far as the results were concerned.

Q. To whom were those reports sent?

A. The financial reports would come to the auditor.

Q. Each month or each day or how would they come?

A. The reports of earnings would come monthly, and the vouchers might come periodically, as they accumulated them.

449 Q. Then, if they were sent to the auditor you would have a record of when they began sending them to the auditor, would you not?

A. While I was auditor at that time, I was not in charge of those records or books, but if there is any special information or anything you want, I will be glad to give it to you if I can.

Q. I have been here ten or fifteen minutes trying to ascertain when the reports and operations of the Ohio Valley Company plant, prior to its consolidation,—when those reports first began coming to the Nashville office.

A. If you want me to guess at it, I will say it was about September 1899.

Q. Will you ascertain definitely and let me know when those reports first began coming here.

A. Yes.

(Witness starts to retire for information.)

Mr. BLAKEY: Note there that Mr. Blakey asked Mr. Smith if he had any objection to Mr. Warren who is assistant to Mr. Blakey, going with him. Whereupon Mr. Smith stated he had no objection and Mr. Granbery directed Mr. Smith to go ahead, that Mr. Warren had nothing whatever to do with the matter and would not permit him to go with Mr. Smith.

Mr. GRANBERY: Mr. Granbery states he does not know Mr.

450 Warren to be Mr. Blakey's assistant, or a lawyer at all, but understands he is assistant to Mr. E. W. Farnam, representing the Mutual Audit Co., who has made a report to the Master Commissioner in this case. Mr. Granbery also says he has not

the slightest objection to Mr. Blakey going with Mr. Smith and looking at the original entries, if he desires.

Mr. BLAKEY: Of course, Mr. Granbery, there will be a number of matters I will want Mr. Warren to examine, in connection with the books of the company and I want to get a ruling of the Master as to whether he shall be permitted to make such examination of records as are called for. If you object to that, I should like to know, in order that I may telegraph the Master to come here and make a ruling on it.

By Mr. GRANBERY: I am not prepared to deal with any question that may arise, until it arises.

Mr. BLAKEY: I will then ask you, instead of having Mr. Smith to look these records up himself, to present them here for inspection.

Mr. GRANBERY: Mr. Smith will present any record
451 pertinent to this lawsuit, which you may call for, for your inspection.

Answer by witness, Mr. SMITH:

A. The last entry made in the Ohio Valley Company's books by the Louisville bookkeeper, were for August accounts, which would be made sometime after the middle of September, or about the middle of September. The September entries were made at Nashville.

Mr. BLAKEY:

Q. Mr. Smith, I will ask you to produce the records about which you have just spoken?

A. I will be glad to do so.

(Witness retires, returning with record which is handed to counsel for defendant.)

Mr. GRANBERY: Mr. Warren, that book is not for your inspection.

Mr. BLAKEY: Mr. Warren, you are here for that purpose.

Mr. GRANBERY: If Mr. Warren is to look at those books, I shall have to insist he does not do so, and I am not going to permit Mr. Warren to look at the books, and there is one way of preventing it, but that, of course, I should regret very much to have to do.

I have not the slightest objection to Mr. Warren being pre-
452 sent and aiding counsel in any data or suggestions he desires but so far as looking at the books of the company, they are not here for that purpose and I shall not permit him to do so.

Mr. BLAKEY: I ask the stenographer to certify to the Master the fact that certain books were produced for inspection, the books referred to by the witness, and that counsel for complainant, after they were produced, objected to the representatives of the City inspecting the books, and that counsel for the defendant then and thereupon requested the stenographer to certify to the Master, the fact that such refusal had been made, and asked for a ruling as to whether the City's representatives should be allowed to inspect the books, which were called for and produced by the witness.

Mr. GRANBERY: Mr. Stenographer, just take this: In making any

certification to the Master, you will please state exactly what occurred, as indicated by your notes.

The further taking of these depositions was thereupon
453 adjourned until the Master can be heard from.

STATE OF TENNESSEE,
County of Davidson:

I, Buford Duke, a Stenographer, and a Notary Public in and for the County and State aforesaid, before whom said deposition was being taken, certify that the foregoing is a true, complete and correct transcript of the proceedings had in the taking of said deposition.

Given under my hand and seal on this the 30th day of August, A. D. 1909.

BUFORD DUKE.
Notary Public and Stenographer.

454 CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
vs.
CITY OF LOUISVILLE.

Cross-examination of H. BLAIR SMITH, resumed on this Thursday Morning, September 2nd, 1909, at 9:30 o'clock, the matters arising during the taking of the said cross-examination having been transcribed by the Stenographer and Notary Public and forwarded to Mr. Henry Burnett, Special Master, and he having replied by telegram as follows:

"WEQUETONSING, MICH., *Sep.* 1, 1909.

Buford Duke, Notary Public, Nashville, Tenn.:

I think Blakey and Assistant Warren may inspect original entries produced by witness and thus guarantee correctness, but assistant may not make other examination of books.

HENRY BURNETT.
Special Master.

Telegram received about eleven o'clock A. M. Sept. 1, 1909
455 Copy of same being left with counsel for Complainant and original telegram being read to counsel for defendant over the telephone about the same hour received.

Complainant's counsel stated that he, of course, would acquiesce in the ruling of the Special Master.

The further taking of said deposition was thereupon resumed, with the same parties present as stated in the caption at beginning of cross-examination of this witness.

Mr. BLAKEY, for Defendant:

Q. Mr. Smith, I believe we were discussing the question of when the Cumberland Telephone began to operate the telephone system in Louisville, when we adjourned on last Monday morning. Are you prepared to say now when the Cumberland Telephone Com-

pany began to operate the Ohio Valley Telephone plant or system in Louisville?

A. The Cumberland Telephone and Telegraph Company began to operate it when they were consolidated.

Q. Did it operate it prior to the consolidation?

A. It did not.

Q. When did the Cumberland Telephone Company first purchase any of the stock of the Ohio Valley Telephone Co.?

A. I think it was in June 1899.

Q. When was Mr. Caldwell elected president of the company?

A. At the same time, June 1899.

456 Q. Who were the other directors elected at that time, Mr. Smith?

A. I cannot answer that Mr. Blakey, unless I look at the records. It is not shown in any of my books.

Q. Will you look at the records and let me know what other directors were elected at the time Mr. Caldwell was elected president?

(Witness retires to examine records.)

Mr. GRANBERY, for Complainant: Mr. Warren, that book is not for your general inspection, but we will just follow the ruling of the Special Master.

Thereupon Mr. Warren surrendered said book.

(Last question read to witness on his return.)

A. William Literer, W. W. Berry and V. E. Shwab.

Q. Do you know those gentlemen?

A. I do.

Q. Were they directors of the Cumberland Telephone Co. at the time they were elected directors of the Ohio Valley Company?

A. I think so.

Q. When were the books of the Ohio Valley Company sent to the Nashville office of the Cumberland Co.?

A. As near as I can approximate it, it was sometime between the middle of September and the middle of October 1899.

457 Q. Do you know how much stock was purchased by the Cumberland Telephone Company at the time these four or five gentlemen, whose names you have just given, were elected directors of the Ohio Valley Company.

A. I do not.

Q. Had the controlling interest been purchased?

A. I cannot answer.

Q. Can you ascertain that fact?

A. I can.

Q. Please do so? And you might also ascertain while you are there, in what way the stock was paid for?

(Witness retires.)

A. June 3rd, 1899, there was bought from James Clark, 1427 shares at $141.00 per share, amounting to $201,207; $50,301.75 was paid in cash and a note for the balance of $151,905.25 was

executed, payable on or before six months after date. This note was paid January 4th, 1900. On the same day there was also purchased 1428 shares at $141. per share, total of $201,348, with a cash payment of $50,337. and a note due on or before, six months for $151,011 payable to Mr. James B. Speed. This note was paid November 2nd, 1899. Both of these notes bore interest at four per cent. That is all the stock that was purchased at that time.

Q. That was the controlling interest in the Ohio Valley Company, was it not?

A. Yes sir.

Q. Who was the manager of the Louisville system at the
458 time the Ohio Valley Company stock was purchased by the Cumberland Telephone Co., if you know?

A. I don't know of anyone who had that title.

Q. Do you know who performed the duties of manager?

A. No, I do not.

Q. Do you know who performed the duties of manager after this stock was purchased in June?

A. Mr. George G. Hall, I think.

Q. When did he become manager?

A. Without referring to the records, I think he became manager or superintendent about June 1899, or probably not before September.

Q. Will you ascertain whether it was before or subsequent to September 1st?

A. I will. (Witness retires.) Mr. Hall became superintendent November 1st, 1899.

Q. Who was superintendent between the time the stock was purchased, about which you have spoken, and November 1st, 1899?

A. I think Capt. H. N. Gifford was general manager at the time of the purchase and continued for two or three months and then there seems to be a gap in that official position at that office for a short time and Mr. Louis K. Webb was auditor at Louisville at the time and I believe held the next ranking position.

Q. When did Capt. Gifford retire from the management?
459 Was it before September 1st, or after September 1st?

A. About that time.

Q. Will you ascertain whether it was before or after?

A. Yes. (Witness retires to do so.) Capt. Gifford's resignation was tendered in writing, effective October 2nd, 1899.

Q. Now we were talking the other day about a reserve for taxes, four thousand dollars. Do you know what years were represented by those taxes?

A. Well, I should say that some of that was for taxes for 1899, called 1899 taxes. In addition to that, I understand that the taxes in Kentucky are assessed as of September 1st, for the following year. If a property began operation on September 5th, it would pay no taxes until the following year; therefore, its taxes are one year behind, so that in addition to unpaid taxes for the year 1899, or payable in 1899, there would be at least a full years' taxes unpaid.

Q. Do you know that any of that four thousand dollars is represented by taxes for the fiscal year ending September 1st, 1899?

A. Yes, I know that some of it is.

Q. How much of it?

A. Probably a thousand dollars.

Q. Will you ascertain between now and tomorrow morning some time after adjournment of the taking of this deposition, and let me know how much of those taxes were for the fiscal
460 year ending September 1st, 1899? known as 1899 taxes?

A. That is, the fiscal year ending August 31st, 1899?

Q. Yes?

A. That is, the taxes that are assessed in 1898.

Q. Yes, taxes for the year 1899?

A. You know, besides the taxes that are payable direct to the State of Kentucky, there are also taxes due the government. At that time we paid a tax on toll line messages.

Q. You didn't pay a tax on telephone messages transmitted from one subscriber to another?

A. We did on long distance messages exceeding a certain sum, which I believe was ten cents.

Q. You had no long distance messages inside of the City of Louisville, did you?

A. No, Louisville would not be affected, itself, but the plant of the Ohio Valley Telephone Company would be affected.

Q. No part of the taxes you paid the Government should be charged against the Louisville Plant?

A. No.

Q. Then, you can ascertain whether any state, county or city taxes are represented in this item of $4,000 for the fiscal year 1899?

A. You ask me to do this over night. I will do it if I can.

461 Q. Will you file an itemized statement with the stenographer showing the items going to make up the four thousand dollars you have mentioned as reserve for taxes, and when any payments were made by the Cumberland Company of those items?

A. I can do so if I am given time to get the statement up.

Q. Now the next item I find, it having been mentioned by you in your deposition on Monday, various reserve accounts $70,049.75, will you please state what items go to make up that gross item of $70,049.75?

A. In giving that sum I referred to an exhibit wherein it is shown as a total. I will deduct from that, items which I see are included therein, making the net liabilities different. I wish to deduct depreciation, $8,000, toll line construction, $9,000 and special account, $38,875.16. The other items which remain and which are liabilities in addition to the tax reserve of $4,000, are the interest reserve of $7770 and the S. B. Royalty reserve of $2459.

Q. So then, instead of assuming $70,049.75, you assumed that amount less $55,875.16, did you?

A. Well, there might be an argument in regard to that, but we will eliminate that from the liabilities for the present.

Q. In making up your original statement in your deposition as

first given, you included that $55,000 as items going to make up the total of six hundred and seventy-eight thousand dollars, in round figures?

A. No sir, I did not. In making up my exhibits in my
462 direct examination, I referred to the books for the figures I exhibited.

Q. Do the books show that this $55,875.15 are included reaching the value of the Louisville plant and fixing it on your books and six hundred and seventy eight thousand and odd dollars, in round numbers?

A. Those are certainly involved.

Q. So, those figures are erroneously included?

A. They are not erroneously included.

Q. What is your position now in regard to this fifty five thousand odd dollars?

A. It represents earnings of the plant.

Q. It appears on the books of the company as a liability, does it not?

A. Yes, all earnings appear on the books as liabilities.

Q. Do they appear on the books as having been assumed by the Cumberland Telephone Company at the time it consolidated with the Ohio Valley Company?

A. They appear on the books as having gone into the accounts of the Cumberland Company.

Q. Please read my question to him again.

(Question read.)

A. I understand the question to refer to them as liabilities. I say that they are not liabilities and I believe you assumed they are liabilities in asking the question.

463 Q. Don't the books show they are liabilities?

A. They do not.

Q. What do they show them to be?

A. Show them to be accounts for various purposes.

Q. Did the company ever pay any of those items, the Cumberland Company?

A. Well, not directly.

Q. Did it pay them indirectly?

A. I cannot say that they did. I will change that, the company paid them indirectly.

Q. How did they pay them indirectly?

A. After the company bought stock in the Ohio Valley Company, it ceased paying dividends, and by foregoing its dividends, it paid them.

Q. Now in your deposition, on Monday, the third item bills payable, $221,005.09, can you furnish me an itemized statement showing those bills payable?

A. I can.

Q. Have you it before you?

A. I have not.

Q. Have you vouchers representing those payments?

A. I think so.

Q. Have you before you an itemized statement of those payments?

A. I have not.

Q. In what records do they appear in your office?

464 A. In the ledger of the company.

Q. Will you produce the ledger for inspection?

A. I will do so.

Q. On what page is it?

A. You have the ledger; there is an index in there.

Q. Will you kindly indicate to me in this ledger where I will find a list of the items that go to make up this total sum of $221,005.09?

A. By referring to the index under notes payable, you will find the page.

Q. I notice that on page 326 of this ledger, you have handed me, the last item appearing on that page is June 3rd, 1899, are there any other records from June 3rd, to January 1st, 1900, dealing with this subject?

A. I would have to investigate. It is possible we have an individual ledger that belongs to the full set of accounts.

Q. The last item here seems to be balance to individual ledger. What does that mean?

A. It means that we carried two ledgers, one for general accounts and one for accounts that are known as individual accounts. Usually the general ledger represents the accounts payable, and the individual ledger, the accounts receivable.

Q. Is the balance appearing on this page, 326, which seems to have been carried to the individual ledger, is that balance carried over to the individual ledger and then this account continued on the individual ledger?

465 A. I take that to be a fact.

Q. Will you produce that individual ledger?

A. Yes. Page 170 shows the continuation of the account.

Q. Mr. Smith, if you will examine page 326 of the ledger you first handed me, you wil notice a balance to individual ledger, it seems to be the last item save the total, $170,000. And, on the right hand side of the page, save the total, is June 3, J. 378, $100,000. That is true, is it not?

A. Yes, sir.

Q. Now, when we turn over to page 170 of the second book you hand me, which you term the individual ledger, you will notice, balance from ledger C. 326, June 3, 1899, Louisville Cement Co. on demand, $70,000. Is that seventy thousand dollars I have just mentioned as being on page 170 of the individual ledger, a part of the items which appear on page 326 of the first ledger you handed me?

A. I think not. Wait a minute, read the question? Do you ask me the question, is this $70,000 a part of this balance of $170,000?

Q. Yes.

A. It is.

Q. Do you know what that $70,000 represents, what sort of a liability and how it was incurred?

A. The books show that it was a demand loan from the
466 Louisville Cement Co., bearing date June 30th, 1898. That is all I know about it.

Q. Was that $70,000 paid by the Cumberland Telephone Co.?

A. No, it was paid by the Ohio Valley Co. on September 29th, 1899.

Q. Then, that $70,000 was not a liability which the Cumberland Telephone Company assumed at the time it consolidated with the Ohio Valley Co.?

A. No sir.

Q. So that of the liabilities appearing in page 170 under the head of notes payable, only $100,000 remains, after deducting from it the $70,000 about which you have just testified?

A. Yes, as of the date transferred. That is, there remain unpaid notes issued prior to June 3rd, after the $70,000 was paid, $100,000.

Q. Now referring again to page 170 of the second book you handed me called the individual ledger, I notice these items in red ink; June 3, 1899, James E. Caldwell, $20,000. Same date, James B. Speed, $10,000; same date, James B. Speed, $10,000; same date, J. B. Speed, $10,000; same date, J. B. Speed, $10,000; same date, Mrs. Jessie L. Clark, $10,000; same date, Mrs. Jessie L. Clark, $10,000; same date, Mrs. Jessie L. Clark, $10,000; same date, Mrs. Jessie L. Clark, $10,000, making a total of the items I have
467 just read, of $100,000. Now is that the $100,000 liability that appears under the head of notes payable in the first book you handed me?

A. Yes.

Q. What were those notes given for, if you know?

A. Those notes were given, I think for the payment of the Jefferson Street property, called the main exchange, now occupied by the main office of the Cumberland Telephone Company.

Q. Were those notes paid?

A. They were.

Q. When were they paid?

A. The first note, for $20,000 seems to have been paid—from this record, on December 8th, 1899. The other notes were paid at maturity.

Q. When was that?

A. The notes in favor of James B. Speed were paid as follows, $10,000 June 3, 1900; $10,000, June 3rd, 1901; $10,000, June 3rd, 1902; $10,000, June 3rd, 1903. The notes in favor of Mrs. Jessie L. Clark, were paid as follows: $10,000 June 3, 1900; $10,000, June 3rd, 1901; $10,000 June 3rd, 1902; $10,000 June 3rd, 1903.

Q. Now, the first item I read was June 3rd, 1899, James E. Caldwell, $20,000. Was James E. Caldwell a part owner of the Jefferson Street property, occupied by the Ohio Valley Company as its exchange?

468 A. He was not. That note was part of the $100,000 and represented the cash payment. It was made in favor of Mr.

James E. Caldwell and endorsed by him individually and negotiated through bank.

Q. Do you know that it was endorsed by him and negotiated through bank?

A. The records show that.

Q. What records?

A. The records of the company.

Q. Did he get any part of that $20,000 individually?

A. None whatever, that I know of.

Q. Do you know that he did not?

A. I don't know further than what the records show and I have the greatest fatih that he did not.

Q. What does the note show?

A. The books show that, the books that I now have before me only show that the note was made in favor of Mr. James E. Caldwell.

Q. Is that note now in the records and archives of this company?

A. I cannot say positively, but we have records of the note.

Q. Will you ascertain if that note is now in existence and produce it if it is?

A. It is ten years ago; it is a payment made ten years ago and it will take considerable length of time to determine whether it is in the files or not.

469 Q. Have you any assistant that you could direct to make the search while you proceed with the deposition?

A. None that I think would be familiar with the records at that date.

Q. Will you, at the same time, or at some time before the proof is closed in this case, see if you can find that note and if so file a copy of it with the stenographer?

A. I will.

Mr. GRANBERY: I would suggest that at the adjournment for lunch that Mr. Smith be given such time then as necessary then, before resuming his testimony, so as not to accumulate too much for him to do at the end of the deposition.

Mr. BLAKEY:

Q. You don't know then, as a matter of fact whether Mr. Caldwell got any part of that money that was paid to him under that note, or not?

A. The books show the transaction as a very clear one and show that he did not.

Q. In what books, and in what way do the books show he did not?

A. The books show that the payment was made.

Q. To whom?

A. To the bank.

Q. The books don't show when the note was discounted

470 that he didn't get the money, does it?

A. The books show that the deed to the property was for a consideration of $100,000, $20,000 of which was payable in cash,

the balance in notes. It takes the $20,000 note we are discussing to make up the full $100,000.

Q. And the note was executed payable to Mr. Caldwell and delivered to Mr. Caldwell, was it?

A. I cannot say that.

Q. That is the presumption, isn't it. The note would be delivered to the man to whom it is payable?

A. Let us see if the note will not show for itself if we find it.

Q. That would not show to whom it was delivered?

A. I can't say what it would show.

Q. So far as your records show then, the note was executed payable to Mr. Caldwell and delivered to him. In other words your record shows nothing to the contrary?

A. The records don't show it was delivered to Mr. Caldwell. The records show that the note was executed and negotiated in bank.

Q. Does it show who negotiated it?

A. The records will show that.

Q. What records?

A. The note itself and the journal would probably explain more fully. I can produce the journal if you like.

471 Q. How long will it take you to produce the journal?

A. Two minutes.

Q. All right, suppose you produce the journal?

A. (Witness does so.) On page 377 of the journal, it shows the transaction complete.

Q. Where is that, here at the bottom of the page?

A. Yes sir.

Q. From this journal,—and, by-the-way, is this the journal of the Ohio Valley Telephone Co.?

A. It is.

Q. From this journal it appears that the Ohio Valley Co. purchased from J. B. Speed and Mrs. Jessie L. Clark, the property on Jefferson Street, about which we have been talking, does it?

A. Yes sir.

Q. And it also appears from this record that the Ohio Valley Co. paid therefore or agreed to pay therefor, the sum of $100,000, $20,000 of which should be in cash, does it Mr. Smith?

A. Yes sir.

Q. And it also appears that Mr. James E. Caldwell the president of the company—what company, president of the Ohio Valley Company does that mean?

A. He was elected on that day.

Q. And advanced twenty thousand dollars to meet the
472 cash payment and a note was given to James E. Caldwell for twenty thousand dollars to cover that advance payment, is that correct?

A. Yes sir.

Q. Now do you know as a matter of fact whether Mr. Caldwell did advance that $20,000?

A. I was not present.

Q. Then you don't know that?

A. No, I don't know it personally, but I have no reason to doubt it.

Q. The next item I notice on page 170, immediately following the items I have read, which we have just gone over, is an item of September 28th, 1899, D. L., which I understand means demand loan, made, 4½% is that right?

A. I take it to be correct.

Q. For $50,000 what does that represent?

A. That represents a loan which was made by the Ohio Valley Telephone Co.

Q. Do you know who they borro-ed that money from?

A. The ledger does not show it; I can find out and let you know, if you desire.

Q. Have you the journal here which shows it?

A. The journal would not show it, but the cash book would.

Q. Suppose you get the cash book, if you will?

A. The cash book shows on page 8, under date of September 28th, 1899, the following entry, Cash debit, account of bills payable, demand loan made this date with the Union National
473 Bank, 4½% interest, $50,000.

Q. Now there appears opposite the item of $50,000, to which we have just referred, October 31, cash, $25,000. What does that item represent?

A. Represents a partial payment made on account of that note.

Q. Is that October 31st, 1899?

A. Yes sir.

Q. The next item I find, on the right hand side of the page, under the item of $50,000 is, October 31st, 1899, 3 months, 6 per cent L. Hume, Treasurer, to C. T. Co. First National, Louisville, $14,728.32. What does that item represent?

A. That represents a note given by the Ohio Valley Telephone Co. for $14728.32, payable to the Cumberland Telephone & Telegraph Co., dated October 30th, 1899, due in 3 months, at six per cent interest.

Q. For what was that note given?

A. On account.

Q. On account of what?

A. After the Cumberland Company purchased the stock in the Ohio Valley Telephone Company in June, it began selling it supplies and financing it generally, and the note mentioned was given as part payment of the debt that the Ohio Valley Telephone Company owed at that time to the Cumberland Telephone Co.

474 Q. What debt did the Ohio Valley Telephone Company owe the Cumberland Company at that time?

A. At what time?

Q. The date of the note you have just been speaking of?

A. About $48,500.

Q. You ascertain that fact from page 182, do you?

A. Yes sir of the individual ledger.

Q. Are these charges against the Ohio Valley Company, or are these credits to the Cumberland Telephone Co.

A. They are credits to the Cumberland Telephone Co.

Q. I notice a number of credits there of material to Jeffersonville, material to Morganfield, material to Louisville, material to Elizabethtown, five items, material to Morganfield, five items, and various other items which do not designate for what point they were intended, the forty eight thousand dollars in round figures, then I assume that was for supplies furnished over various parts of the company's territory?

A. No sir, the forty eight odd thousand dollars was represented largely by cash advances.

Q. Now, when was that note paid if you know, if at all?

A. It was paid after January 1st, 1900.

Q. Was it paid prior to January 27th, 1900?

A. It was paid after the Ohio Valley Company's accounts were taken into the Cumberland Company's accounts, which was
475 January 1st, 1900.

Q. Read him the question again?

(Question read.)

A. If you wish to know the exact date, I will refer to the Cumberland Company's books and ascertain it.

Q. There are three other items here. You might ascertain those at the same time—there are also two other items, notes, one of October 3rd, 1899, for $16,170.98; and one for $13,680.10. Ascertain when all three of those notes were paid, will you?

A. I will. (Witness retires to do so.) Company paid the note for $14,728.32 on February 2nd, 1900; the note for $16,170.98 was paid March 31st, 1900. The note for $13,670.10 was paid March 31st, 1900.

Q. Now at the time the Cumberland Company was furnishing the supplies to the Ohio Valley Company and at the time these notes were given, who was receiving the earnings from the Ohio Valley Co.?

A. They were kept in the treasury of the Ohio Valley Co. I say they were kept within that company, they probably were expended for construction or liquidation of li/abilit-es, etc.

Q. Do you know what part of this forty-eight thousand dollars was devoted towards the Louisville plant, towards upkeep, or maintenance of the Louisville plant?

A. I can not say what part of that specific forty eight
476 thousand dollars was.

Q. Do you know whether any part of it was so used, except the amount indicated on this ledger?

A. The amount of the money put into the Louisville plant would be shown by the vouchers.

Q. You don't know now whether any part of it was?

A. I can not say these specific dollars went into it.

Q. Can you say any sum advanced or any material furnished by the Cumberland Telephone and Telegraph Company to the Ohio Valley Telephone Co. and which is represented by this forty eight thousand dollars was used on the Louisville plant, except such as

appear on this page 172 of the ledger as having been as follows, for Louisville?

A. If you ask me to speculate, I should say that the largest part of the cash advances went for the improvement and extension of Louisville plant, for the reason that Louisville was the main exchange, in fact, practically the only exchange deserving the name that the Ohio Valley Telephone Company had.

Q. You don't know that, though?

A. I don't know it absolutely.

Q. I will ask you whether this record here shows any material or cash furnished to Louisville, Ky., except one item of September 30th, 1899, which shows material to Louisville, $9.00?

A. The ledger record does not state specifically, but simply
477 states that supplies were sold and cash was advanced.

Q. It does show what the supplies were furnished for when it mentions supplies, doesn't it?

A. It does, in a few instances.

Q. Doesn't it in most of them?

A. No sir, possibly less than half.

Q. About half of the items on there are cash items, aren't they?

A. By far the largest part of the money represented in the account, was advances of cash.

Q. Well, the next item on page 170, under the three notes about which we have just been talking, is an item of November 6th, 1899, of $25,712.85. Will you please explain what that item represents?

A. That item represents a note given to the Western Electric Co., for that amount, dated November 6th, 1899 and due January 8th, 1900.

Q. For what?

A. The Western Electric Company furnished quite a quantity of apparatus and material, and it was given in part payment of the account due that company by the Ohio Valley Telephone Company?

Q. Was that note paid on January 8th, 1900?

A. Shall I ascertain from the Cumberland Telephone Company's records?

478 Q. Yes.

(Witness retires.)

A. The note was paid January 6th, 1900.

Q. The next item is an item of November 6th, 1899, $25,713.84. State what that represents and when it was paid?

A. The note is for $25,712.84 and was paid February 6th, 1900.

Q. Was that the same character of note as the preceeding one?

A. Yes sir.

Q. The next item on page 170 is December 1st, 1899, an item of $20,000. Please explain what that item is and what it represents?

A. That is a four months' note, dated December 1st, 1899, due April 4th, 1900, in favor of the Cumberland Telephone and Telegraph Co.

Q. For what was that note executed?

A. That note was executed in part payment of the open account

due the Cumberland Telephone Company by the Ohio Valley Telephone Co.

Q. Where do you ascertain that fact?

A. I ascertain that fact from individual ledger, page 123.

Q. Is that the same character of notes as the three notes you testified about awhile ago, amounting to $14,728.32 and the other two?

A. I think so.

479 Q. Do you know whether or not it is?

A. The records show that it is.

Q. Have you any minutes on your directors' meeting records or any other records showing the authority for the issuance of that note?

A. I can not say; I have nothing to do with those records.

Q. Have you any journal that will make any minute of that item or show any minute of that item?

A. The journal, page 480, under date of December 1st, 1899, shows the following entry, "Cumberland Telephone and Telegraph Co. charged, and bills payable credited, $20,000. The explanation is, "Our four months' note in favor of Cumberland Telephone and Telegraph Co., payable at Union National Bank, Louisville, dated December 1st, 1899, due April 4th, 1900, interest, six per cent."

Q. Is that the same note that was executed to James E. Caldwell, payable December 3rd, 1899, for $20,000?

A. It is not the same note.

Q Is it a renewal of the same note?

A. The records do not show that it is, and further than that I do not know.

Q. Do you know to whom the note was executed which is referred to in the entry here as a note payable at Union Bank?

A. It states it is in favor of the Cumberland Telephone and Telegraph Co.

Q. But this note here seems to be a renewal of some other

480 note?

A. The entry does not so state.

Q. Do you know whether that is a renewal of the note which appears as of date June 3rd, 1899, payable to J. E. Caldwell on December 3rd, 1899, for $20,000?

A. I don't know.

Q. Have you any way of ascertaining?

A. I have not.

Q. Do you know whether or not that note was paid?

A. It was.

Q. To whom was it paid?

A. I will have to refer to the voucher.

Q. When was it paid?

A. It was paid April 4th, 1900.

Q. I notice here immediately under the item, bills payable, on page 123, an item of James Clark, $15,000. What does that item represent?

A. On December 2nd, 1899, the Cumberland Telephone Co. ad-

vanced the Ohio Valley Company $15,000 which was paid to Mr. James Clark on the note given him dated June 3rd, 1899, for $150,905.25. As the Cumberland Telephone Company advanced the Ohio Valley Telephone Company that money, the Ohio Valley Company credited the Cumberland account with it and then paid it to Mr. Clark.

481 Q. So that transaction represented a payment by the Cumberland Telephone Company of $15,000 of the purchase price of the capital stock of the Ohio Valley Co.?

A. No, I think the entry is this: that the Cumberland Co. loaned —no, wait a minute. The Cumberland Company issued a check for $15,000 and sent it for that purpose and the books here just mix it. They credited it on the Ohio Valley Company books and then had to withdraw it for it was a payment direct from the Cumberland Company to Mr. Clark, but it went through incorrectly on the books of the Ohio Valley Company, as the books will show and as will be seen from the following entries, on December 2nd, the Cumberland Company account is credited with $15,000 and on December 19th, when the error was discovered the Cumberland Company account is charged with that $15,000.

Q. How much did the Ohio Valley Company owe the Cumberland Company on December 1st, 1899?

A. On the open account?

Q. Yes?

A. It owed the Cumberland Company $11,824.70.

Q. Why should it give its notes to the Cumberland Company for $20,000 on that day, unless it was necessary to make up this payment of $15,000 to Mr. Clark and which follows immediately after the entries you have just read?

A. The Cumberland Company had loaned money to the Ohio Valley Co. and I guess, or I should say in this instance it was a return of favors.

482 Q. So, the Ohio Valley Company was simply loaning money then to the Cumberland Telephone Co.?

A. The Ohio Valley Company gave its note on December 1st, for $20,000 to the Cumberland Telephone Co.

Q. Loaning its credit to the Cumberland Telephone Co.?

A. It might be termed that.

Q. Now isn't it a fact Mr. Smith, that on December 1st, when this note was made, it was made in order that the money might be procured from the bank to pay Mr. Clark?

A. I think not.

Q. The records show that out of the proceeds of this loan, Mr. Clark was paid, don't they?

A. No sir.

Q. The Ohio Valley Co. got the twenty thousand dollars, didn't it?

A. The Ohio Valley got the $20,000 you ask?

Q. Yes.

A. Where from?

Q. From the Cumberland Co.

A. The records don't show it.

Q. The records do show that $15,000 was credited to the Cumberland Telephone Co., on December 2nd, does it not?

A. Yes.

Q. And the records do show that on December 19th, James Clark was paid $15,000 do they not?

483 A. The records don't show this as a payment to James Clark. The records show this debit of $15,000 which says to James Clark, as a correction entry of the $15,000 credited to the Cumberland Telephone and Telegraph Company's account.

Q. Now, I notice on page 124, bills payable, $20,000. What does that item represent?

A. On page 482, of the journal, under date of December 18th, bills payable is charged and the Cumberland Telephone and Telegraph Co. credited with $20,000, the entry reading as follows—"Latter paid our note dated June 3rd, 1899, due in six months, December 6th, 1899, in favor of James E. Caldwell, which they had discounted on August 24th, with the Fourth National Bank of Nashville."

Q. Well, what is your explanation of that entry?

A. My explanation is on the date mentioned, that the Cumberland Company took up a note which had been made by the Ohio Valley Telephone Co.

Q. To whom?

A. Been made to James E. Caldwell, and which had been discounted on August 21st, with the Fourth National Bank of Nashville.

Q. Had the Ohio Valley Company executed any note to Mr. Caldwell, except the $20,000 with which we first examined the books?

A. I think this entry covers the note specified in the pur-
484 chase of the Jefferson Street property.

Q. And that is charged the Ohio Valley Company is it on your books?

A. Which are our books?

Q. That $20,000 is charged in the shape of bills payable to the Ohio Valley Co. and the Cumberland Telephone Company is credited with that $20,000, is it?

A. The Cumberland books would show a charge to the Ohio Valley Company and the Ohio Valley Company books show a credit to the Cumberland Company.

Q. Twenty thousand dollars paid by the Cumberland Telephone Co. for the property on Jefferson Street, in Louisville?

A. Show a loan of that amount to pay a note.

Q. That particular note already appears as of December 8th, 1899 as having been paid, does it not?

A. That is a part of this journal entry which we are discussing.

Q. It appears as a charge in favor of the Cumberland Telephone Co. against the Ohio Company here, does it not?

A. On page 170 it appears as a credit to notes payable, and would not appear at all on the Cumberland Telephone Company's books.

Q. It appears as a debt of the Ohio Valley Co. does it not?

A. It appears as a debt of the Ohio Valley Telephone Co.

485 Q. On page 170 doesn't it?

A. On page 170 it so appears, as a debt until December 8th, 1899.

Q. Now isn't it a fact that the money represented by that same note appears on page 124 of the same book, as a charge against the Ohio Valley Telephone Co.?

A. The transaction you refer to is a transfer of the $20,000 debt from notes payable account on page 170, to the Cumberland Telephone and Telegraph Company account on page 124.

Q. But this $20,000 on page 170 is part of the $221,000 is it not?

A. It is not.

Q. Do you mean to say that $20,000 does not constitute a part of the two hundred and twenty odd thousand dollars about which I first asked you?

A. No part whatever.

Q. The $221,000 that you have said was a part of the liabilities, are derived from the items on page 170, here, aren't they?

A. From the balance of unpaid items on page 170.

Q. And the $20,000 which appears on page 124 as bills payable is part of the $21,997.93 which the Ohio Valley Company owed the Cumberland Company at the date of the consolidation, isn't it?

A. That is correct.

486 Q. Now, will you turn to your minutes and see what item of date November 29th, 1899, $3,000, which appears on page 123, represents?

A. On the cash book of the Ohio Valley Company under date of November 29th, 1899, appears the following entry—cash being charged therewith: "Cumberland Telephone and Telegraph Co., Nashville, Tenn., check November 20th, on account, $3,000," that being a loan of $3,000 from the Cumberland Telephone and Telegraph Company to the Ohio Valley Telephone Co.

Q. A check on account would simply seem to imply that the Cumberland Company owed the Ohio Valley Telephone Company something?

A. It would indicate the Cumberland Company had a running account with the Ohio Valley Company.

Q. Now are there any items any additional items in the records of the Ohio Valley Company, any of these cash items such as you see all the way through here, which were devoted towards the paying off of any of the notes given in payment of the Jefferson Street property or in payment of any stock bought by the Cumberland Telephone Co.?

A. The Cumberland Telephone Co. itself paid for all of the stock which it bought of the Ohio Valley Telephone Co. The Cumberland Telephone Company paid directly $80,000 of the notes given in exchange for the Jefferson Street property, and seems to have paid indirectly, by a loan to the Ohio Valley Tele-

487 phone Co. of $20,000 additional, that was paid for the Jefferson Street property. I know of no transactions other than those, that have been brought out in this deposition.

Q. When the stock of the Ohio Valley Telephone Co. was purchased by the Cumberland Telephone Co. was it taken in the name of the Cumberland Telephone Co. or in the name of the directors of the Cumberland Co.?

A. I can not say.

Q. Now I notice Mr. Smith from the examination the other day you give another item of liabilities assumed by the Cumberland Telephone Co., as miscellaneous, $63,755.16. Of what individual items is that miscellaneous item made up?

A. L. C. Maddux account, $139.68; toll agents' accounts, $1.35; Cumberland Telephone and Telegraph Co., $21,997.93, exchange subscribers', $2,059.93; American Bell Telephone Co., $14,197.91; Western Electric Company, $23,950.21. Other line accounts, $1,408.15; total, $63,755.16.

Q. Now the first item I call your attention to is Cumberland Telephone Company $21,997.93. Is that the item attention to which was called a moment ago in which was included the $20,000 note which was a renewal of the note given by the Ohio Valley Co. to J. E. Caldwell?

A. The amount that is shown as due the Cumberland Telephone and Telegraph Co., is the balance of the open and running account shown on the Ohio Valley Telephone Company's books and the note you specified does enter into the account.

488 Q. Now, exchange subscribers, $2,059.93. What does that represent; explain that item will you, I mean, in a general way?

A. I think it probably represents advance payments made by exchange subscribers.

Q. American Bell Telephone Co. $14,197.91. What did they owe the American Bell Telephone Company for?

A. They owed the American Bell Telephone Co. rental on instruments and royalty on switchboards. The ledger that I have before me shows that at the time it was opened, prior to September 1899, they owed the American Bell Telephone Co. $1,708.76, and the balance of the amount represents what was due the American Bell Telephone Co. net, through December 31st, 1899.

Q. Is that the amount that is represented by what you call later on in your deposition four and one half per cent of the gross receipts of the company?

A. It is not. That contract wasn't effective at that time.

Q. You paid a royalty at that time?

A. We paid what was known as a rental and royalty.

Q. Can you tell from this book how much the Ohio Valley Telephone Company owed the American Bell Telephone Company on June 3rd, 1899?

A. The general ledger, page 332, shows that the Ohio Valley Telephone Company under the previous management, paid their bills monthly.

489 Q. So then, on June 3rd, the Ohio Valley Telephone Co. owed the American Bell Telephone Company, practically nothing?

A. Yes.

Q. Now the next item is Western Electric Company, $23,950.21. What does that item represent?

A. That represents purchases.

Q. Of what?

A. Telephone apparatus and supplies.

Q. How much did the Ohio Valley Telephone Company owe to the Western Electric Company on June 3rd, 1899?

A. Something over $7200.

Q. The next item is other line accounts, $1,408.15. What does that item represent?

A. It represents toll collections made by the Ohio Valley Company for connection companies?

Q. Money it had collected and owed to other companies?

A. Yes, for messages going over their lines.

Q. In those various reserve accounts, will you turn back to your memoranda on that subject and indicate what items it was you eliminated from that seventy thousand dollars. I do not recall them just now?

A. I eliminated, depreciation $8,000; toll line construction, $9,000; special account, $38,875.16.

Q. Does that leave anything there except the $4,000 or reserve for taxes?

490 A. It leaves reserve for interest $7770; reserve for S. B. royalty, $2,404.59.

Q. Now what do you mean by reserve for interest?

A. Reserve for interest account represents, either by its debit or its credit, the amount of interest due and unpaid, or the amount of interest due but not paid. In this instance, it represents by its credit an amount of interest which has actually accrued but which has not yet been paid.

Q. When did it accrue?

A. It accrued prior to December 31st, 1899.

Q. Did it accrue prior to June 3rd, 1899?

A. I don't know.

Q. Can you ascertain whether any part of it, and if so what part, accrued prior to June 3rd, 1899?

A. By a very careful analysis of each item entering into the account, beginning with the items entering into balances on the books as of June 3rd, 1899, and coming down on the books as of June 3rd, 1899, and coming down through all other items to December 31st 1899, such analysis can be made.

Q. The Ohio Valley Telephone Company paid its interest payments monthly, I suppose, didn't it. It paid it when it accrued?

A. It did not; it paid it like anyone else would pay it. On demand loans the interest is usually paid quarterly.

Q. Can you state what the Ohio Valley Company owed on
491 June 3rd, 1899 in the way of demand loans?

A. I can.

Q. Suppose you look at the book and tell me what it did owe in the way of demand loans on that date?

A. It owed one demand loan of $70,000.

Q. When was that loan made; does it appear there?

A. June 30th, 1898.

Q. Does it show whether any interest had been paid at all on that demand loan?

A. No sir.

Q. What interest did the loan bear?

A. The account does not show.

Q. If it bore six per cent interest, the interest for the entire year would not have been over four thousand dollars, would it?

A. Forty-two hundred dollars.

Q. The year wasn't quite up. Now, about this S. B. Royalty Reserve for S. B. Royalty, what did you say that was for, if you have stated?

A. It is switch-board royalty. At that time there were various patents——

Q. I thought you said in this American Bell Telephone Co. item of fourteen thousand and odd dollars, that was for rental and switch-board royalty?

A. No, I don't think I did. I think the debt due the
492 American Bell Telephone Company was for instrument rental and royalty, that is, royalty on instruments.

Q. When did that reserve for S. B. royalty accrue, was that due at the time of the consolidation?

A. The switch-board royalty was usually calculated by the year and a part credited off each month. That is, each month would be charged with its part of the rental of royalty of the switchboards, so that amount is probably the exact amount that was due at the end of the year.

Q. That was for the entire year?

A. I think probably so, or due for whatever fiscal year they followed.

Q. What would generally be the royalty on switch-boards for the year?

A. It depended entirely upon the number of lines in the switch-board; I think that was what determined it.

Q. Can you tell from the books about how much they paid for a year, usually, in a general way?

A. In 1897, we paid $2370; in 1898, $2579; and the reserve at the end of 1899 was $2404.59.

Q. That was the amount that was paid for the year 1899?

A. This record does not show what amount was paid.

Q. Have you any record that shows when that was paid?

A. If it was paid it would be shown in the Cumberland Telephone Company's books.

Q. Some time during December 1899, would you say?
493 A. It was paid after December 1899.

Q. Was it paid before January 27th, 1900?

A. I will have to refer to the Cumberland Telephone Co. books to determine.

Q. Were the records of the Ohio Valley Telephone Co. kept as a

part of the records of the Cumberland Telephone Co. after January 1st, 1900?

A. They are included in the records of the Cumberland Telephone Co. from January 1st, 1900, having been put into the Cumberland Company records after the consolidation.

Q. Suppose you refer to those at the lunch hour and tell us?

A. Very well.

At 12:30 o'clock, recess was taken until this afternoon at two o'clock.

494 Afternoon.

At two o'clock this afternoon, September 2nd, 1909, the further taking of this deposition was resumed at the same place, with the same parties present.

A. Regarding the switch-board royalty, I beg to exhibit bill of the Western Electric Company, dated January 10th, 1900, against the Ohio Valley Telephone Co., which reads, as follows; Royalty on multiple switch-board at Louisville, Ky., for first 10 months of 1899—average number of lines 2812.3, amount $2343.58. No further bills for royalties will be rendered."

Q. That was paid when?

A. That was paid some time in 1900.

Q. Doesn't it say there on the bill?

A. Paid March 16th, 1900.

Q. I will ask you if you will have a copy made of this page 170 as it appears upon the records from which you have testified and file it as a part of your deposition?

A. It reads, as follows, on page 170 of ledger of the Ohio Valley Telephone Co. Title of account, "notes Payable."

Debit side, Sept. 29th, to cash, page 9	$70,000
December 8th, to C. T. & T. Co., page 482	20,000
Oct. 31, Cash, page 13	25,000
Total debits	$115,000

Credit Side. Balance from Ledger C, p. 326.

495 Date, Favor of, Due, Amount.

Q. Permit me to interrupt you. I don't care for it in the way you are reading it, as it does not serve my purpose. I will ask you to have a copy of it made as it appears on your books, and file it as an exhibit to your deposition?

Mr. GRANBERY: Just stop and make a copy of it. I do that, not in order to be arbitrary, but the auditor's time is very much taken up with his ordinary duties and in taking a long deposition this way he gets very much behind and in order that there may be no mistake about furnishing it and about getting what is asked for, I think it is better to have it done now.

Mr. BLAKEY:

Q. Have you some assistant or clerk that you could have do that and you verify it?

A. I have.

Q. Will you have it done that way?

A. Yes. (Paper to be marked, Exhibit No. 14.)

Q. Now, Mr. Smith, I believe we have covered the ground of the amount paid by the Cumberland Telephone and Telegraph Company for the stock of the Ohio Valley Telephone Company plus the amount of liabilities of the Ohio Valley Company which it assumed. I should now like for you to tell me what property the Cumberland Company acquired by reason of this purchase or this consoli-

496 dation as you may be pleased to term it?

A. In the first part of your question you make a statement but I do not care to agree to it. We have covered the liabilities that the Cumberland assumed which are shown on the Ohio Valley Telephone Company's books. There are always outstanding liabilities which are not on the books. As to the properties acquired——

Q. Before we go into that then, I should like to interrupt you just here and ask you if you didn't state in the early part of your cross-examination, that the Cumberland Company paid certain sums of money and exchanged certain shares of stock for the stock of the Ohio Valley Telephone Company, and whether you didn't then say that the Cumberland Company paid in cash nothing further than the amounts it had paid or exchanged for stock, but assumed certain liabilities, and if you didn't then proceed to detail what liabilities were assumed?

A. May I refer to my deposition. (Witness does so.) My answer to your question, what were its liabilities," is this. "Those shown on the books were"—and then I detail them.

Q. Did the Cumberland Telephone Company pay anything further for the control and ownership of the property of the Ohio Valley Company except what it paid for the stock and the amounts

497 you have detailed as the liabilities it assumed?

A. I can not give you specific items but if there were no outstanding obligations not shown on the books, it was an exception —one in a thousand. I never have seen the time since I have been in business that any corporation knew its obligations and could express them on its books, especially a corporation as large as was the Ohio Valley Telephone Co.

Q. If there were any other liabilities you don't know of them?

A. I do not know of them in detail, because, as I say, I was not auditor of the Ohio Valley Telephone Co. and not in charge of those records at that time or at the time such would have been paid; and, it was ten years ago, and would be too long ago to remember now.

Q. Did the Cumberland Telephone Company pay any such liabilities in addition to the ones you have already mentioned here?

A. If any of them presented themselves they were.

Q. But, as I understand you, it is impossible now for you to give any detailed statement or accurate information on that subject?

A. I am unable to do it. I could, by hard work, go through every record of that section of the territory from that time to date and determine approximately what there was outstanding at the time.

Q. Now, reverting to what property the Cumberland Tele-
498 phone and Telegraph Company acquired by reason of this purchase or consolidation, can you state from the books of either the Cumberland Telephone and Telegraph Company, or the Ohio Valley Telephone Company, what property was acquired?

A. Just in what detail would you like to have that Mr. Blakey, dollars and cents?

Q. No, actual property, exchange systems or toll line systems, or what nature?

A. I can give you the exchange systems but my books don't show just what the toll lines were.

Q. What were the exchange systems?

A. The first records we have of what the Ohio Valley Telephone Company had in the way of exchanges, is of September 1st, 1899. At that time the Anchorage exchange had one telephone; the Bardstown, Ky. had 50; Corydon, Ind. 57; Elizabethtown, Ky., 94; Eminence, Ky., 47; Jeffersonville, Ind., 309; Louisville, Ky., 3221; New Albany, Ind., 461; Salem, Ind., 113; Shelbyville, Ky., 118; making a total of 4471 instruments.

Q. How many exchanges?

A. Ten, counting Anchorage, Ky.

Q. You had no exchange at Anchorage, I suppose?

A. I guess not.

Q. Nine exchanges, then?

A. Nine, excluding Anchorage, which was listed as an
499 exchange and transferred to us as an exchange. This record is of September 1st, 1899, and you understand the Cumberland Company did not have the Ohio Valley Company at that time. It only owned stock in it, but I understand your question to be what subscribers did the company have at the time the Cumberland Telephone Company purchased an interest in the stock.

Q. Did the Ohio Valley Company have any additional exchanges on January 27th, 1900?

A. Yes, sir.

Q. Name them, will you?

A. Cloverport, Ky., Morganfield, Ky., and there are seventy five toll line stations shown as of December 1st and 80 as of January 1st, and fifty-five private lines as of January 1st.

Q. What do you mean by private lines?

A. A private line is a line connected by telephone instruments between two stations, and it is not connected with the switchboard. It may be inside of an exchange area, but is not a part of the exchange.

Q. Were these lines you have just spoken of, private lines in Louisville or outside of Louisville?

A. I don't know.

Q. What was the number of subscribers in the various exchanges which you have named, on January 27th, 1900?

A. The nearest record I can give you to that date is either
500 January 1st, or February 1st.

Q. Is the February 1st record sent to you as of January 22nd?

A. The record we have used is January 1st, so far as taking the property over from the Ohio Valley Telephone Co. is concerned.

Q. Is the record you have as of February 1st, the record which was sent in to you as of January 22nd?

A. The record which we have on our books as of February 1st, would be for Louisville as of January 22nd, but for the other exchanges as of February 1st. No, I will not state that as a fact, for Louisville, because it is so far back, and at one time our exchange records closed on the last of the month and not on the 22nd, but it is either one or the other.

Q. What records have you as of January 1st, so far as the telephones in the various exchanges are concerned?

A. Anchorage, Ky., 1; Bardstown, Ky., 65; Cloverport, Ky., 71; Corydon, Ind., 57; Elizabethtown, Ky., 123; Eminence, Ky., 78; Jeffersonville, Ind., 383; Louisville, Ky., 3536; Morganfield, Ky., 29; New Albany, Ind., 614; Salem, Ind., 80; private lines 55. Total, 5395.

Q. Now, have you any record showing what the Ohio Valley Telephone Company valued these various exchanges at, at the time of the consolidation?

A. We have records showing how the construction account at these various exchanges stood on the books at that time.

Q. Will you produce those?

501 A. Yes. The Ohio Valley Telephone Company's ledger shows amount charged to construction, December 31st, 1899, as $638,196.74.

Q. Was that for all exchanges and all toll lines?

A. Yes.

Q. Is there any memoranda or minute or other records, showing what the construction account was for each exchange or for the toll lines?

A. Not that I know of.

Q. Does their record show what amount was allowed for the construction of toll lines?

A. That can be secured by going through the ledger of the company and determining the charges to toll line construction, which, at the end of each year were transferred to general plant account.

Q. In the joint report of the auditors, it is placed at $125,406.80. Do you know whether or not that is correct?

A. I think that is the balance the ledger would show remaining on the books at that period.

Q. That is, deducting that amount, $125,406.80 from $638,196.74 will leave a balance of how much?

A. Leaves a balance of $512,789.94.

Q. That last amount you have just named then, is the amount which the books of the Ohio Valley Company shows as being the value of the various exchanges owned by it, does it not?

A. It is the balance; shown by the books.

502 Q. Does that include the exchanges at Morganfield and Cloverport?

A. Yes sir.

Q. These figures that you have given me, do they appear as of January 27th, and if not, of what date do they appear?

A. They appear as of January 1st, 1900.

Q. Do those figures include the value of the real estate owned by the Ohio Valley Telephone Company at the time of the consolidation?

A. They do not.

Q. What did the real estate appear on the books of the Ohio Valley Telephone Company as being valued at, at that time?

A. $115,765.46.

Q. What did that comprise; what real estate did the company own?

A. It owned a three story brick building on land 44 by 210 feet on Jefferson Street in the City of Louisville, which cost the Ohio Valley Company $100,000; it represented a lot 50 feet by 200 feet on Ormsby Street in the City of Louisville with a cottage thereon, purchased in April 1898 for $4500, and a lot on Green Street in the City of Louisville, with a building used as a warehouse, which cost $3534.50. Also land and building used as a telephone exchange in New Albany, Ind., amounting to $7,730.96. That makes

503 a total of $115,765.46.

Q. Did the Cumberland Telephone and Telegraph Company acquire any property other than the property you have detailed?

A. No other real estate, that is shown on the books.

Q. Did it acquire any other exchanges or any other toll lines, other than those you have mentioned?

A. I have not mentioned any toll lines. It acquired no other exchanges.

Q. Did the Cumberland Telephone Company acquire any toll lines from the Ohio Valley Co.?

A. It did.

Q. I believe you said those toll lines were valued at $125,406.80, did you not?

A. I said that was the net value shown as a balance in the construction account on the books of the Ohio Valley Telephone Co.

Q. Well, were they of any greater value than that?

A. Undoubtedly.

Q. Did they cost any more than that?

A. Yes.

Q. How much more?

A. I will have to refer to the Ohio Valley Telephone Company's books to see how much would be charged off against them.

Q. What would be charged off against them on the Ohio Valley Telephone Company's books?

504 A. The value was reduced each year, or at different periods by transferring some part of the surplus amount to them, I think.

Q. Was that due to the fact that the Ohio Valley Company considered that the toll lines had depreciated in value?

A. I was not connected with the Ohio Valley Telephone Co. I simply see that the books do charge it off. I do not think it was charged off for that purpose.

Q. Why do you think it was charged off?

A. I think it was charged off to rid the books of any surplus account.

Q. Would it affect the management or conduct of the Ohio Valley Company's business, one way or the other, to rid it of surplus account?

A. That is a question of policy.

Q. Do you, of your own knowledge, know that those toll lines were of more value than $125,406.80?

A. You asked me whether they cost more than that and I said yes.

Q. Do you know whether or not they were of more value or not?

A. I didn't see their lines, and I cannot testify as to their value, but I can testify as to their cost.

Q. Now, did the Cumberland Telephone Company acquire anything further than the exchanges, toll lines and real estate, by the consolidation with the Ohio Valley Telephone Co.?

505 A. Yes, it acquired other things.

Q. Will you detail them?

A. It acquired supplies valued at $37,299.59; cash, $288.81; Board of Trade stock, $10.00; an account against the auditor of the company amounting to $30,215.18; toll agents accounts, $715.42; an account against the American Telephone and Telegraph Company for $869.45; against the Cumberland Telephone Co. for tolls, $143.84; against the Central Union Telephone Co., $118.19; against the East Tennessee Telephone Co., $544.40; against the Louisville Railroad Co., $2233.40; H. Brown, foreman, $300.00; Sundry small accounts, $351.17; Sundry manager's accounts, $3,822.14.

Q. Was there an item of unearned rentals of $1558.29?

A. There is an account of that nature on the books of the Ohio Valley Telephone Co. which on its books appears as an asset, but it is no asset.

Q. But you mean it was never collected?

A. It is impossible for that account to have a debit, except through an error in the accounts.

Q. If telephone companies had paid them $1558.29, for service, in advance, then they would owe those subscribers either service of the value of $1558.28, or the actual money?

A. Yes, but if they did owe them service or money, it would appear as a liability.

506 Q. That is just an error in the book-keeping then, is it, to put it there?

A. I think so, and that is the reason it was wiped out.

Q. Were the sums which you have detailed here, in the accounts taken over by the Cumberland Telephone and Telegraph Company?

A. They were taken over at face value.

Q. Did the company realize face value from them?

A. I think not; not from all of them.

Q. Is there any way of ascertaining whether the Cumberland Telephone Company did or not?

A. Not practically, but, for instance the item of thirty thousand and odd dollars due by the auditor, was for accounts due the company by the subscribers of the Louisville exchange, good and bad.

Q. Do you know how much of that was collected?

A. I do not.

Q. Out of three hundred thousand dollars that you collect, substantially, from your Louisville subscribers—that you earn from your Louisville subscribers, you usually collect all with the exception of from two to three thousand dollars, do you not?

A. Yes, just about that. This, however, represents what we took over from another company and just whether or not they have carried their uncollected accounts longer than we carry them before charging them off or whether there is an accumulation in this account, I am unable to say.

507 Q. Well, you got the $288. cash, didn't you?

A. Yes sir.

Q. And you got the items representing the supply account?

A. Yes sir.

Q. And you got the Board of Trade stock?

A. Yes, but we did not consider that of any value and left it out. Didn't put it in as any asset.

Q. You got the agents' toll line accounts?

A. Collected some of them; probably some part was charged off.

Q. What about the American Telephone and Telegraph Co., was that collected?

A. That account has always been a fluctuating account. You put certain items on your books and lots of times you charge them off, because they are formed from reports of linemen in the field, and often those linemen make incorrect reports and incorrect bills are sent and there will have to be a great deal of adjustment in that account.

Q. The Louisville Railroad Company paid you, I suppose?

A. Part of that was charged off.

Q. How much?

A. Two or three hundred dollars.

Q. How about sundry managers' accounts?

A. I suppose most of that was collected.

508 Q. Now, going back to the $512,789.94, which you say the books show as the value of the eleven exchanges and fifty-five private lines, have you any data or is there now in existence any record from which you can determine how much the Ohio Valley Telephone Company value the property in its various exchanges at?

A. Mr. Blakey, if you quote me as saying that that sum represents the value of the lines, I want to correct it, because I say that it is

simply a balance of the construction account as shown by the books of the Ohio Valley Telephone Co. The balance of the cost.

Q. The books of a corporation conducting any business, usually show what the company values its property at, does it not?

A. Our books do.

Q. Did you ever have any connection with any other business that did not?

A. I have never been in any other business.

Q. Wouldn't you think as a business man a company conducting a business should show by its records and would show by its records, if properly kept, what it valued its property at?

A. I say, the Cumberland Telephone and Telegraph Company certainly does.

Q. Now, as I understand you the Ohio Valley Telephone Co. valued the eleven exchanges and the private lines at $512,789.94, as shown by its books, did it not?

509 A. I will say that is the balance of the construction account on the general ledger of the Ohio Valley Telephone Company's books.

Q. Well, will you answer my question one way or the other? Read it to him again.

(Question read.)

A. If it considered its books to represent the value, it did; that was the net cost of the construction.

Q. Did it show in any part of its records, the books, that it valued its property at any other sum or any additional sum to that amount?

A. The construction accounts of the Ohio Valley Telephone Co. contain a great many credits at the end of the year, which are charged against the surplus, and after spending a large allowance for the maintenance of their properties, they, nevertheless, at the end of the year, wipe off a large part of their construction cost, against the surplus account.

Q. Did the Cumberland Telephone and Telegraph Company acquire anything other than the items you have gone over here since noon, from the Ohio Valley Telephone Co.?

A. Nothing that I can recall, except the going business, goodwill, a profitable company.

Q. Now, after the Cumberland Telephone and Telegraph Co. consolidated with the Ohio Valley Company, can you tell me how much the Cumberland Company spent in the way of new

510 construction during the year 1900?

A. For the whole of the Ohio Valley Company plant.

Q. No, on the Louisville plant exclusively?

A. The books show that $166,939.03 was added. I wish to explain, that in the examination of the construction vouchers by the Mutual Audit Company, exception was made to charges to Louisville construction account amounting to $2,852.31, which exceptions were accepted. The construction account was reduced by this amount and it was increased by the sum of $4,707.16, which is also accepted. In my original deposition, Exhibit No. 2, the book values

before these corrections were made, were shown. The net difference of these errors adds $1854.70 to the total cost of plant as of December 31st, 1908.

Q. Now, you say exceptions were made. By whom were exceptions made?

A. Every construction voucher, I think of any amount whatever was analyzed thoroughly by Mr. Warren and Mr. Castleman of the Mutual Audit Co. and it was by them that these criticism- of charges was made and all the criticisms that they did make were found to be correct.

Q. Now, in order to get the matter started off after this explanation, please state what amount was expended by the Cumberland Telephone and Telegraph Co. on new construction in the City of Louisville or in connection with the Louisville exchange, for the year ending December 31st, 1900?

511 A. In order to more readily answer this question, I will accept the joint report with corrections made, as correct, and the amount shown therein is $166,775.23.

Q. For what purpose were these expenditures made?

A. Generally for enlarging the exchange.

Q. How were the items for enlarging the exchange, paid?

A. They were finally paid in cash.

Q. What was the procedure whereby those claims representing this $166,000 and odd dollars were audited and allowed and paid?

A. The pay-rolls were made up on the ground, and without referring directly to them, I think they were O. Kd. by the foreman in charge, by the manager of the exchange, and they were verified in the office at Louisville, there paid and sent to the general office at Nashville for credit. At the general office, they were checked up and audited, approved by the auditor and the general manager and the Louisville exchange given credit for the disbursement. In case of material, being purchased, the invoices for the material were checked up, the delivery determined, the correctness of the price checked, approved by the general manager, some of the invoices being paid locally, and others from the general office. All vouchers would be approved by the auditor and the general manager or the auditor and the president.

512 Q. Have you vouchers representing all of these payments covered by that total item of $166 and odd thousand dollars?

A. I believe we have. They were exhibited to the Mutual Audit Co. I recall now, in January 1900, I believe it was, that one or two vouchers, amounting to probably two thousand dollars or twenty-five hundred dollars, were not located. I explained to Mr. Warren, the vouchers were ten years old and that they had been misplaced, and I was unable to locate them, but showed him the entries on the books of the company.

Q. Mr. Smith, I should like to have you produce Voucher No. 325, May 1900, if you will; and I should also like to have you produce say a dozen or fifteen other vouchers, say, two vouchers a month for each of the months of 1900, representing payments

made in the original construction account for that year, in the City of Louisville?

A. Will you please specify which ones I shall furnish you.

Q. It is immaterial, except I would like to have some for labor, some for material and some for equipment, during that period?

A. Shall we adjourn while I do that.

Q. Will it take some time to do that?

A. Yes.

513 Q. And while you are at it, I would like to have you do the same thing for the other years up to and including 1908.

At 3:45, an adjournment was taken until tomorrow morning at the same place.

514 FRIDAY MORNING, *September 3rd*, 1909.

Cross examination, resumed.

At 9:30 o'clock this Friday Morning, September 3rd, 1909, the further taking of this deposition was resumed; present same parties.

By Mr. BLAKEY:

Q. Mr. Smith, in response to my request for Voucher No. 325 for the year 1900, you handed me a bundle of papers marked No. 325, in favor of Huston & Liggett which seems to be a voucher for $3460.71. I will ask you what they furnished to the Cumberland Telephone and Telegraph Co., as represented by this voucher?

A. May I inspect the voucher. (Witness does so.) Telephone poles and insulator pins.

Q. Among other papers I find in this package, is a paper dated April 25th, 1900, which has an item, sold to Cumberland Telephone and Telegraph Co., Nashville, Tenn., 53 poles 30 feet 7 inches; 21 poles 35 feet 7 inches; 4 poles 40 feet 7 inches, total of $156.00 shipped from Sulphur Springs to Anchorage, Ky. That paper has also written on it in lead pencil, Louisville, Ky. I will ask you who made that pencil mark on that paper, if you know?

A. From the handwriting I think it is the handwriting of Mr. J. L. Pearey, Jr.

515 Q. Who was he?

A. He was the chief clerk of the supply department at the time.

Q. What did that notation mean, what was it intended for?

A. It means that the poles were shipped, and that his information was that they were to be used in constructing the Louisville, Ky. exchange.

Q. Were they used in constructing the Louisville, Ky. exchange?

A. They were used at the Anchorage, Ky., exchange, which at the time was a very small exchange or which was just being built and it was doubtful, probably, as to whether it would be a part of Louisville exchange or a separate exchange.

Q. Did Anchorage ever become a separate exchange?

A. It is a separate exchange now.

Q. Was it ever a part of the Louisville exchange?

A. No, it was not, but it is very near and is a part of metropolitan Louisville.

Q. It is more than twelve miles from the City of Louisville?

A. I don't know the exact mileage, but about that, I suppose.

Q. So, that item should not have been charged to the construction of the Louisville telephone plant and you agree with the accountants that it should be eliminated from the construction
516 account of the Louisville exchange?

A. I agree that it may be deducted.

Q. Now, I show you another paper contained among the papers, as a part of this voucher, dated Lewisburg, Tenn., April 20th, 1900, Cumberland Telephone and Telegraph Co., Nashville, Tenn., a number of poles aggregating in value $127.15, freight $26.95, which seem to have shipped from Nashville, Tenn., to O'Bannon, Ky. and which also has endorsed on it in lead pencil, Louisville, Ky. Will you examine that paper and tell me who placed that endorsement in pencil on that paper?

A. Mr. J. L. Pearcy, Jr.

Q. What does that endorsement mean?

A. It means that the invoice should be charged to the construction,—aerial account, of the Louisville, Ky. exchange.

Q. Do you know where O'Bannon, Ky., is?

A. I do not.

Q. Do you know it is at least twenty miles from Louisville?

A. I do not.

Q. Do you know whether or not those poles were used in connection with the construction of the Louisville exchange?

A. I have no reason to doubt that they were.

Q. Do you know that they were?

517 A. Personally, no.

Q. Does anybody personally know, connected with your office?

A. I think the supply department would have secured information to determine that before charging it.

Q. Can you produce anybody connected with the supply department and will you produce a witness, who will testify that the poles represented on that paper I have read you, were used in constructing the Louisville exchange?

Mr. GRANBERRY: I object to the question, because this witness is not supposed to be furnishing other witnesses. He is here to testify as to what he knows and not to produce witnesses for examination.

Mr. BLAKEY:

Q. You are an official of this company are you not?

A. I am.

Q. Well, will you answer that question that I have propounded or not?

A. It was nine years ago; I don't know of anyone who saw the poles and who set the poles. I might state here, at the time the joint report was made, there was no mention of that in the joint

report and there was no exception taken to that item at the time.

518 Q. That sum is now, the sum of $154.10 is now a part of the construction account, or rather now represents a part of the construction account of the Louisville exchange, does it not. In other words, does that sum enter into the one hundred and sixty six thousand and odd dollars which you say was expended in new construction in connection with the Louisville exchange for the year 1900?

A. Unless the poles have been removed in the meantime and exchange construction credited therewith, the charge still stands.

Q. It was charged at the time as a part of the one hundred and sixty six thousand and odd dollars?

A. Yes.

Q. I will ask you to examine that bunch of papers representing an expenditure of $3460.71, and see if there are any other items in that which was charged to Louisville?

A. The distribution of the voucher shows charged to the Louisville exchange, $310.10; the sum of the two invoices which you have mentioned, equals this amount.

Q. I understand, Mr. Smith, these vouchers are stored away in a room above and it takes considerable time to get them out. Is there any objection to us adjourning to that room and calling for such vouchers as we want there?

Mr. GRANBERY: Not a bit in the world.

519 Mr. BLAKEY: I suppose we might as well now go ahead here, though, with those we have and go up there later.

Q. Mr. Smith, you have also produced Voucher No. 842, which seems to be for $6,088 in favor of Houston & Liggett, I will ask you how much of that amount was charged to Louisville, Ky.?

A. $302.25.

Q. And as I understand, your answer to a former question, that amount you agree should not have been charged to the construction account at Louisville, Ky.?

A. Yes, I will agree to that, with this explanation; that the poles so charged were actually shipped to Louisville, but were handled through the supply account, and charged from the supply account.

Q. In other words, they were charged twice?

A. They were charged twice, actually, on the books.

Q. One of the bills going to make up the $302.25 which you say you agree should be eliminated, seems to be a bill for 66 poles shipped from Shelbyville, Tenn., to Prospect, Ky. for $108.90. That is one of the bills which should be eliminated, is it?

A. Yes, it is one of the bills which should have been handled through the supply account.

Q. Another one I notice is a bill for 50 poles shipped from

520 Monetery, Tenn., to Prospect, Ky., amounting to $87.75?

A. That is correct, it should have been handled through the supply account.

Q. Another one seems to be a bill for 64 poles invoiced at $105.60,

shipped from Lewisburg, Tenn., to Prospect, Ky., under date of December 31st, 1900. Is that also one of the bills which should be eliminated?

A. It is. It should have been handled through supplies.

Q. Now, I will ask you to examine this bunch of papers which go to make up this voucher and ascertain whether there are any sums other than those three mentioned, going to make up the $302.25 about which you have testified?

A. The sum of the three invoices which you have asked about, amount to $302.25. It is noted that on these invoices, the original charge was Louisville, Ky., that a correction was made charging invoices to supply account. The correction was not followed by the clerk in making the distribution of the charge.

Q. Do you know when that correction was made?

A. I do not. This voucher is one of the vouchers already agreed to as being improperly charged to Louisville and is included in the amount objected to by the Mutual Audit Co., and is embodied in the report of the accountants for the complainant.

Q. Mr. Smith, Voucher No. 2571 seems to be in favor of Louis K. Webb, and for a total amount of $2,133.30. It seems to
521 have a date on it of March, 1902. What position did Louis K. Webb hold with the Cumberland Telephone Co., at that time, if any?

A. Assistant Manager in charge of the accounts.

Q. At what place?

A. Louisville, Ky.

Q. The second paper going to make up the bunch of papers which appear as part of this voucher, seems to be for fare Eubank to Danville, Ky., loading poles at Eubank, Ky., to ship to Louisville, Ky. Is that item charged to the Louisville, Ky., exchange?

A. It was, Louisville, Ky., Construction—aerial.

Q. Is that one of the items that was eliminated from the construction account at the suggestion of the accountants?

A. On page 24 of Mr. Wilkinson's report to the Master, April, 1902, voucher shown as No. 2571 eliminates $1,049.42 from Louisville construction account. Some few small items in the voucher are properly chargeable to Louisville, Ky., but the larger part of the charge was made to Louisville construction in error and in order not to grab at straws, we cancelled the whole charge. The error is a clerical one; the charge is properly to construction—aerial, but not to Louisville and the charge was made to Louisville by a failure of the clerk who distributed the voucher, to show what exchange it was chargeable to, and as the voucher came in
522 from Louisville, it was charged to Louisville, which is the regular method for handling them.

Q. Do you mean to say all vouchers paid at Louisville, are charged to Louisville?

A. By no means. The method is this, that vouchers coming in from Louisville show clearly the name of the exchange thereon. After the voucher has its proper distribution on it, it is likely in some instances, chargeable to a number of different exchanges. In

this instance a star is not opposite the charge, which refers the bookkeeper to another part of the voucher for a distribution of the charge among exchanges. The star being omitted, the charge is to the exchange whose name is in the heading of the voucher.

Q. Who places that star on the voucher?

A. The clerk compiling the distribution.

Q. And if the star does not appear and the voucher comes from Louisville, it is charged to Louisville?

A. If the Louisville exchange is in the heading of the voucher and nothing designates that any part of the voucher is chargeable to another exchange, it is charged to Louisville.

Q. What territory is embraced under the jurisdiction of your chief manager at Louisville, chief officer at Louisville?

A. At the present time?

Q. Just generally speaking, Mr. Smith?

523 A. The exchanges are as follows: Anchorage, Ky., Borden, Ind., Greenville, Ind., Georgetown, Ind., Harrods Creek, Ky., Jeffersontown, Ky., Jeffersonville, Ind., Louisville, Ky., New Albany, Ind., Pewee Valley, Ky., Pleasure Ridge, Ky., St. Matthews, Ky., Utica, Ind., West Point, Ky.

Q. What represented the district over which your chief officer at Louisville, had jurisdiction in the year 1900?

A. I will have to send upstairs to get it. It will probably take an hour to do that, as we will have to go through the vouchers.

Q. Have you any general idea about what district was covered in the district I have asked about?

A. Well, New Albany, Jeffersonville——

Q. The ones you have already named?

A. If they were in existence, probably, yes.

Q. What other territory?

A. No other. It was not as extensive in 1900 as in 1909.

Q. Was it ever more extensive than it is now?

A. No, never as extensive as it is now.

Q. When material is purchased for any of that territory, at what point is the material paid for?

A. Some small items of material would be purchased in Louisville and handled through the supply account. The large bulk of the material is purchased by order of the supply department

524 at Nashville and paid for at Nashville and handled through the supply account. Regular pay-rolls and regular miscellaneous expenses, vouchers covering the expenditures at all of the exchanges mentioned, are handled — each exchange separately and separate accounts are kept with each of the exchanges mentioned.

Q. Where is the money paid out from?

A. Some from Nashville, and some from Louisville.

Q. What percentage of it is paid out from Louisville?

A. The pay-rolls are handled through Louisville; the larger part of the supplies are paid for from Nashville.

Q. Sixty per cent of the supplies paid from Nashville?

A. Yes.

Q. Seventy per cent?

A. I suppose seventy per cent would probably be accurate.

Q. When a wagon or team of mules is purchased for use say in Charleston, Ind., where is that paid for?

A. I hardly think we would supply an exchange as small as Charlestown, with a team of mules.

Q. Well, a toll line, suppose you were building a toll line in Indiana?

A. If we had a gang building a toll line in Indiana, the vouchers would be handled with the construction foreman and be cashed at Louisville and Louisville would be reimbursed from Nashville.

Q. Now if you were building a toll line from Jefferson, Indiana, to Charleston, Ind., and you had twenty-five men working
525 on it and pay day came around what would be the method of paying those men?

A. The present method.

Q. The method in 1900?

A. The method would have been for the foreman to have submitted the time, for the check to have gone to the foreman from Louisville, for the foreman to have had the pay-roll receipted and certified and returned to Louisville in exchange for the check.

Q. And what record would the Louisville office have of having paid that?

A. They would have the stub in their check book and an entry on the cash book stating that voucher number so and so for a certain amount, had been sent to Nashville for credit.

Q. Then when that voucher came to Nashville what would be its course?

A. The voucher upon reaching Nashville would be registered as having been received from Louisville; it would be checked in the auditor's office to see that the salaries paid out are according to the authorized schedule; to see that the charges made of the expenditure were according to its records; be approved by the general manager and by the auditor and to be credited to the Louisville Cashier's office and charged to the proper construction or expense accounts.

526 Q. Now I hand you voucher No. 2571, which seems to be approved by Leland Hume, Assistant General Manager. Was that paper ever approved by the auditor of the Cumberland Telephone Co.?

A. It was approved for the auditor, by two clerks.

Q. That paper has possibly fifty individual bills and attached to the back of the bills is a form which has Mr. Hume's endorsement or approval thereon; the individual bills have never been approved by the auditor or anybody for the auditor or by the general manager?

A. Yes, the larger part of the bills in this voucher represent freight. Every single freight bill has been approved by the clerk who audits the freight. There is another bill in the voucher for poles. That has the approval of the supply department, the price and order clerk having approved it. There are a few small board vouchers in it which have the approval of the Assistant Manager,

not individually, but on the cover. There are a few transportation vouchers representing a small amount of money which have had like approval.

Q. Now when the clerk comes to put the star on there, showing it should be charged to some exchange other than the Louisville exchange, if he fails to put the star there showing it should be charged to toll line for instance between Jefferson, Ind., and Charleston, Ind., it would be charged to Louisville?

527 A. Nothing charged to toll lines would be charged to Louisville. This voucher shows a charge of $962.70 to toll lines and this charge has not been made to Louisville.

Q. When you say nothing that is expended in constructing toll lines is ever charged to Louisville, do you say that of your own knowledge or merely because that is your belief?

A. I have been connected with the company for a long time and with the disbursement department, and not to my knowledge have we ever intentionally charged anything for the construction of toll lines, to an exchange.

Q. You didn't intentionally charge this $1049.33 represented in Voucher No. 2571 to Louisville, did you?

A. We did not.

Q. Then, you don't know whether as a matter of fact charges to toll lines have been made against Louisville, or not?

A. I believe they have not.

Q. You don't know that?

A. I know it as well as I can know it without proof to the contrary. I do not handle individually every item and every transaction of the company, but I believe we have a very competent force of clerks to do this, and it is done under my supervision.

Q. And they charged up here $1049.32 to Louisville which

528 should not have been charged to it?

A. That is correct.

Q. Do you know whether or not they charged up any more for that month that should not have been?

A. The Mutual Audit Company made a most searching investigation into practically every voucher charged to the Louisville construction account and that is the only voucher in the month of April which they brought up for criticism, so I take it, nothing else was charged improperly.

Q. But you don't know it yourself?

A. I believe there was not.

Q. Now here is Voucher No. 353, August 20th, 1904, amounting to $17.50, which seems to be in the shape of a check payable to John Same for hauling poles on New Albany gravel road, $17.50. Is that chargeable to the Louisville Construction account?

A. The $17.50 item in there I remember being referred to me by Mr. Warren of the Mutual Audit Co. as proper charge to New Albany.

Q. What was being done on the New Albany road at that time Mr. Smith?

A. I don't know.

Q. Is the New Albany gravel road a gravel road out of the city of New Albany and a road on which you were either then constructing or repairing a toll line?

529 A. I don't know.

Q. If the New Albany road is outside of the city of New Albany and the work was done hauling poles along that gravel road, then would you say it was for work in connection with toll lines?

A. If it was a toll line that was being built, I should say so; if it was a subscriber's line being built, then it is an exchange line. I am not familiar with the territory near there nor with the work done; the charge is against New Albany, aerial, on the invoice, but not so designated on the cover of the voucher. It was a clerical error unintentionally made.

Q. So that when you say no charge was made against Louisville for work done on the toll lines, you are mistaken if this was work done on a toll line, are you not?

A. I say that was a clerical error, and there was no intention to charge it to Louisville, by anybody concerned.

Q. Is that one of the items you have eliminated from the construction account.

A. It is, and is one which the accountants agreed should be eliminated.

Q. Mr. Smith, I find here a voucher No. 352, for $331.50, and I will ask you what part of that voucher was charged to Louisville construction account of Louisville exchange?

A. The voucher is for August 1904, No. 353, you gave the number incorrectly; $80.00 of this voucher is charged

530 Louisville, construction-aerial.

Q. What was the money represented by that amount paid out for?

A. For the board of twenty-two head of horses for the month of July and for the hire of horse and buggy to go to Pleasure Ridge Park, on local trouble.

Q. Where were those horses used?

A. They were used for many purposes. Some of them for repairing telephones, some of them were dray horses with construction gangs.

Q. Were they used at all in the construction or repairing of toll lines?

A. There is nothing in here to indicate that.

Q. Do you know whether or not they were so used?

A. If the toll line in the district was in trouble that could be reached by a vehicle, they probably repaired it.

Q. Didn't all of the toll line construction gangs, together with their wagons, go out from Louisville if trouble was reported?

A. When trouble was reported?

Q. Or, when it was necessary to make any re-construction or repair work or new construction?

A. Well, we had Louisville City gangs and we had construction gangs. If the necessity of the case required, a gang was sent.

Q. Out from Louisville?

531 A. Yes, from Louisville or anywhere else.

Q. And would they take these horses and use them out on these toll lines?

A. They possibly might have done so.

Q. Did they have any other horses except horses they used indiscriminately in Louisville and out on the toll lines?

A. Yes, we rented horses, we had horses at other points.

Q. Did you have any horses at Anchorage, Ky.?

A. Shall I refer to my records to determine? We have hundreds of horses all over the territory and just at what exchanges we have them, I do not know.

Q. Isn't it a fact when you wanted to repair a toll line between Louisville and Anchorage, or Louisville and Jeffersontown or Louisville and Harrods Creek, that you had the same teams and used the same teams that you used when you had occasion to use it, in the same character of work in the City of Louisville?

A. Either the Louisville manager or the trouble man would attend to it, or the Anchorage trouble man, and they might have used street car service or vehicles.

Q. If Anchorage is a place of five hundred inhabitants, would you say that you had a construction gang there with wagons and teams?

A. We would not have a construction gang at Anchorage.

Q. Would you have teams there?

532 A. We would not have teams; we may have a horse and a wagon.

Q. I didn't get a satisfactory answer or, rather a succinct answer to my question about whether you would send out wagons and teams from Louisville, Ky., to Anchorage or to Jeffersontown and places of that size surrounding Louisville, should you have occasion to make any repairs or do any new construction work in those vicinities?

A. If it were necessary I should say we would do so.

Q. And if that work was in connection with toll lines the boarding of those horses, notwithstanding they were used for that purpose would all be charged to Louisville?

A. I would say this; that the routes leading out of Louisville don't bear toll lines exclusively. They bear subscribers' circuits. If there is anything the matter with those circuits, the Louisville trouble man goes out after it. If anything is the matter with one circuit on the pole, why, all the circuits are in trouble, and the same man would repair them all.

Q. And it would all be charged to Louisville?

A. That depends as to whether it was Louisville circuits out of order or other exchange circuits out of order.

Q. How do you mean that depends?

A. I just said, on what circuits were out of order.

Q. Do you mean to say if you sent out a gang of men from Louisville to a point halfway to Jeffersontown, which is

533 fifteen miles from Louisville and they put a cross arm on the pole out there which carried long distance wires as well

as local wires, that you would charge any part of the expense of doing that to toll lines?

A. If the cross-arm was a toll line cross-arm, it would be charged to toll line construction, provided it was a new cross arm and not replacing a previous cross arm.

Q. But, would it be charged to toll line re-construction?

A. I said it would be charged to toll line construction.

Q. How would you go about charging it?

A. We would report on the pay roll the time of the man in doing that and his time would be charged to toll line construction. We would report, from the supply department, the use of the cross arm and by the supply department would be charged to toll line construction.

Q. How about the board of the teams?

A. The placing of a cross arm would not require a team.

Q. If it did require a team?

A. If the cross-arm required a team, the team might have been used from Louisville or from Anchorage or it might have been hired.

Q. And would not be charged up to toll lines?

A. If there was a special expense incurred in order to do that it would be charged to toll lines.

Q. What do you mean by special expense?

A. I mean, any additional cash outlay.

534 Q. If it was the regular team, that would not be charged up to toll lines?

A. Well, probably not.

Q. So you can not say whether any part of this voucher which I have shown you for board of teams, whether the items were used for toll lines or for Louisville exchange work?

A. These teams may have been used to put up two cross arms but, if there was any work done to any appreciable extent, it would be charged direct to that work.

Q. Now here seems to be voucher No. 290 for $63.00 which seems to be freight on poles from Hartselle, Ala., to Georgetown, Ky., $63.00. Was that charged to Louisville construction account?

A. This voucher, November 1904, No. 290 is shipment of poles to Georgetown, Ky. The distribution on the freight bill is to construction account of that exchange, but the clerk in making the distribution on the cover of the voucher charged it to Louisville exchange in error. This is one of the items included on page 24 of Mr. Wilkinson's report.

Q. Here is another part of voucher No. 290 which seems to be for two shipments of poles from Pine Hill to Centerville. I will ask you whether those two items of expense were charged to the Louisville construction account?

A. The shipments of these poles was for Paris, Ky., and the distribution in the voucher is clear, but by clerical error, $104.00 was incorrectly charged to Louisville. This item is one men-

535 tioned on page 24 of Mr. Wilkinson's report.

Q. I show you here voucher No. 353, May 13th, 1905,

Stewart Bros., $61.05. It has marked on it, O. K. Gooch. Has also marked on it, work done on new switchboard at Jeffersonville, Jeffersonville, Ind. equipment. Was that charged to the construction account of the Louisville exchange?

A. It was so charged, incorrectly.

Q. All of these items which you have said were charged incorrectly or by error, are included in the respective amounts which you have given as the amount expended for the new construction in Louisville for the respective years, are they?

A. Yes. And as explained yesterday they are all included in the exceptions taken to construction account by the Mutual Audit Co. and agreed to by Mr. Wilkinson and by me.

Q. I also have part of voucher No. 353, which is a piece of paper which seems to be a bill in favor of Laid & Co., for various items, one of which appears to be April 8th, 1905, 620 feet pipe bands, and several other items, including freight, shipped to East Tennessee Telephone Co., Frankfort, Ky., and I will ask you whether or not that item was charged to the construction account of the Louisville exchange?

A. The invoice shows as clearly as possible that the purchase, amounting to $65.83 is chargeable to the Frankfort, Ky. office.

536 The distribution on the voucher is incorrectly made and so the $65.83 is incorrectly charged to Louisville construction account. This is one of the items included on page 24 of Mr. Wilkinson's report.

Q. As a part of the same voucher, No. 353, I hand you a paper made payable to W. L. Drake & Co., for $299, for board of horses, hire of horses, etc. What part of that item, if any, is charged to the Louisville construction account?

A. Now, there is $59.80 of the $299 charged to Louisville construction—aerial.

Q. And the same statement you made in regard to the voucher about which I asked you a few minutes ago, for board of horses, applies to this voucher, does it?

A. Yes sir.

Q. Here is voucher No. 290, for $75.63 to June 1905, which seems to be order or check payable to the order of S. O. Bouldware. Please examine that part of the voucher, explain it and say whether or not the amounts therein named were charged to the Louisville construction account?

A. Yes, the voucher mentioned covers freight on material shipped for use on Campbellsburg Ky. exchange. It is clear that the charge should be against that exchange and not against Louisville, as it was incorrectly made. This is one of the items included in Wilkerson's report on page 24.

Q. Mr. Smith, what is the extent of the vouchers for each year, that have come into this office from Louisville, Ky. What

537 space would they likely fill?

A. Well, the vouchers, of course, have grown, as the exchanges under the Louisville manager have increased, and as the business in those exchanges has increased. I take it vouchers cov-

ering construction charges alone, of the Louisville exchange, will number over 1300 from the first of 1900 to the last of 1908. This does not include the sub-vouchers which are parts of the main vouchers. Many vouchers have as many sub vouchers as fifty. These vouchers are distributed in my files among something over 3200 file cases.

Q. How large are the file cases?

A. A file case is a little larger than a regular, ordinary letter file case, or about the size of a Jumbo letter file, if you know what that is.

Q. That is, for the period from January 1st, 1900, to December 31st, 1908?

A. Yes, and as we have not had space in any one part of the building to store these vouchers, they are distributed on different floors of the building.

Q. There is a voucher, No. 290 for September, amounting to $18.73, which seems to have been a charge which should properly have been made against toll lines, but was made against Louisville construction. Do you know the facts in regard to that voucher. I do not find it here?

A. I think it is in the file I gave you. Mr. Wilkinson's report shows it is part of a voucher for $3095.08, and that the
538 charge should have been made against toll lines instead of aerial construction account at Louisville. I will admit that it is correct. The item is doubtless there, but as it is incorrectly charged on the consolidated cover, there being about thirty sub-vouchers with hundreds of bills in them, it would be difficult to locate the item, which is very small.

Q. Now I hand you here voucher No. 753, February 14, 1906, for $93.00 which seems to be check to order of J. U. Laswell for $98, less $5.00 for 98 chestnut poles. Attached to this as a part of this voucher is a letter signed by J. C. Symmes, purchasing agent, in which he says, D. S. Read, Louisville, Ky. Dear Sir: This will be your authority for placing order immediately with party for one car load of strictly first class 25 chestnut poles, top diameter 7 or over, delivered on cars for shipping to this company at Watson, Ind., at $1.00 per pole, f. o. b., cars shipping point, same to be used in taking care of new business at Utica office. I will ask you whether that item of $93.00 was charged to the construction account at Louisville, Ky., and if so, whether it should have been so charged?

A. The item was, through a clerical error, charged in the consolidated cover, to Louisville, Ky., incorrectly. This item is one of those outlined in Mr. Wilkinson's report, page 24.

Q. I hand you voucher No. 204, August 1st, 1906, for $50.71, and will ask you whether or not that item was charged to
539 the construction account of the Louisville exchange, and if so, whether it should have been so charged?

A. This is one of the items mentioned on page 24 of Mr. Wilkinson's report and it is agreed that the charge is incorrectly made against the Louisville, Ky., aerial construction account.

Q. Where should that item have been charged?

A. Charleston, Ind.

Q. Charleston exchange or toll line?

A. Charleston, Ind., exchange, aerial-construction.

Q. Now, I hand you voucher No. 206, November 1st, 1906 which seems to be freight bill for arms, pins, braces, insulators, brackets, wires and bolts, amounting to $3.50 which seems to be freight sent to Pleasure Ridge Park, Ky. Can you say what that material was used for, for which freight was paid?

A. Without referring to the voucher I will agree it is charged incorrectly to the Louisville construction account. This item is shown on page 24 of Mr. Wilkinson's report.

Q. Was that freight paid on material used in toll line or exchange business at Pleasure Ridge Park?

A. Exchange—aerial.

Q. Do you know that or are you just guessing at it?

A. The record shows it was for the exchange.

Q. What record?

A. The record Mr. Wilkinson has made in his report.

Q. Will you look at the voucher and see whether there is
540 any record showing what it was for?

A. The item is so small I don't find it. Yes, here it is. The distribution shown on the voucher at the time it was fresh, and as made by the supply department which was familiar with the purpose for which the shipment was made, shows that it was chargeable to aerial construction, Pleasure Ridge Park, Ky.

Q. How does it show that?

A. By the notation thereon.

Q. Who made the notation?

A. Mr. Johnson.

Q. Who was Mr. Johnson?

A. Freight clerk.

Q. Where?

A. In the general office at Nashville.

Q. How did he know it was aerial construction at Pleasure Ridge Park?

A. Before shipments are made, requisitions therefor are provided and it is specified for what purpose the material is to be used.

Q. Is the requisition there?

A. The requisition is not attached, but when freight bills come in, they are compared with the requisition which has been, in the meantime, attached to the bill of lading covering the shipment, and both the material and the freight, are charged in the same manner.

541 Q. That is your custom, at least, is it?

A. That is our practice. At the same time, he audits the freight charge to see that it is proper.

Q. Now, Voucher No. 206, for November 1906, seems to be an item of $8.89 freight on material shipped from Jeffersonville to Louisville and placed in the warehouse. The voucher also seems to show it was charged up to aerial construction of the Louisville exchange. Is that correct?

A. This voucher shows that it covera freight and drayage on the return of cable reels which had been shipped to Jeffersonville, Ind., loaded with cable. The amount of freight and drayage is $8.89. This item is included in a voucher for $962.24 containing at least 100 other similar bills.

Q. Was it charged to aerial construction at the Louisville plant?

A. It was incorrectly charged by the distribution clerk to aerial construction of the Louisville exchange, and such is admitted in Mr. Wilkinson's report, page 24.

Q. Mr. Wilkinson in his report simply admits that the exceptions from the construction account which the Mutual Audit Company contended for, were proper exceptions, does he not?

A. Mr. Wilkinson's report reads in part as follows: "In conducting this part of the investigation, we examined the vouchers
542 and pay-rolls for an aggregate sum of $944,667.64. This is 92% of the total sum expended by the complainant on its telephone plant in the City of Louisville during the nine years from 1900 to 1908, as shown by the joint report (see page 17).

"During the progress of their detailed examination of the vouchers above referred to, the employés of the Mutual Audit Company took exception to certain payments charged to the Louisville exchange construction account, on the ground that the amounts, or in most cases, portions of the amounts so charged should have been charged to other exchanges than Louisville. Having looked into the facts, we find that the above contention is well founded and we have accordingly made due allowance for the full amount claimed, by deducting same from the cost of construction as recorded on the books of the company. This deduction is shown in the joint report. (See page 17)."

Mr. Wilkinson also states in his report; "We have compared these vouchers and pay-rolls with the abstract before mentioned and we find same to have been correctly recorded."

Q. I hand you voucher No. 204, January 25th, 1907, which seems to have a number of items, among which is one for $36.07, charged to Louisville which should have been charged elsewhere. Will you examine that voucher and state what items there are charged to Louisville which should not be charged to Louisville?

A. Mr. Wilkinson's report, page 25, shows that $36.07 is
543 incorrectly charged to Louisville construction account, and that the charge should be to Pewee Valley, Ky. construction account, aerial construction.

Q. Now, will you answer my question?

A. The vouchers cover an expense incurred for adding to the Pewee Valley, Ky., exchange, to the amount of $36.07, which were distributed on the face of the items as chargeable to that exchange, but which were, through clerical error, charged incorrectly to Louisville.

Q. I notice one item on the voucher, stringing wire, estimate #173. I will ask you if that was work on a toll line?

A. The voucher reads as follows: "13th to 19th inclusive, new subscriber's line, Pewee exchange, stringing wire, estimate, #173.

The voucher itself indicates clearly that the work was for a subscriber.

Q. Is not all toll line work done by estimate?

A. Yes, now.

Q. Was it then?

A. It was about the time we began it. Exchange work was also done under estimate.

Q. Was then done under estimate?

A. Yes.

Q. Is it now?

A. Yes.

Q. You don't know whether that was done for exchange
544 work, then, or toll line work?

A. The voucher itself states clearly it was for exchange work.

Q. I call your attention to one of the pages included in this voucher, in which occurs this verbiage: "stringing toll line between Pewee Valley and Anchorage, estimate, #173, and ask you what that means?

A. I guess the foreman meant what he put on there, but as you know, there are subscribers' lines between Pewee and Anchorage, as well as toll lines.

Q. Estimate #173 seems to include the toll lines at least?

A. I cannot say.

Q. I call you to notice the next sheet immediately following the one I have just read, which says, "stringing toll line from Pewee Valley, Ky. to Anchorage, estimate #173 and will ask you if estimate #173 would not necessarily be estimate for toll lines?

A. Not necessarily.

Q. How do you explain then the language on that sheet of paper?

A. I am afraid we would have to ask the foreman to explain it.

Q. The next sheet contains the following language; stringing toll lines, Pewee Valley to Anchorage, Ky. You think that
545 would have to be explained by the foreman also do you?

A. The case has nothing whatever to do with Louisville.

Q. It was toll line work that was charged to Louisville?

A. No, we have never charged any toll line work to Louisville intentionally.

Q. At the same time, you did charge this voucher to Louisville?

A. We did, incorrectly and have agreed to take it out.

Q. The next item, stringing toll line between Pewee Valley and Anchorage, estimate, #173. That is correct, isn't it?

A. You mean what you have read is correct?

Q. Yes?

A. I believe so. Vouchers are all so plain, anybody looking at them can see whether they are properly charged or incorrectly charged, as far as Louisville is concerned.

Q. Here is a voucher containing some twenty-five or thirty papers, being Voucher No. 204, January 11th, 1907, for $162.41, $156.10 of which seems to have been for work or material performed or furnished for Crab Orchard. Is that correct?

A. This voucher is a part of Voucher No. 204 for January, the total of which was $2,487.58 and it contains quite a number of sub-vouchers. The voucher referred to by the counsel for the City of Louisville, is a sub-voucher. There are items in this voucher
546 which are plainly marked as chargeable to Crab Orchard, Ky., which are distributed in error to construction account of the Louisville exchange. This voucher is one of the items shown on page 25 of Mr. Wilkinson's report.

Q. That was erroneously charged then, was it?

A. Clearly so.

Q. Here seems to be a voucher, No. 204, for $39.11, in February 1907, which seems to be the payment of freight on a car load of poles shipped from Crab Orchard, Ky. to Frankfort, Ky. Was that item charged to the Louisville exchange, construction account, and if so was it correctly charged?

A. This item is one of the items shown on Mr. Wilkinson's report, page 25, as incorrectly charged and is admitted by me. The voucher shows clearly that it does not concern Louisville.

Q. I hand you voucher No. 702, May 1907, which seems to be a pay-roll voucher for the East Tennessee Telephone Co., amounting to $920.60, $152.76 of which seems to be charged to Louisville. I call your attention to a notation on the voucher which reads as follows: "Running line orders from August 1st to August 9th, reconstructing Winchester and Mt. Sterling toll route, from August 10th to August 30th." and I will ask you whether any part of that pay roll represented by this voucher was charged to the Louisville
547 exchange construction account, if so, what part and state whether it was correctly charged, if so charged?

A. Mr. Wilkinson's report, page 25, shows that this item was incorrectly charged to the Louisville construction account, and such is admitted by me.

Q. No part of that voucher then, should have been charged to the Louisville construction account, should it?

A. You are correct.

Q. To what account should it have been charged?

A. The explanation on the voucher would indicate that it concerns Winchester Kentucky and not Louisville.

Q. Doesn't the notation on the voucher indicate it concerns the toll line business and that it should be charged to toll line construction or re-construction?

A. The voucher shows that two classes of work were done during the month for which the pay-roll is made out. It shows that from April 1st to April 9th, the gang was running new line orders, and therefore the charge of $152.76 is properly made where it is placed, except it should not have been to Louisville.

Q. How about the notation reconstructing Winchester and Mt. Sterling toll route?

A. That has nothing whatever to do with Louisville nor with the Winchester account.

Q. Would not that notation indicate that at least a part of
548 the work should have been charged to toll line reconstruction?

A. It would indicate that an expenditure chargeable to

maintenance, or what we term, or the foreman terms, a line between Winchester and Mt. Sterling, was made. He calls it a toll route; at the present time I don't know just what is on the route.

Q. Do you know whether it was toll line or not?

A. I do not.

Q. Do you know how far Winchester and Mt. Sterling are apart?

A. I do not.

Q. If they are thirty miles apart, would you call it a toll route?

A. Might be.

Q. If it was reconstructing a line from Winchester to Mt. Sterling, which are thirty miles apart, would you say it could be anything else but a toll line?

A. Yes.

Q. What could it be?

A. Might be that part of the route which bears subscribers' of the Winchester exchange and also of the Mt. Sterling exchange.

Q. The presumption is that it was a toll line as it says toll line?

A. Your presumption is.

Q. What is your presumption?

549 A. Mine is that I don't know. I want it to be clear, though that the case does not affect Louisville.

Q. Your presumption is when a voucher says it was done on toll line, you don't know what it was done on?

A. I say, the foreman thinks it was done on a toll line.

Q. If it was done on a toll line, then you have charged up as part of the construction of the Louisville exchange work done on a toll line?

A. Absolutely none.

Q. This was charged up as part of construction?

A. No reconstruction.

Q. This was charged up as part of the construction?

A. No, reconstruction.

Q. I didn't say anything about reconstruction, I said construction?

A. A part of the pay roll is incorrectly charged to the Louisville construction account.

Q. And that work was actually done on toll lines?

A. No.

Q. Where was it done?

A. The part which was incorrectly charged to Louisville construction account is the part of the pay roll which was spent in running line orders at an exchange.

Q. How can you tell that?

A. Because that is what the pay roll shows.

550 Q. The pay roll shows two things? *Q.* How can you tell which is line orders and which is toll line construction?

A. Part of the pay roll is charged to maintenance and part is charged to construction.

Q. The reconstructing part is the maintenance part according to your statement now, I believe?

A. Yes sir.

Q. And the other is the running line orders. You think then the $156 was expended in running line orders?

A. $152.76.

Q. You think that was expended in running line orders, do you Mr. Smith?

A. I think that is true.

Q. Do you know that to be true?

A. No.

Q. Where was this voucher paid?

A. It was cashed through the Louisville, Ky. office, Louisville cashier's office.

Q. Was Winchester in the Louisville district?

A. It is under the superintendent at Louisville.

Q. Over what territory has the superintendent jurisdiction?

A. The Louisville superintendent.

Q. Yes?

A. Over Southern Indiana and Central Kentucky; at the present time his jurisdiction is as far west as the eastern counties in Illinois.

551 Q. How far north?

A. As far as the territory of the Cumberland Company extends, now.

Q. How far is that.

A. It embraces the counties in Indiana which border the Ohio River.

Q. How far east does the territory extend?

A. I will have to refer to my files.

Q. How far south?

A. The general answer I will give you is, Central Kentucky. If you wish more detailed information I will have to ask for time to get it.

Q. This morning you gave a list of towns which were included in the Louisville District; that is a sub district is it, and the district over which the superintendent has jurisdiction?

A. Yes, this morning you asked me for the jurisdiction of the manager.

Q. The manager of the Louisville exchange then and the Louisville office, has jurisdiction over the towns you named this morning, has he?

A. I stated so.

Q. Then you have a superintendent there also?

A. Yes.

Q. Who is your manager?

552 A. The present manager is Mr. W. K. Boardman.

Q. Who is your present Superintendent?

A. Our present Superintendent is Mr. George G. Hall.

Q. And are bills for material and labor over the district presided over by Mr. Hall, paid at Louisville in the same manner and to the same extent as over the district which you named this morning?

A. No.

Q. What is the difference?

A. All exchanges in Mr. Hall's territory get their money, except those specified as being under the Louisville manager, direct from Nashville; they account for their money to Nashville direct, and they pay their own pay rolls and expenses.

Q. How long has that system been in force?

A. That has always been in force but the superintendent has a few gangs of construction men over whom he exercises a supervision, whose pay rolls are sent to him at Louisville and audited by him and cashed by the Louisville cashier.

Q. How about freight bills, where are they paid?

A. As a usual thing, they are paid by the exchange. It so happens, at times, they must have funds immediately and in such cases, they are authorized to draw drafts.

Q. On whom?

A. Sometimes on Louisville and sometimes on Nashville. Before proceeding, I would like to state this. In the examination
553 which has lasted all morning, eighteen vouchers have been involved, representing total expenditures of $85,324. That is, eighteen vouchers were taken from more than 1300 vouchers, which go to make up the charges against the Louisville construction account. In many of these 1300 vouchers mentioned, there are sub-vouchers, running from three to fifty. All vouchers amounting to small sums were furnished the Mutual Audit Company, and two of its employés spent weeks in going through these vouchers most thoroughly. The result is, that out of the whole, they find eighteen vouchers which have incorrect charges in them, and these incorrect charges amount to $2,852, which is less than one third of one per cent of the charges made to the Louisville construction account for the period running from January 1st, 1900, through December 31st, 1908 or nine years.

Mr. BLAKEY: I object to that statement by Mr. Smith, as not answering any question and purely a matter of argument on his part.

At this time, 12:30 P. M., a recess was taken until this afternoon at two o'clock.

554 Cross-examination resumed at 2 p. m., Friday, September 3, 1909.

By Mr. BLAKEY, for the Defendant:

Q. Mr. Smith, will you produce a half a dozen vouchers representing expenses for construction of Louisville Exchange, for the year 1900?

A. Here they are. (Producing vouchers).

Q. Mr. Smith, I find here one voucher No. 156, for $783.52, which seems to be a pay-roll voucher, and I will ask you how much of that was charged to the Construction Account, City of Louisville?

A. The voucher mentioned is for February, 1900, Louisville,

Kentucky Exchange, Aerial, was charged $188.30 from this voucher.

Q. That represents a pay roll, does it?

A. That represents a pay roll.

Q. For what month—was it a pay roll for work done in connection with new construction?

A. Yes sir.

Q. In what month was that work done?

A. December, 1899.

Q. Is that amount of $188.30 comprised or included in the item of $166,000 for new construction for the year 1900?

A. It is.

Q. If the work was done in December, 1899, prior to the consolidation?

555 A. And was paid from the general office after December, 1899.

Q. Pay roll #502 seems to be for the same month; how much, if anything, was charged against the Louisville Exchange for new construction for that period?

A. $304.79 was charged Louisville Exchange Construction Aerial; $269.38 was charged Louisville Construction Underground Conduits.

Q. When was the work done?

A. This pay roll is for the month of January, 1900.

Q. Here is voucher #733, for $338.50; to what account was that charged

A. The voucher is March, 1900, No. 733; it was charged to Construction Exchange Aerial, Louisville, Ky. exchange.

Q. Does that voucher represent the purchase of poles?

A. It does.

Q. When were those poles furnished?

A. The invoices are dated March 14, 1900, March 16, 1900, and March 21, 1900.

Q. Who directed that the cost of these poles should be charged to the Construction Account of the Louisville Exchange for the year 1900?

A. The voucher was prepared and approved by the Purchasing Agent, and charged in his office.

Q. Who was the Purchasing Agent then?

A. Mr. J. C. Symmes.

Q. Who is the Purchasing Agent now

556 A. Mr. J. E. Warren, with the title of Supply Agent.

Q. What has become of Mr. Symmes?

A. Mr. Symmes is now District Superintendent of the Nashville District.

Q. Were those poles used in new construction in the city of Louisville?

A. The voucher would not be so charged if they were not.

Q. Do you know, of your own knowledge, that they were so used?

A. I do not.

Q. Do you know, as a matter of fact, whether they were put in Supply account, or used in some other way?

A. I know from the records that they were charged and used direct and did not go through Supply.

Q. Do you know, of your own knowledge, that they were not placed among the supplies which were accumulated at Louisville?

A. Of my own knowledge I do not.

Q. Do you know, of your own knowledge, whether they were used in the construction of the Louisville Exchange, or in the construction of a pole line outside of Louisville?

A. I do not, of my own knowledge.

Q. Have you any records in your office showing where those poles were used

A. I have not, further than as shown by the voucher itself.

557 Q. I hand you voucher No. 231, for the month of March, which seems to be a pay roll; I will ask you for what month that was a pay roll?

A. February, 1900.

Q. For the month ending February 28th?

A. I presume so.

Q. One item there is Mr. L. K. Webb, Assistant Manager, $125.00; is that the salary of Mr. Webb?

A. Yes sir.

Q. How much of that salary was charged to new construction, if anything?

A. $41.00⅔ (forty-one and two-thirds dollars).

Q. Where was the balance of it charged?

A. Part to Operating Salaries and Wages, Louisville, Ky. Exchange, and part to Maintenance, Salaries and Wages.

Q. Was Mr. Webb then Assistant Manager for the same District that Mr. Boardman is now Manager of?

A. Mr. Webb was Assistant Manager; his duties did not represent those of Manager.

Q. I believe you said yesterday that during the time Mr. Webb was Assistant Manager you had no Manager?

A. I did not say that.

Q. Who was your Manager at this time?

A. The Superintendent.

Q. Who was the Superintendent?

A. Mr. George G. Hall.

Q. Did you not say on yesterday or the day before that for a time after Mr. Gifford resigned that you had no manager,

558 and that Mr. L. K. Webb, Assistant Manager, performed the duties of the Manager?

A. Mr. Gifford resigned effective October 2, 1899, and Mr. Hall assumed charge as Superintendent and Manager at Louisville November 1st, 1899. During the period between those dates Mr. Webb had the title of Auditor of the Ohio Valley Telephone Company, and I think was the ranking officer at Louisville.

Q. Who is Assistant Manager now?

A. We have no one by that title.

Q. When you appointed a Manager, did you do away with the office of Assistant Manager?

A. I do not recall.

Q. Is it not true, then, that Mr. Webb, during the time he was Assistant Manager, performed the duties that the Manager subsequently performed?

A. I don't know; at the time the best judgment of the general office was that Mr. Webb's salary should be charged as it is charged in this pay roll.

Q. I notice you have down here one item, H. Seymour, toll clerk; was any part of that charged to the Construction account of Louisville Exchange?

A. No part.

Q. How do you ascertain that fact?

A. I note that the distribution on the pay roll shows his salary was charged to Operating Salaries and Wages.

559 Q. Was any part of that charged to operating the toll lines?

A. We have never kept a separate account for the operation of the toll lines.

Q. Have you ever kept a separate account for the construction of toll lines?

A. Yes.

Q. In the city of Louisville?

A. Yes.

Q. Has there, since 1900, been any such an account kept of the construction as between toll lines and exchange lines in the city of Louisville?

A. No toll circuits in the city of Louisville have ever been charged to exchange construction. There have always been kept separate accounts between toll line construction and exchange construction.

Q. Is it not a fact that on June 7th, 1909, Mr. Warren, of the Mutual Audit Company, asked you that if you had any accounts showing the construction since 1900 as between toll line construction and exchange construction, is it not a fact that you then said that no such record has ever been kept?

A. It is not a fact.

Q. In what books do you keep a record of your toll line construction in the city of Louisville?

A. We have never kept exclusively the cost of toll line
560 construction within the city of Louisville. There are various toll lines which enter the city of Louisville, and the cost of the part within the city of Louisville is charged to the cost of those toll lines.

Q. Is there any record showing that fact?

A. The record of the lines themselves.

Q. What toll lines have you running out of Louisville, Kentucky?

A. I will get them for you. (The witness here went to get the list).

Mr. BLAKEY: I would like to note that Mr. Smith was over an hour getting this information.

A. I would like to explain that the information had to be secured from the Engineer's office; that the Engineer himself, with a clerk and a stenographer, prepared the information as soon as possible; that the Auditor himself helped in the work.

Q. Read the question. (Question was here read).

A. One route from Louisville towards Lexington, Kentucky.

A route from Louisville to Worthville, Kentucky.

A route from Louisville to La Grange, Kentucky, through Harrod's Creek.

A route from Louisville to Charlestown, Indiana.

A route from Louisville to Sellersburg, Ky.

A route from Louisville to Salem, Indiana.

561 A route from Louisville to Marengo, Indiana.

A route from Louisville to Huntingburg, Indiana.

A route from Louisville to Owensboro, Kentucky.

One from Louisville to Nortonville, Ky.

One from Louisville to Bowling Green, Ky.

One from Louisville to Danville, Ky.

One from Louisville to Taylorsville, Ky.

Q. Are all of those routes under the superintendency of Mr. Hall?

A. They are where they leave Louisville.

Q. Now, without taking up further at this time, Mr. Smith, the statement you have made in regard to the separate items of cost for construction of toll lines and Exchange system of Louisville, Ky., I proceed with the investigation of the vouchers concerning the construction account of the Louisville Exchange. I believe you said that no part of the charge for H. Seymour, Toll Clerk, was made against Construction for the Louisville Exchange?

A. That is correct.

Q. How do you ascertain that fact from that voucher?

A. Opposite the salary or name of H. Seymour, Toll Clerk, is noted "O. S. & W." which indicates that this man's salary is charged to Operating Salaries and Wages.

Q. I show you voucher No. 109, for April, 1900, which seems to be a pay roll voucher, the first item appearing being that of E. Bright, I-n-s-t Man. What does that stand for—"I-n-s-t?"

A. I think it stands for Instrument man.

562 Q. On the next page is the name of M. C. McCarthy, a lineman; what was his salary charged up to?

A. He worked on the first day of March, 1900, and the salary drawn by him, amounting to $1.75, was charged to Construction Aerial, Louisville Exchange.

Q. What do you mean by Aerial?

A. It includes the cost of pole lines, cables, wires, and other parts making up an outside pole route used for exchange purposes.

Q. Now do you know whether Mr. McCarthy worked on that day in Louisville in that class of work, or whether he was engaged on that day somewhere else outside of Louisville.

A. The pay roll shows clearly that he worked that day in Louisville; distribution is therefore made to Louisville.

Q. Is it not a fact that all linemen engaged in Louisville worked

indiscriminately in Louisville and outside of Louisville, wherever their services were needed?

A. In the Louisville Exchange.

Q. If their services were needed in West Point, Ky., wouldn't they be sent to West Point?

A. They would be sent to West Point, and their salary would be charged to West Point.

Q. You don't know whether this man worked that day in West Point or not, do you?

A. No sir I don't know anything further than what the
563 pay roll shows.

Q. Do you know whether he worked on aerial construction or aerial reconstruction?

A. The pay roll shows that his time is chargeable to Construction Aerial.

Q. How does that appear on the pay roll?

A. It appears on there by the following being written after his title: "Con ex a," which means what I have stated.

Q. Who wrote that on there?

A. The clerk in charge of that work at Louisville.

Q. How did he know whether he did that work in connection with construction of reconstruction?

A. By the daily Time Reports.

Q. Have you any of those Daily Time Reports?

A. We do not keep them for nine or ten years, and they are not forwarded here in cases of that kind; they are filed locally.

Q. Now that is one of a large number of names that appear on this pay roll, making an aggregate for Construction Aerial of $1,132.73, is it not?

A. That is correct.

Q. And that is for the month of March, 1900?

A. It is for two weeks ending March 14, 1900.

Q. Is this pay roll which I now give you a fair example of the pay rolls and the character of the charges made against orig-
564 inal construction for labor in the city of Louisville?

A. It is a very good example exhibiting the care that was used in doing this.

Q. I call your attention to the name H. Otte, Laborer, and ask you what the letters in pencil mark made after his name indicate?

A. That his time is chargeable to Underground Cable Construction.

Q. Is that new construction or re-construction?

A. New construction.

Q. I will ask you if any item on that entire pay roll consisting of seven large sheets shows that any of the salaries or wages of any of the men were charged up to re-construction?

A. In 1900 all reconstruction done was charged as Maintenance. The pay roll shows that $168.20 was charged to Maintenance.

Q. That was the pay roll for the two weeks?

A. That is a pay roll representing certain employees in the city of Louisville for two weeks.

Q. Will you please indicate to me some of the names on there whose salaries or wages are charged to reconstruction?

A. As stated before, we did not have an account known as Reconstruction, in the year 1900.

Q. Well, to maintenance, then?

A. The following salaries were charged to Maintenance: E. Bright——

565 Q. What did he do?

A. His title is given as Instrument man. G. Coons——

Q. What does he do?

A. His title is shown as Trouble man. P. Frech, whose title is shown as Trouble man; D. Gwyn, Instrument man, A. Moraweck, Wire Chief, L. Newhouse, Instrument Man, C. Rozenbaum, Instrument man.

Q. Is that all?

A. That is all in that pay roll.

Q. Do you know what duties an instrument man performs?

A. No, it would be guessing.

Q. Does he do any reconstruction work?

A. He might.

Q. It would be in connection with the instrument itself, wouldn't it?

A. It would be in connection with the subscriber's station.

Q. What about the trouble man, what are his duties?

A. Repair man.

Q. What does he repair?

A. Repairs lines and cables, and probably instruments.

Q. Isn't he the man that you send when a telephone gets out of order so that you cannot hear well through it, don't you send the trouble man to see what the trouble is?

A. He might be sent, after the test.

566 Q. Isn't that the main thing he is used for?

A. Yes.

Q. What does the Wire Chief do?

A. The Wire Chief does the testing to see where the trouble is, and directs the trouble man.

Q. None of these men would be engaged in the service of taking down one line of poles and replacing it with another line of poles, would they?

A. If they had nother else to do that would keep them busy they would be; our men are always kept busy, no matter what their title is.

Q. Is it not a fact that the class of men who take down a line of poles and put up another line of poles are laborers under the head of a foreman?

A. Yes sir.

Q. Is it not a fact that the men whose names are on here on these other seven pages and who drew for two weeks service $1132.73, are the class of men who work for $1.75 to $1.80 a day, and who work under a foreman, and who are used for taking down a line of poles that have become valueless and replacing with another line

of poles. I am not asking whether or not they did, but I am asking whether or not they are that class of men who did that class of work?

A. If there was work of that kind to be done they would probably have been engaged in it.

Q. I show you another voucher, No. 461, for July, 1900, in which it seems that the total is $1303.00, which appears to have
567 been expended in the way of pay rolls for the month ending June 15, 1900, is that correct?

A. No.

Q. For the two weeks ending June 15, 1900?

A. Ending June 14.

Q. Please indicate what men, if any, were paid during those two weeks for doing any work in the way of maintenance which you say included reconstruction work?

A. G. Coons, Trouble man, P. Freck, Trouble man, D. Gwyn, Instrument man, A. Moraweck, Wire Chief, C. Stephens, Instrument setter; I. Hall,—I don't know his title—he, however, was included for one day; J. Helm, Inspector, J. Lally, Watchman, G. Wathan, Clerk, W. M. Gilmore, Bricklayer.

Q. Now on what character of paper, as to size, and how many pages are there, that go to make up this pay roll?

A. The pay roll is about 14 inches long eight inches high, and it consists of six sheets; the name of each man paid anything through the pay roll is shown thereon, the days of the month he worked, the number of days, the rate per day, the amount paid, his receipt for the payment, and a memorandum showing how each salary should be charged.

Q. I should like to have you cause a copy of that pay roll to be made, and file it with your deposition as an exhibit as a part of your deposition, if you will. You can do it at some time before the deposition is closed.

568 A. I will do so and file it as Exhibit No. 15.

Q. Now with the exception of $175.98 for Maintenance, all the balance of this voucher, which represents a total payment of $1303.82, was paid to men for services, and the payments so made were charged up to new Construction was it?

A. $18.00 of the pay roll was charged to the Supply department; $1109.84 charged to Construction Exchange Aerial, Louisville. You understand, of course, that this is only one of several pay rolls of the Louisville Exchange.

Q. Are there any more pay rolls for that period covering payment to laborers engaged either in reconstruction or in construction work for the Louisville Exchange?

A. I will investigate and see, and answer it later.

Q. I now show you pay roll No. 548, which seems to be dated Sept. 25, 1900, and which on its face seems to be the pay roll for the month ending August 14, 1900; is that correct?

A. Yes sir, it is a pay roll.

Q. Will you examine that pay roll and indicate the wages of what men, if any, were charged to Maintenance, which you say

includes reconstruction work as well as maintenance, in the city of Louisville, for that period?

A. F. Weick, Foreman, J. Lally, Night Watchman, G. Wathan, Clerk, G. Coon, Trouble man, P. Freck, Trouble man, D. Gwyn, Instrument man, A. Moraweck, Wire Chief, L. Newhouse, Asst. Stock keeper, C. Stephens, Instrument setter.

569 Q. What is the total amount charged to Maintenance on that voucher?

A. $210.25.

Q. What is the total amount charged to new construction?

A. Exchange Aerial, $1078.89; Exchange Underground Conduits, $98.64.

Q. And the facts stated by you in regard to the pay roll which was exhibited to you prior to this pay roll substantially apply to this pay roll, do them?

A. Yes sir.

Q. Now I show you voucher No. 1695, which seems to be a pay roll for the last fourteen days of November, 1900; is that correct?

A. It includes in it for some men pay for the full month.

Q. And for the majority only half of the month?

A. And for others a half month.

Q. Will you indicate on that pay roll what men were paid salaries which salaries were charged to Maintenance?

A. J. T. Featherstone, Supt. Construction, 1/3 of his salary, for the full month; W. R. Harris, engineer, all of his salary for the full month; G. Wathan, all of his pay except for one day, payment half of the month, J. Arnold, Ground man.

Q. How much was paid to those men whose names you have just read off and charged to Maintenance account?

A. $185.58 to Maintenance Salaries and Wages, and

570 $32.05 to Maintenance Damage and Compensation.

Q. How much was charged, as appears by that pay roll, to New Construction?

A. To Underground Construction, Louisville, $108.20.
To Underground Construction, Jeffersonville, Ind., $19.50.
To Aerial Construction, Eminence, Ky., $3.00.
To Aerial Construction, Bardstown, Ky., $56.50.
To Aerial Construction, Louisville, $1289.27.

Q. Now have you any pay rolls for the year 1901?

A. I have.

Q. I show you a pay roll now which seems to be for the first two weeks of January, 1901, and which seems to represent a payment of $38.35 for maintenance and $905.27 for aerial construction; is that correct?

A. Yes, the aerial construction not all being charged to Louisville.

Q. How much of it is charged to Louisville?

A. $828.76.

Q. This pay roll is similar to the pay rolls I have exhibited to you heretofore, and which you have testified to, in the main, is it?

A. Yes sir.

Q. Where are your other vouchers for the year 1901?

A. They are here before you (pointing to the cases in the file room).

Q. Have you any objection to Mr. Warren's selecting some of them for me to look at?

571 A. No one in the Voucher Department is authorized to go into these vouchers except the File Clerk.

Q. Would you send for the File Clerk, and get him to produce me certain vouchers that I may ask for?

A. This is the file clerk here now.

Q. I wish you would have him produce the pay roll account for the month of July, 1901.

A. I will do so. You mean those affecting Louisville?

Q. Yes.

A. I here hand you two July, 1901 pay rolls, both referring to Louisville, Kentucky.

Q. Mr. Smith, the voucher you have produced for the first 15 or 14 days of July, seems to be Voucher No. 158, for $2046.11, $2013.11 of which seems to be for maintenance, and $33.00 for Supply Department, is that correct?

A. That is the way the voucher shows.

Q. Now I want you to look at this voucher, if you will, and take these names up as I point them out to you, and indicate to what account they were charged by the clerk whose duty it is to indicate to what account it should be charged—and by clerk I mean the clerk you mentioned in the earlier part of your deposition who you said made the mark "ex ael." For instance, take the name of Jas. Leigh, the first man whose name appears on this voucher, appears to be a foreman, I will ask you to what account his wages were charged, as appears from that pay roll?

572 A. The black pencil notation charges his salary to Exchange Aerial.

Q. Is that Construction?

A. Yes sir.

Q. How about the next seven men on the pay roll?

A. The same answer.

Q. Now why is it that the amount of their pay roll does not seem to have been charged to Construction account?

A. Clerical error.

Q. A clerical error?

A. That is my explanation.

Q. Would you say that the amounts represented in dollars and cents opposite the respective names of these 8 men was a part of the new construction for the year 1901, or a part of the maintenance for that year?

A. I should be guided by the black pencil notations.

Q. And say that it was a part of the——

A. Part of construction.

Q. And was so charged up?

A. It seems that it was not so charged up.

Q. Would you say, then, that those amounts there were in-

cluded in the part of the $178,549.14 which you say was expended in the way of new construction for the year 1901?

A. Those amounts should be included in it, whether they are or not I am not now able to say; it is possible that the error was caught and corrected, but the voucher does not show it.

Q. This voucher #158 is in every respect similar except as to the names and amounts—similar in form at least, to the vouchers which you have heretofore testified about, is it?

573

A. Similar to the other pay rolls that I have testified to this afternoon.

Q. And how many pages are there in that particular voucher?

A. Eleven, including the last page, on which there is a recapitulation.

Q. Will you kindly read off to the stenographer the names of the laborers whose wages according to the pencil notation should have been charged to maintenance?

A. I. Herrin, Trouble man.

Q. How much was he paid?

A. $27.23. L. Lewis, Trouble man, $33.30. H. Linet, Trouble man, $27.00.

Q. Should the balance of $2013.11 which appears on this voucher to have been charged up to Maintenance have been charged to Reconstruction?

A. No, it should have been charged to Construction.

Q. Are the laborers or other employees whose names appear on this voucher substantially the same class of laborers and employees whose names appear on the former pay roll vouchers of 1900 about which I asked you?

A. I think so.

The further hearing of this proof was here adjourned until 9.30 a. m., to-morrow.

574 SATURDAY, *September* 4th, 1909.

Cross-examination of H. BLAIR SMITH, resumed.

By Mr. BLAKEY, for the Defendant.

Q. I think when we closed yesterday, Mr. Smith, you had been testifying in regard to pay roll voucher for fifteen days during the month of July, 1901. I now show you Voucher No. 1236, which seems to be for the month of June, 1901, or the first fifteen days of the month of June, 1901, is that correct?

A. The first fourteen days.

Q. I will ask you to examine that voucher, and especially the pencil marks immediately after the name and the occupation of the labor or employee, and state what portion of the expenses appearing on that pay roll should have been charged to New construction?

A. I have examined the pay roll. It consists of quite a number of sheets. In order to determine this accurately it would require the recapitulation of each item.

Q. Are not the pencil marks, such as "ex. ael" which appear after the occupation of the employee substantially the same character of pencil marks that appear in the same position on former pay rolls which have been exhibited to you?

A. The pay roll is one which I will grant is not charged properly, but it is probable that the correction was made later on, properly distributing it. The pay roll itself does not show that a correction was made.

Q. Is any part of it correctly charged?

575 A. The charges which are made to construction aerial at Louisville, and Anchorage, are proper; the charge made to the Supply department is proper, and some of the charge to Maintenance, Salaries and Wages is proper.

Q. How much is charged to Maintenance, Salaries and Wages?

A. The total charge to Maintenance, Salaries and Wages is $2092.40; $59.75 of this is charged to Jeffersonville, Indiana.

Q. How much is chargeable to aerial exchange construction?

A. Ninety dollars is charged by the voucher to Construction Exchange Aerial.

Q. How much to Supply department?

A. $45.00.

Q. How much of the $2032.65 which appears here to be charged to Maintenance, Salaries and Wages at Louisville should have been charged to that account?

A. $77.00, as far as Louisville is concerned.

Q. Where was the mistake in the charge made, in Nashville or in Louisville?

A. Made at Nashville.

Q. Do you know, as a matter of fact, whether the sum which should have been charged to the construction account on the books of the company was ever so charged?

A. I think so.

Q. Do you know that as a matter of fact?

576 A. There were corrections made in that year, and I feel certain that the results of the year's business were properly charged.

Q. Have you any way of determining that fact?

A. Yes sir.

Q. How would you go about determining it?

A. Mr. Warren was given a memorandum which showed the corrections that were made. I saw you both looking at that memorandum yesterday.

Q. Do your books show whether this particular item about which you are testifying, namely: voucher 1236, was ever corrected in such a manner as to charge Construction account with the amount which you say should have been charged to Construction account?

A. The books show quite a number of errors like the errors mentioned in this pay roll. There are four or five of such in the accounts for 1901. These were discovered before the close of 1901, and the actual facts in the case were very carefully gone over and

adjustments made to the very best of our ability and knowledge at the time.

Q. This pay roll, as well as the one you said yesterday was improperly charged, has on the face of it blue pencil marks on the first page, certain memoranda; will you look at that, and tell me what it is?

A. These are memoranda made by a clerk at the Nashville office, and are a change in the distribution made on the ground at Louisville, and incorrectly made.

577 Q. Do you know what clerk wrote that on there?

A. I think Mr. J. L. Pearcy, Jr., wrote it.

Q. Is he still connected with your company?

A. He is not.

Q. Do you know why he made that change?

A. I do not.

Q. Was he the man that was accustomed to handling payrolls of that character?

A. As I remember, he was new at his job; he had been with the company for quite a while, but was new at this job.

Q. You said yesterday that he handled them in 1900, did you not?

A. I do not recall that I did.

Q. If he is the same man you spoke of as having handled the pay rolls in 1900, then he had been handling them for a year had he not?

A. If he began in 1900, he certainly had.

Q. If he charged them up in 1900 according to the memoranda made by the Louisville office, then he knew that the memoranda made by the Louisville office was there for a purpose, did he not?

A. I presume so; it is difficult to testify as to another man's mind.

Q. Is it possible to tell, without looking at every pay roll, how many errors similar to this have been made or

578 were made during 1901?

A. It would be necessary to examine the pay-rolls.

Q. Have you any other pay roll for laborers during the first fourteen days of June, 1901?

A. I will examine the files, and see.

Q. While we are waiting for you to have that found, I will ask you if you found any additional pay rolls for the month of June, 1900, about which I asked you yesterday?

A. I did.

Q. Will you let me have that?

A. (Witness produces voucher.)

Q. Mr. Smith, the voucher you have handed me is Voucher No. 286, which seems to be for the last half of the month of June, 1900; is that correct?

A. No, it is for the full month of June, 1900.

Q. And the pay roll about which you testified yesterday was for what part of the month of June?

A. I believe it was for the first fourteen days.

Q. So this pay roll covers all expenditures in the way of pay roll

for the first fourteen days of June except that that you mentioned yesterday for the first fourteen days of June?

A. Well, I won't say that it covers all, but it covers the monthly men; there may be other pay rolls.

Q. Can you produce any others?

A. If you wish me to continue to search, I will do so.

579 Q. What others could there be besides the laborers paid twice a month and the monthly men paid once a month?

A. If all the laborers were included in the other pay roll there would not be, but I am not certain all the laborers were paid in the one pay roll.

Q. Is it not the custom to pay all the laborers in one pay roll?

A. It is now, but it was not then.

Q. You made quite a thorough search yesterday, and it took you quite a while to find any additional pay rolls to the one you found yesterday, did it not?

A. My File Clerk looked through July and August vouchers rather hurriedly, and found this one.

Q. Will you file a copy of this pay roll, and make it part of your deposition?

A. I will, as Exhibit 16.

Q. Will you have your file clerk search further for any additional pay rolls for the first 14 days of June, 1900?

A. If you desire it.

Q. I do. Now I notice the first two names on this pay roll are repair men on the Brandenburg line, charged to Maintenance Salaries and Wages, is that correct?

A. No.

Q. What does that memorandum I have just read mean?

A. It applies to one man.

580 Q. Which man?

A. A. Applegate.

Q. What amount did he receive, according to that pay roll?

A. $30.00.

Q. To what was that charged?

A. Maintenance Salaries and Wages.

Q. Where?

A. Louisville.

Q. Now I notice in this pay roll the name of F. Ammon, repairman; what sort of work did he do?

A. I don't know, further than his title designates.

Q. Would you not infer that he did repairing where an instrument got out of order or fell off of a man's desk, or a new cord had to be put in, or some such trouble as that?

A. I do not know.

Q. I notice the name of E. Coons, Night repairman, what would he do?

A. He would probably care for a switch-board.

Q. I notice the name of E. Bright, Instrument man, what would be his duties?

A. They would seem to attach to Instruments.

Q. I notice the name of W. Elrod, Trouble man; what would he do?

A. The title indicates care for troubles.

Q. I notice here three men, Switchboard Inspector, As-
581 sistant Switchboard Inspector, assistant switchboard man. Switchboard Inspector. Their duties would be in connection with the switchboard, would they?

A. With the switchboards, testing troubles, cutting changes of numbers, installing lines for new stations, and other duties that are attended to in the central office.

Q. Now the Superintendent of Equipment and Maintenance, he would have what duties?

A. Supervision.

Q. Superintendent of Construction, what would be his duties?

A. As designated in the title.

Q. Would he have anything to do with maintenance?

A. Yes.

Q. In what way?

A. He would supervise gangs engaged in maintenance.

Q. Doesn't his title indicate that he would superintend construction work?

A. The Superintendent of construction means the superintendent in charge of the construction in existence and of new work.

Q. To what account are his wages charged, according to this pay roll?

A. One-third to maintenance, two-thirds to Construction aerial.

Q. I notice that you have four names on here which seem — be foremen; to what account were their salaries charged?

582 A. By the Louisville office, to Construction, and charged at the general office to Maintenance, Salaries and Wages.

Q. Why was that done?

A. I do not recall. It was done eight years ago.

Q. By whom was that done?

A. It must have been done by Mr. Pearcy.

Q. Is he the same man you spoke of a few minutes ago that made error in charges for 1901?

A. Yes sir.

Q. Do you know whether that was an error on his part in charging those men's wages to Maintenance & supply?

A. It was not charged to Maintenance and Supply. It was charged to Maintenance Salaries and Wages, and I don't know whether it is an error or not.

Q. The Louisville notation is not followed in the charges, is it?

A. No, not in this instance.

Q. Now do you find on that pay roll the name of a single man whose duties would be to assist in the taking down of worn out or useless line of poles and replacing it with a new line of poles?

A. I am not familiar enough with the work to answer that positively, but there are not many of them on there.

Q. The voucher No. 1236, for the first 14 days of June, 1901,

about which I was asking you a few moments ago, is signed by you, is it not?

A. Yes sir.

583 Q. Was that signed by you after the blue pencil marks were made opposite the names, or before those blue pencil marks were made?

A. Well, probably after they were made, but it was signed with a great many more vouchers that were put on my desk.

Q. The blue pencil marks are very pronounced are they not?

A. They are.

Q. Two or three times as large as the lead pencil marks made by the Louisville clerk, are they not?

A. They are clear.

Q. Now I show you voucher 166, which seems to have been for the last 15 days of June, 1901, and which also seems to be the pay roll for those 14 days I believe you say it represents, and will ask you to examine the first 12 pages of that voucher, and see if there is any material difference between those 12 pages as to where the Louisville clerk said the wages should be charged and as to the blue pencil marks made by the Nashville clerk wherein it is indicated that the wages were charged to a different account?

A. Yes, the Nashville clerk has made a complete change.

Q. Explain in what respect?

A. Just as in the first 14 days of June.

Q. There is no material distinction between the two vouchers in that respect?

A. Practically none.

Q. And generally speaking, it seems that the same propor-

584 tion of wages paid and which the Louisville clerk said should have been charged to New construction is, under the notation made by the Nashville clerk, made chargeable against Maintenance, is that correct?

A. Yes, this is one of the pay rolls that I referred to just a few minutes ago, in which errors had been made and corrected.

Q. These pay rolls which you have exhibited to me were asked for at random, were they not?

A. I do not know.

Q. Is that pay roll signed by you?

A. It is.

Q. Was it signed by you before or after the blue pencil marks were made thereon?

A. After the pay rolls were checked and distributed, they were, with other vouchers, put on my desk for me to certify that they had been handled in my office.

Q. Do you know where Mr. Pearey is now?

A. I think he is in the Isle of Pines.

Q. Does his family live in Nashville?

A. His father is dead; I think he is taking care of his mother, and where she is I don't know.

Q. This pay roll has a charge against Maintenance Salaries and

Wages of $4230.74, and charged against Construction Aerial $41.67, has it not?

A. Yes sir.

Q. How much of that $4230.74 was charged to Louisville
585 Maintenance Salaries and Wages?

A. All of it. And a large part of this seems properly so charged.

Q. Properly so charged to what?

A. To Maintenance, Louisville.

Q. Will you go through it and tell me specifically what part should be charged to maintenance according to the Louisville clerk's notations?

A. $1668.20.

Q. The first 12 pages of this voucher, with the exception of six men, seems to be for the last 15 days of June, 1901, is not that correct?

A. Yes sir.

Q. And how much of the salaries appearing on those 12 pages should, according to the Louisville clerk's notation, be charged to maintenance?

A. $105.50.

Q. The balance of the $1668.20 appears on two pages and a half, immediately preceeding the recapitulation, does it not?

A. Yes sir.

Q. And is for pay roll for the entire thirty days?

A. Yes sir, for the men shown.

Q. And those were the character of men who were paid monthly, that appear on this last two and a half pages?

A. Some of them were paid monthly.

586 Q. They were generally speaking—I mean those who appear on the two and a half pages I have just referred to: trouble clerk, night watchman, switch-board inspectors, wire chief, instrument setters, battery men and stock room men, and stock keepers, were they not?

A. You have picked out a few of the titles.

Q. Generally speaking doesn't that cover practically all that appear on those two pages?

A. There are seventeen names on each page.

Q. Well, don't the titles that I have indicated in my question a moment ago cover practically all the titles that come on those two and a half pages?

A. They cover some of them.

Q. You hand me voucher #1231, which seems to be pay roll voucher for the first 14 days of June; is that the only voucher you have in addition to the ones you have heretofore exhibited for the first fourteen days?

A. The only one I have found since the file clerk began searching.

Q. I notice on this voucher an item "trimming trees" for this company, under which appear the names of several men. Does that mean that those men were engaged and paid for trimming trees?

A. I think so.

Q. I notice one item of C. Kettig, Team, $21.00; do you know what that team was used for?

587 A. For the purpose explained on the pay roll, I take it.

Q. Assisting in trimming trees?

A. Yes sir.

Q. Do you know where those trees were trimmed?

A. Within the city of Louisville.

Q. How do you think that?

A. It is Louisville pay roll, Okayed by the Assistant Manager at Louisville.

Q. The Assistant Manager had under his jurisdiction and O. K. pay rolls for people who did work outside of the corporate limits of Louisville, did he not?

A. He had jurisdiction of the payment of those pay rolls.

Q. Did he O. K. the pay rolls before they were paid, of any men who did work outside of the city of Louisville?

A. I think not.

Q. What supervision did he have, then?

A. Supervision of handling the money.

Q. If trees were to be trimmed within three miles of Louisville, and Louisville men, employees and laborers and teams, were sent out from Louisville to do the trimming, would not he O. K. the pay rolls?

A. If the Louisville men were sent out, yes, but in that case if the lines did not belong to the City of Louisville District, he would so specify; but within three miles of Louisville we can rest assured that the routes were those of the Louisville District.

588 Q. The Louisville clerk did not indicate on this paper, to what account it should be charged, did he?

A. It does not seem to have gone through the Louisville clerk's hands—the one who made the pencil notations on other pay rolls.

Q. I notice on this pay roll a memorandum which seems to be erased, "ael," what did that mean?

A. The erasure meant that it was wrong.

Q. The original charge meant what?

A. It meant Aerial.

Q. Do you know who made that memorandum on there?

A. I do not.

Q. Did you do it?

A. No.

Q. Did you make the memorandum on there, "M. S. & W?"

A. No, that is Mr. Pearcey's; I think this other one is Mr. Skipwith's.

Q. Who is he?

A. He was a clerk in the Auditor's office at the time.

Q. Louisville, or Nashville?

A. Nashville.

Q. Do you know, as a matter of fact, whether that work was done in original construction or reconstruction?

A. No, I didn't see it.

Q. What does the pay roll amount to?

A. $58.00.

Q. Now will you furnish me any part of the pay roll for
589 the month of November, 1901? I say November, it is immaterial whether you furnish me October, or November or December.

A. Yes sir.

Q. Your clerk has handed me voucher No. 114, for $126.00, which seems to be a voucher for "hauling poles to Bedford on toll line," and which, according to the notation, seems to be charged Aerial Construction, Campbellsburg. Did I not understand you to say the other day that no toll line construction was charged to exchange construction?

A. You did.

Q. How do you explain that charge?

A. This has absolutely nothing to do with Louisville, but I am glad to be able to give you a clear explanation, which is this: Bedford and Campbellsburg doubtless at this time and now I think are given a free interchange of service from the subscribers of one exchange to the subscribers of another exchange, and the lines in between them were for this purpose.

Q. That says on its face it was for toll lines, does it not?

A. It says so.

Q. Then if it shows it was for a toll line, it was for a toll line, wouldn't you say?

A. Unless better information to the contrary were given me it would have been so charged.

Q. Who charged it to Campbellsburg?

590 A. The Auditor's office.

Q. Do you know what particular man in the Auditor's office?

A. It looks like the handwriting of Mr. Skipwith, and the charge has the approval, in this instance, of the Assistant to the Assistant General Manager.

Q. Why should it be charged to Campbellsburg instead of Bedford?

A. I do not now know; it probably was the part of the route nearest Campbellsburg, and which would be utilized for Campbellsburg subscribers.

Q. There is no indication by the Louisville clerk where the voucher seems to have been paid that it should be charged to Campbellsburg, is there?

A. The Louisville clerk does not seem to have noted.

Q. Mr. Smith, you have furnished me pay roll No. 2224, for the first 14 days of October, 1901; that is correct, is it?

A. Yes, it is a pay roll.

Q. I notice, among other things, that you have a charge on the back of this pay roll of $151.50 for Maintenance Salaries and Wages, that is correct, is it?

A. Yes.

Q. And $2657.38 for Construction Exchange Aerial, and $383.46 for Underground construction, making a total of $3192.34, is that correct?

A. Yes sir.

591 Q. The first ten names appearing on this pay roll seem to have under the heading occupation the word "Foreman" opposite them. Now were the wages of those ten foremen charged to Maintenance or to Aerial Construction?

A. Aerial construction.

Q. The next man is a ground man, to what account were his wages charged?

A. To the same account.

Q. The next man is a laborer, to what account were his wages charged?

A. Same account.

Q. Aerial construction?

A. Yes sir.

Q. The next four men are denominated Linemen; to what account were their wages charged?

A. Aerial construction.

Q. The next man was a ground man, to what account were his wages charged?

A. Four and a half days to Underground cable, the balance to Aerial construction.

Q. Underground cable construction work?

A. Yes sir.

Q. The next four names, at the top of the second page of the pay roll seem to be laborers; were their wages chargeable to Construction or Maintenance account?

A. Construction.

592 Q. The next account is a team and teamster; are his wages charged to Construction or Maintenance?

A. Construction.

Q. The next nine pages contain a list of the names of men—17 to a page; I will ask you to look over those names casually, and state, in a general way, what their occupations were, and whether or not substantially all of their wages were charged to Construction account?

A. The general class of workmen represent Linemen, Ground men, laborers, painters, Cable men, Pavers, and bricklayers. Practically the full part of the wages paid these employees is charged to construction.

Q. There are only one or two pavers and bricklayers, were there not?

A. Three or four.

Q. The last two pages of this pay roll before the recapitulation has how many names on it?

A. These two pages have six names.

Q. What is the occupation of those six men?

A. Trouble men, repairers and help in stock room.

Q. And to what account were their wages charged?

A. Maintenance.

Q. And what is the total of their wages?

A. $151.50.

Q. That was the total amount charged in that voucher to Maintenance, was it not?

A. Yes sir.

593 Q. And all of the balance was charged to Original Construction?

A. Yes sir.

Q. Now have you any additional pay rolls for the first 14 days of October, of the year 1901?

A. I cannot answer without further search of the File clerk.

Q. Will you cause such search to be made, and let me know on Tuesday, or as soon as you ascertain?

A. I will try to do so.

Q. Here, Mr. Smith, is a voucher No. 1035, which seems to be for the month of May, 1900, among other sub-vouchers is one of the Western Electric Company, dated May 28, 1900, $1815.43, which seems to be for factory cabling and certain wire for switchboard cables, spring jacks, triple terminal strips, and arresters. To what account was that item charged?

A. Louisville Construction Equipment.

Q. Why was it charged to Louisville Construction Equipment?

A. Because the equipment was furnished and used at Louisville.

Q. Was it in connection with the Louisville exchange, or in connection with some part of the district over which the Superintendent presided?

A. Used for the Louisville exchange.

Q. How do you know that?

594 A. Because it is charged that way; and I don't know of another exchange in the Louisville district which would have required as extensive apparatus.

Q. You don't know, of your own personal knowledge, though, that that was used in Louisville?

A. The shipment was made to Louisville. When the invoice was received it was checked with the order evidently, and the order would clearly show for what purpose the apparatus was ordered.

Q. The two accountants, I believe, found that you had charged to the Nashville Exchange certain switchboard apparatus which was used in Louisville, amounting to some $4,000.00 or more?

A. Yes, and it was so clear that it was improperly charged that they both discovered it.

Q. That was a mistake of the Auditor's office, having that charge made against Nashville instead of against Louisville?

A. If you will produce the original invoice or tell me what it was, I will answer the question.

Q. You cannot explain that item without my furnishing you the number of the voucher, I take it?

A. I cannot. My information at the time was that it was a clerical error, which was easily discovered.

Q. It was not discovered, was it, until the Accountant examined the record?

595 A. It was discovered, but not corrected.

Q. When was it discovered?

A. I don't know.

Q. Was it discovered before the Accountant called your attention to it?

A. Personally I don't know. At the time the accountants were here, the matter was brought up and a written memorandum was handed to the Mutual Audit Company in regard thereto.

Q. Whose error was it?

A. I don't know.

Q. Whose duty was it to see that material for equipment for the different exchanges was charged to the proper exchange?

A. It was the Auditor's duty.

Q. Mr. Smith, who had charge of the construction work in the city of Louisville during the year 1900, if you know?

A. The Assistant General Manager is the only one that I could specify.

Q. Who was the man who had immediate control of the various foremen who did the construction work?

A. I do not recall at this time, but the District Superintendent is immediately next to the Assistant General Manager.

Q. What would be the title of the man who directed the foremen of the various working gangs in 1900, where to go to work and what to do?

A. I don't know.

596 Q. Can you ascertain that fact from your records?

A. No, I could not from mine.

Q. Well, are there any records in your office to which you have access and from which you could ascertain that?

A. There are no records in the Auditor's office which would show that.

Q. In whose department would that appear?

A. It would logically appear in the General Manager's.

Q. Who is the General Manager?

A. The president of the company was the General Manager at that time; he had an Assistant General Manager.

Q. Who was his assistant?

A. Mr. Leland Hume.

Q. And he is now the General Manager, is he not?

A. Yes.

Q. Now Mr. Smith, getting back to some of those pay rolls which were charged up to Maintenance Salaries and Wages, and which you said should have been charged to Aerial Construction according to the notation made on the pay roll by the Louisville clerk, will you kindly say whether you could tell from your records anything definite on the subject of those errors having been corrected and the charge properly made against aerial construction?

A. I know that corrections were made in the year 1901.

Q. Do you know whether the correction was made in respect to these particular items, and if you don't know, can you ascertain?

597 A. I believe that corrections were made for all of the errors which we have mentioned and referred to.

Q. You don't know that to be a fact?
A. I believe it.
Q. But you don't know it?
A. I am pretty certain of it.
Q. Can it be ascertained definitely from your books that such correction was made?
A. I think so.
Q. Will you ascertain and let me know?
A. I will.

The further hearing of this proof was here adjourned until next Tuesday morning, Sept. 7th, at 9:30 o'clock.

598 TUESDAY MORNING, *September 7th*, 1909.

The further cross-examination of Mr. H. BLAIR SMITH was resumed at 9:30 o'clock this morning.

By Mr. BLAKEY:

Q. When we adjourned on Saturday, I asked you to ascertain whether pay roll vouchers which you stated had been erroneously charged to maintenance, had ever been corrected on the books of the company and correctly charged up to construction account as you said it should have been. Can you tell me now any facts in regard to that matter?
A. Pay rolls for 1901 have been corrected in that year. The pay rolls originally charged maintenance with $47,278.94. The revision shows the charge corrected to $31,230.94.
Q. How do you ascertain that fact?
A. I ascertain that fact from the books of the company?
Q. What books?
A. The journal.
Q. Will you produce that journal so we may inspect it?

(Witness produces book.)

Q. I notice in the book you have produced, page 324 an item, sundries to expense, maintenance, salary and wages $5,480. Immediately under that, construction, aerial or exchange-aerial, Louisville, Ky., $3350 and under that the following notation: "Estimate: amount charged to expense which is properly charged to con-
599 struction, estimated by gain in subscribers, signed H. B. S." That is correct, is it?
A. It is not a signature; it is just a notation made by the general book-keeper who I instructed, after revising the pay roll, to make the journal entry specified. I do not think the explanation is good.
Q. Is that your signature?
A. It is not.
Q. Did you authorize someone to write those letters there representing your name?
A. It was not intended, I think, as a signature, but entries of that kind always bear authority, or notation for authority.

Q. Does that $3660 charged to construction, exchange aerial, represent the pay roll or represent sundry accounts?

A. It represents the pay roll in as much as it deals with salaries and wages.

Q. The $5480 is opposite the word sundries and also under the caption at the top of the page sundries, is it not?

A. No.

Q. What is it under?

A. The item of $5480 is opposite credit expense M. S. & W. That credit is divided; part of is is charged to Louisville, and part to New Orleans.

Q. What does that $5480 represent, wages or sundries?

A. It represents wages. The explanation, sundries, is used
600 in journal entries when more than one account is treated in the charge or credit.

Q. What accounts are included in that entry?

A. Expense, maintenance, salary and wages, and construction exchange-aerial at Louisville and New Orleans.

Q. Was there any other expense connected with maintenance, salary and wages or construction, exchange-aerial, except pay rolls?

A. Certainly, maintenance, salary and wages come from pay rolls, but construction items come from many different classes of vouchers, including pay rolls.

Q. Are there no expenses connected with maintenance, salary and wages, except pay rolls?

A. Salaries and wages indicate labor, and it has been our custom to have all labor appear on pay rolls.

Q. Do you know as a matter of fact that $5480 represents anything but pay rolls?

A. I stated before that it represented pay rolls and only pay rolls.

Q. How do you ascertain that fact?

A. From my knowledge of the system.

Q. Was that amount paid out in Louisville or in Louisville and New Orleans, jointly?

A. In Louisville, and in New Orleans.

Q. Do you know how much was paid out in Louisville and
601 how much in New Orleans?

A. The entry is very clear, and shows that $3660 of the $5,480 concerns Louisville and that $1,820 concerns New Orleans.

Q. But, do you know as a matter of fact that $3660 was charged up as of that date to expense, maintenance, salary and wages on your books, as an expenditure in Louisville for salaries and wages and that only $1820 was charged up to New Orleans?

A. The question is too vague for me to answer. I do not understand it.

Q. Does the $5,480 represent all that was expended by the Cumberland Telephone and Telegraph Co. in the way of salary and wages for Louisville and New Orleans for the month of June, 1901?

A. It does not.

Q. How much more was expended?

A. The pay rolls concerning Louisville for the month of June,

showed salaries and wages charged to maintenance, salary and wages, amounting to $4,649.03.

Q. How much from New Orleans?

A. I don't know. New Orleans is not concerned and I have not examined the records, but I will do so if you think it is desirable to know it.

Q. What was the occasion for putting this item down of
602 $5480, and then dividing that between Louisville and New Orleans?

A. The occasion is the correction of pay rolls which were improperly distributed.

Q. Now was this item of $3,660 charged up to construction, exchange—aerial, in addition to the other pay rolls which you have exhibited and testified about in regard to pay rolls for the month of June, 1901?

A. Mr. Blakey, I didn't say this charge came from June pay rolls. What I said was, in the month of June the pay rolls entered on our books were incorrectly charged and that this entry was made to correct those pay rolls.

Q. This entry then is a mere estimate based on the amount of gain among the subscribers in the Louisville exchange, was it?

A. The entry shows that, but I know as a matter of fact that no estimates, or no important entries of this kind were ever made without more direct and detailed information than is shown in the entry.

Q. The entry then, is erroneously made?

A. It is not erroneously made; it is just not fully explained.

Q. It purports to state on what basis this amount is charged to construction—aerial, Louisville, Ky., does it not?

A. It seems so.

603 Q. And it purports to show that was made on an estimate from the subscribers gained, does it not?

A. It seems so, from the entry.

Q. Therefore, the entry to that extent is not full?

A. The entry is not full; that would be one factor to be taken into consideration.

Q. It did play a part in determining what amount should be charged to Louisville, then, did it?

A. Necessarily so.

Q. Then it could not be an accurate charge if it was based on an estimate, could it?

A. My opinion is that almost all accounting, of every nature, is the closest estimate that we can get to the facts.

Q. Your pay roll showed where work was done, did it not, what class of construction or what class of work was being done, did they not?

A. The pay rolls showed notations made by the Louisville clerk, indicating the class of construction to which the salaries should be charged.

Q. And if that had been followed, there would not be any estimate about it, would there?

A. I think the pay roll clerk's notation must be made from a time report, which is no more than an estimate.

Q. You didn't follow the clerk's notation made in Louisville in putting this $3,660 against construction, did you?

A. Partly.

604 Q. Not fully?

A. Not fully.

Q. Now have you a book or record of any nature in which appears the Louisville exchange construction, or an account of the Louisville exchange construction?

A. We have.

Q. Can you produce that?

A. For what year?

Q. Well, for 1901?

A. I will do so, and this book was also exhibited to the Mutual Audit Company at the time it made its audit of our accounts.

(Exhibits book.)

Q. Is the item of $3,660 on the book which you now exhibit, which purports to be the exchange construction for Louisville, Ky., for the year 1901?

A. This item does not appear on the Louisville books. When the Mutual Audit Company were at work in the office there were a few discrepancies in the 1901 construction account, and as I remember it, before an explanation was asked of these, I handed to their Mr. Warren on or about May 10th, a memoranda explaining to him fully these discrepancies, and at that time, as well as now, he has had full access to any of the original records and details in regard thereto.

Q. Is that item of $3,660 now a part of the $178,000 now
605 included as a part of the $178,000 for original construction in the Louisville, Ky., exchange for the year 1901?

A. I don't bear in mind just now how much original construction was added in 1901, but the item of $3,660 is a part of the Louisville construction account.

Q. Now have you a book showing the maintenance, salary and wages for the year 1901?

A. It is before you.

Q. The book you exhibit now shows then not only the construction but the maintenance, does it?

A. It shows the charges as originally made from the vouchers to both construction and to maintenance.

Q. Mr. Smith, I believe you have stated that $4,649.03 was the amount of the pay roll for maintenance for the month of June, 1901?

A. I didn't say that. I said that was the amount of the pay roll vouchers charged into the month of June, 1901.

Q. You subsequently transferred $3,660 of that to construction—aerial, I believe?

A. Yes.

Q. Now when you transferred that did you show on your books

under the head of maintenance, that that item had been transferred to construction and taken out of maintenance?

A. It necessarily appeared on the general ledger of the company.

Q. Does it appear anywhere except under the item which
606 we read a short time ago?

A. It appears on the journal as the book of original entry. From the journal it is posted to the general ledger.

Q. Does it now appear on your books as a part of the expense of maintenance for the year 1901, that sum of $3,660, I mean?

A. It does not so appear on the general ledger of the company.

Q. It does so appear on the book which is now before me, which you have exhibited?

A. No change on the book before you has been made. This book was compiled from the original voucher entries.

Q. Now do any other items appear on your journal in the way of corrections, such as the one about which you have been testifying?

A. Yes, on page 5, September, 1901, there appears this entry: September 30th, construction, exchange—aerial, charged, and credits are made to expense, maintenance, salary and wages, $9,000, and expense, maintenance, material, $1,000. Of that entry, $5,000 involves Louisville, Ky., salaries and wages, and $600, Louisville, material. That is a total of $5,600 was credited maintenance accounts and charged exchange—aerial construction account.

Q. Is that the same class of entry as the entry as of June, 1901, about which you have testified?

A. Yes.

607 Q. In other words, you transferred from material as it appears on your books, being a part of maintenance, salary and wages, $600. You transferred that sum to aerial construction?

A. Exactly.

Q. And the sum of $5,000 which appears charged on your books to maintenance, salary and wages, you have here transferred to aerial construction, and charged it to that account?

A. You are correct. This original entry corrects entries originally made.

Q. The entries originally made were erroneously made, were they?

A. Yes.

Q. I notice here a memoranda in connection with the items about which you have just testified, of labor and material used and charged to expenses, which considering the gain in subscribers is properly charged to construction. Is that the theory on which this correction was made?

A. The theory on which this correction was made is the same as that on which the previous correction was made and which I have explained fully.

Q. And this wording which I have just read then does not state the facts?

A. It states facts, but only partial facts.

Q. I notice as a part of this same entry that you have charged

up to Lexington, Ky., $100 for material, $500 salaries and
608 wages; Nashville, Tenn., $100 for material and $2,000 for salaries and wages; New Orleans, $200 for material, $2,000 for salaries and wages; the $10,000 which you first mentioned, was distributed among the four cities I have just named in the same way that the $5,400 was distributed between Louisville and New Orleans, which you explained in answer to the question about the entry for June, 1901, was it,—I mean, in the same general way?

A. Yes.

Q. I notice that entry contains the following item "Memo of entry and from H. B. S. Is that your signature?

A. It is not, those are my initials.

Q. Have you any additional entries for the year 1901 similar to the two about which you have just testified?

A. On page 74, under the head of October 30, 1901, is the following; construction, exchange—aerial charged $15,052, and expense, maintenance, salary and wages, is credited. Of this amount Louisville if affected to the extent of $7,388.

Q. I notice other items in addition to the $7388 of $150 to Jackson, Tenn.; $796 to Jeffersonville, Ind., $2086 to Memphis, Tenn.; $1557 to Nashville, Tenn., $2134 to New Orleans, $576 to New Albany, Ind., $682 to Shreveport, La. and $673.00 to Vicksburg, Miss. The same explanation in regard to the other vouchers, in so far as these particular items are concerned, applies, in so far as items of this nature are concerned, applies to the items I have
609 just read, does it?

A. Yes.

Q. Do these two items aggregating $5600, which appear on your books as of September 1901—do they now appear in your construction account and go to make up the $178,000 of original construction in the City of Louisville for the year 1901?

A. They are included in the cost of construction in the year 1901.

Q. And the same is true of the item of $7388 for the month of October 1901?

A. Yes.

Q. Are there any other items for the year 1901 similar to the ones about which you have testified?

A. Under date of October 31st, 1901, the following entry appears, on page 127: Construction, exchange—aerial, is charged $624.00 and this amount is credited to expense, maintenance, traveling. The Louisville exchange is affected in the sum of $200. The explanation of this is that livery hire and board charged for September in October vouchers direct to expense, which according to construction done during month, is properly chargeable to construction.

Q. This item of $624 is divided up among nine cities, is it not?

A. Yes.

610 And the item of $200 chargeable to Louisville construction is one of the items that goes to make up the aggregate of $178,000 for original construction for Louisville in 1901?

A. Yes.

Q. Now are there any other additional items of a nature similar to the ones you have just testified about, for the year 1901?

A. I know of no others. You will bear in mind, of course, as stated, this morning, that the original charges to maintenance for the year 1901 at Louisville, or rather of the payroll vouchers charged into the year 1901 at Louisville, was $47,278.94, and that the corrections outlined above and made in the books, there remains charged to maintenance, $31,230.94.

Q. Does it include the proportion of the general expense which was charged to Louisville?

A. I think not.

Q. Mr. Smith, can you tell me how much was charged to original construction in the City of Louisville according to your vouchers for the month of January 1900?

A. $17,018.40.

Q. Does that amount go to make up a part of the total of $166,000 which is the construction account for the year 1900?

A. It does.

Q. Does that item include, salaries, wages and material?

A. Yes, expended for construction purposes.

611 Q. When was the material furnished for which any part of this total item is a charge and when was the labor done for which this item is a charge?

A. The only way I can answer that accurately is to go back to the records and determine. It is often a fact that these vouchers are thirty days late getting into the books of the company.

Q. I will ask you if you didn't state to Mr. Warren, in connection with this particular item and the vouchers representing this particular item, that the vouchers representing this total item could not now be found?

A. I stated to Mr. Warren that through January 1900 the accounts of the Ohio Valley Co. and of the Cumberland Telephone and Telegraph Co., were run on separate books of account and the vouchers were filed in separate files, and that owing to the fact that my office had been moved several times during the nine or ten years, that at the time the Mutual Audit Company was engaged in their work, we were unable to locate January vouchers of the Ohio Valley Telephone Co., and to this date, we do not know where they are. At the time I took out of the files, the voucher record of the Ohio Valley Co. and showed Mr. Warren the original entries thereon and individually explained to him our inability to furnish the vouchers, and the explanation seemed entirely satisfactory to him at the time, he making several comments as to the age

612 of the vouchers and the tremendous number of vouchers or papers necessary to be filed.

Q. Have you then, any original entries or papers whereby you can show when this expenditure of $17,000 for the month of January was made, or when the labor or material were furnished?

A. If necessary to get this information up I should analyze subsequent vouchers and determine whether or not they were sent in

promptly and which ones were the first ones we could locate, and in this way determine through induction which were missing.

Q. You could not determine definitely, however, I assume from what you say?

A. I think it could be determined definitely enough for a reasonable person.

Q. What would be your best judgment as to when this material was furnished or labor performed, representing this item of $17,000?

A. Probably within thirty days of the time it reached the books.

Q. When did it reach the books?

A. During January 1900.

Q. The books do not show the exact dates on which the vouchers were paid?

A. The book that you are looking at shows the number of the voucher and the charges on that voucher.

Q. Would you say that any of this material was fur-
613 nished or any of this labor performed which is represented by this $17,000, subsequent to January 27th, 1900?

A. Hardly.

Q. Now Mr. Smith, I will ask you if you can produce voucher No. 711 in favor of the Western Electric Co., being a voucher for the month of January 1900?

A. Here it is. (Hands same to counsel.)

Q. I notice among this voucher an item of $154.36, goods returned from Louisville, Ky; another item of $134.00 goods returned from Louisville; another item of $128.80, goods returned from Louisville. Were those sums ever charged up as a part of the construction of the Louisville exchange?

A. The credit memoranda show that supply was credited with the proceeds. I presume from that, that supply had been charged at the time the reels were shipped, and that no part of the charge was made against Louisville.

Q. How is your supply department conducted?

A. In what way?

Q. You have, in Louisville, a department known as the supply department, have you not?

A. Yes, a supply house.

Q. And for what district is that a supply department?

A. The supply house at Louisville is established to enable the company to buy at wholesale as much as possible, or as is prudent, and store for the use of the system in that locality.

614 Q. You mean, the system in the district?

A. The district, or the system; at times Louisville will have supplies that other supply houses have not. In that case, Louisville is drawn on, if economical, for such supplies.

Q. And does the supply department furnish Louisville with such supplies as are required and such as it has in stock?

A. Yes.

Q. Is Louisville charged with the cost price of supplies when such are furnished?

A. As near as possible.

Q. Is any percentage added to the cost?

A. Yes.

Q. How much?

A. Covering freight, drayage, rental etc. This percentage has varied at different periods, the maximum, I believe, being ten per cent.

Q. Do you use cables in any part of the Louisville district, except at Louisville?

A. I think most of the exchanges which we have, had some cables in them.

Q. Was that true in 1900?

A. I cannot say positively, but I think so.

Q. Mr. Smith, I would like to see voucher No. 779, for the month of February 1900?

615 A. I hand it to you.

Q. Among other items I find in this voucher, is one in favor of the Western Electric Company for $12,667.37, which seems to have been charged to underground construction in the City of Louisville. Does that item go to make up a part of the $166,000 new construction in Louisville during the year 1900?

A. Yes.

Q. Do you know whether that underground cable was used in replacing any cables which were originally installed in Louisville, Ky.?

A. I think it was not, from the fact that it is charged to construction. If it had been used to replace other cable, it would not have been charged to construction.

Q. Do you know of your own knowledge that it was not used to replace other cable?

A. I wasn't present in Louisville during the years either 1900 or 1901.

Q. And don't know for what purpose that cable was used, of your own knowledge?

A. The cable is cut into special lengths, as will be noted from the invoice. I don't know that it was not used as charged. All my information at this time is what the voucher shows.

Q. Will you examine the voucher about which you have just been testifying and see whether any underground cable in

616 that was charged to re-construction or maintenance?

A. Voucher No. 779 for February 1900 shows no charge against maintenance account at Louisville, Ky.

Q. What charge does it show against underground construction in Louisville?

A. It shows a charge of $13,813.87 against Louisville construction, underground.

Q. Now, voucher No. 711, which you produced a short time ago, shows $401.64 against underground construction, Louisville, Ky. I will ask you if that voucher shows any charge against re-construction or maintenance in connection with underground construction?

A. Voucher No. 711 for January shows no charge against Louisville maintenance for underground re-construction.

Q. I would like to see Voucher No. 897 for April 1900?

A. I hand it to you.

Q. Mr. Smith this voucher No. 897 for April seems to be in favor of the Western Electric Company and I will ask you what was the character of the purchase made from the Western Electric Company?

A. We purchased two sections of toll switch boards with a keyboard equipment; one subscribers' section multiple switchboard with keyboard equipment; extra frame work for subscribers' section; local wiring was done by that company for subscribers and toll sections and miscellaneous switchboard material furnished, together with factory cable, labor in factory framing and attaching
617 566 cables to jacks, lamp sockets and terminals strips. We purchased one subscribers' section key and plug shelf and one trunk section, key and plug shelf with full equipment.

Q. At a total cost of how much?

A. $11,146.42.

Q. How much of that expenditure was for the purchase of toll board equipment or material in connection therewith?

A. I am unable to analyze the voucher and answer that. The first two sections are entered here with keyboard equipment as $728.73 and $653.95, and local wiring for two toll sections $251.30.

Q. Was any part of the material and labor which appears charged in this voucher made necessary on account of the toll switchboard equipment and installation thereof?

A. Yes.

Q. Was that entire sum of $11,146.42 charged up to original construction of the Louisville exchange?

A. It was, necessarily so.

Q. Do you know whether the only subscribers' section, multiple switchboard which appears as a part of this voucher, was used to take the place of a subscribers' section multiple switchboard which had worn out or become useless?

A. Without knowing absolutely, I am pretty certain from other facts in the case, that it was a brand new section for the accommodation of new subscribers, which the company was gaining very rapidly at this time. The main office switchboard which
618 was acquired from the Ohio Valley Telephone Company had only been installed a few years, two or three. The voucher itself indicates that it was a brand new purchase for construction purposes as it is charged to construction.

Q. The voucher itself does not show that it was not *be* be used to take the place of some other switchboard?

A. It does, by being charged to construction.

Q. And that charge to construction was made at Nashville?

A. The notation on the voucher itself was made at Nashville.

Q. Is the eleven thousand and odd dollars which appears in this voucher and which you say was charged to original construction—does that go to make up the one hundred and sixty six and odd

thousand dollars, the original construction for the year 1900 in Louisville?

A. Yes.

Q. I now would like to have Voucher No. 1476 for November 1900?

A. I hand it to you.

Q. This seems to be a voucher No. 1476 for November and it seems to contain a bill in favor of the Western Electric Company dated November 23rd, 1900, making a total of $12299.44, which is charged to Louisville equipment. What does that expenditure represent?

619 A. The invoice reads, in part, as follows: 16th and 17th sections, multiple switchboard equipment for Cumberland Telephone and Telegraph Co. at Louisville, Ky. It then itemizes the various apparatus.

Q. Would that indicate then that you had seventeen sections in your switchboard at Louisville when these two were installed?

A. It would seem so.

Q. Do you know how many you have there?

A. I do not.

Q. To what switchboard were these sections added?

A. These sections were added, I think, to the main exchange. In fact I am sure of it.

Q. Mr. Smith, I wish Voucher No. 2307 for December 1901?

A. I hand it to you.

Q. This voucher seems to be for some $39,000 for installing and equipping the South exchange, Louisville, Ky., is that correct?

A. The voucher contains a number of invoices. One of those vouchers, dated November 30th, 1901, is for $39,209.54 for a No. 1 relay switchboard built for the South office, Louisville, Ky.

Q. Was that the cost of the switchboard and the installation thereof?

A. On the last page of the invoice is this notation: an additional bill for installation and balance of material, will be rendered.

620 Credit will be given for material returned.

Q. Do you know whether or not that was rendered?

A. Not at this date, but I have no doubt it was as the Western Electric Company is a very well managed company, and therefore I presume it was.

Q. Do you know what percentage of the cost of the South Exchange, the $39,000 represents?

A. No, I do not, and I do not know what you would consider the South exchange.

Q. I mean by the South exchange, the equipment used in connection with the South exchange?

A. We have two styles of equipment. One central office equipment and one subscribers' station equipment. I think the invoice we are referring to is the largest part of the cost.

Q. What does the invoice show as the capacity of that South Exchange?

A. It shows as the ultimate capacity, 4900 lines, 350 outgoing

trunks, 216 incoming trunks. It shows as the equipment at the present time, that is, at the time the invoice was rendered, 2100 subscribers' lines, 200 outgoing and 200 incoming trunks, and 10 toll trunks.

Q. Does that mean that the South exchange was equipped to take care of 10 toll trunk lines?

A. No, it means that it was connected with the main ex-
621 change or had the capacity of being connected with the main exchange for ten trunks which could be used for tolls.

Q. Doesn't the 10 toll trunks appear under the present equipment?

A. Yes.

Q. Would not that then mean it was at that time equipped with ten trunk toll lines?

A. Not with ten toll trunk lines, but with the equipment for ten toll trunk lines.

Q. And was the entire $39,000 represented by this invoice charged to the construction account of the Louisville exchange and does that amount now go to make up a part of the $178,000 total construction for the year 1901?

A. The whole of the invoice was charged to construction, Louisville exchange, and is a part of the present cost of that exchange.

Q. Have you these vouchers on this list?

A. I am handing you the nine vouchers of the Western Electric Company for 1902 requested on your written memorandum.

Q. Mr. Smith, this voucher seems to have one invoice from the Western Electric Company of date December 1st, 1901, amounting to a total of $17,087.45. Will you explain what expenditure that represents?

A. The invoice reads, "Additional switchboard equipment
622 to be installed for Cumberland Telephone and Telegraph Co., at Main office, Louisville.

Q. I will get you also to read the language immediately following the part you have read?

A. Ultimate capacity 4800 subscribers' lines; 360 outgoing trunk lines; 180 incoming trunk lines, 160 toll lines. Present equipment 4800 subscribers' lines, 200 outgoing trunk lines, 180 incoming trunk lines; 160 toll lines.

Q. What does that language mean that you have just read?

A. I don't know that I could express it any clearer than it is in this invoice.

Q. Does it mean that the items going to make up the $17,000 was an expenditure to increase the capacity of the main switchboard by adding thereto sufficient equipment to take care of 4800 subscribers' lines, 200 outgoing trunk lines, 180 incoming trunk lines and 160 toll lines?

A. I take it to mean that, since it states it.

Q. Now I notice on the second page of this invoice the following language: "2 (24th and 25th) sections trunk, multiple switchboard. The last invoice which was exhibited here from the Western Electric Company was for the installation of the 16th and 17th sections of

the multiple switchboard in the main exchange. Can you explain how this bills calls for the 24th and 25th sections?

A. No, the invoice itself shows that; I don't know anything further about either of them.

623 Q. Do you know whether this item of $17,000 represented by this invoice was for equipment to take the place of other equipment theretofore installed, or whether it was for new equipment?

A. It is charged to construction account, Louisville, to which account would not be charged such item if it were not new equipment.

Q. You don't know yourself, though, whether it was actually used to take the place of other equipment, do you?

A. Not individually or personally. All my information in regard to such things comes through reports.

Q. I notice on page 6 of this invoice, third section of toll equipment and on page 7, keyboard equipment and on page 8, fourth section of toll switchboard, and on page 9 keyboard equipment, and I would ask you if the items following the third section, toll switchboard on page 6 and the other items down to miscellaneous switchboard material on page 9, was for material used in connection with toll switchboard?

A. The invoice states so.

Q. What is the total of those items which I have just referred to?

A. The third section of toll board, including keyboard is billed at $1065.05; the fourth section, with keyboard, at $883.93.

Q. Are there any other expenditures appearing in that invoice, for other material and for labor in connection with install-

624 ing those third and fourth sections toll switchboards?

A. I think so.

Q. Are the items for toll switchboards and other material and labor in connection therewith, which appear in this invoice for $17,000 and a part of the $178,000 charged to construction of the Louisville exchange for the year 1901?

A. These vouchers are for the year 1902. The total of this invoice is included in the total of the Louisville construction account and properly so, for the year 1902.

Q. One of the invoices which go to make up this voucher No. 2588, April, 1902, seems to be miscellaneous labor and material, and labor in installing switchboard shipped to main office, Louisville, Ky., an item of $2137.17. I will ask you to explain what the individual items going to make up that total, were used for, if you can?

A. The invoice seems to be for switchboard material and labor in connection with installation of switchboard at Louisville main office.

Q. Can you determine from that when any such labor was performed or material furnished?

A. The invoice is dated April 21st, 1902, and states material shipped since our invoice of December 31st, 1901.

Q. Now do you know whether or not that was used in replacing any part of the old switchboard or whether it was material and labor performed in new construction?

625 A. The invoice is charged to construction equipment account of the Louisville exchange and that indicates to me clearly that it was a case of new construction.

Q. You don't know that of your own knowledge, however, do you?

A. I do not.

Q. Was that material and that equipment used in connection with the main exchange?

A. I think so.

Q. Another invoice in this voucher is of date April 17th, 1902, representing an expenditure of $4707.16 in favor of the Western Electric Company. I will ask you to explain that item?

A. That item is part of the cost of switchboard equipment, at the South office, Louisville, Ky.

Q. Was that new equipment or equipment used to replace some that had been theretofore placed there?

A. The south office was only completed about that year; the charge is to construction equipment and the voucher clearly indicates that it was not reconstruction.

Q. Do you know whether some of the original equipment placed in the South exchange proved to be valueless and had to be removed and replaced with other, such as represented by this item?

A. If such had been the case, I am certain it would have been done without additional cost to the Cumberland Co.

626 Q. This seems to be for three sections, seven panels. How many sections were there originally placed in the South exchange?

A. I don't know.

Q. Were both of these items in this voucher for $2100 and for $4700 charged to construction account for the year 1902, and was those items there included in and do they go to make up the total sum which you have heretofore testified to as being the amount expended in Louisville for construction during the year 1902?

A. Yes.

Q. This item of $4700 appearing on the invoice of April 17th, 1902, has the following memoranda written thereon: This amount being approximately 25% of the estimated cost of additional switchboard equipment at South Office, Louisville, and now due, according to our circular letter of February 11th. How do you explain that memoranda?

A. I have the original circular letter if you would like to read it.

Q. No, I don't care to read it.

A. The circular was something to this effect, it requires a considerable length of time to build and install a switchboard of the size of the one being referred to. The circular states that future installations will be made so that 25% of the cost of the switchboard will become due at a specified time, say, at the date the

627 apparatus is shipped from the factory; another 25% falls due at some specified time, as the work progresses; and the third twenty five per cent later on, and the final payment, I think, thirty days after the apparatus has been accepted and tested. I

am not positive as to the dates, but this answer is approximately correct.

Q. Would you say then, the additional switchboard equipment, third section, seven panels, three operator switchboard equipped for eight subscribers' operators, which seems to be the equipment for which $4700 is charged, cost four times forty-seven hundred dollars?

A. Yes, but the final invoice adjusts any additions if there are any.

Q. And this $18000 which seems to have been substantially the amount charged for this additional equipment, switchboard equipment, is for equipment in addition to the equipment of the South exchange originally costing $39,000, is it?

A. Yes. If the final invoice shows that the estimated advance charges were correct.

A recess at this hour, 12:45 was taken until this afternoon at two o'clock.

628 Cross-examination of H. BLAIR SMITH, resumed, at 2 o'clock, p. m., Tuesday, Sept. 7, 1909.

By Mr. BLAKEY, for the Defendant:

Q. Was any equipment for switchboard for either the main, south, east, or west Exchange, purchased from any source except the Western Electric Company?

A. That is a question that can not be answered positively by me, but I think that all of our Louisville switchboard equipment was bought from the Western Electric Company.

Q. Have you before you the construction account showing the vouchers for purchases from the Western Electric Company for equipment for the Louisville Exchange?

A. Our Construction account for the nine years is in this office. If you desire it analyzed, it can be done. It would take a considerable period of time to do it accurately.

Q. Does this book which is now before you show the number of the vouchers for expenditures on account of Construction, in so far as the equipment is concerned, for the Louisville Exchange?

A. I have before me the book showing the Construction account for one year. Our Construction records show the voucher numbers, or original sources of entry for all charges made against construction.

Q. I show you voucher No. 167, for May, 1902, which contains, as a part of it, an invoice of the Western Electric Company, April 30, 1902, which shows a total of $11,503.75
629 charged to Construction Louisville Exchange. I will ask you where the material represented by that invoice was used?

A. The invoice shows that it was for the South office.

Q. What are the character of the items furnished for the South office, as shown by that invoice?

A. The invoice covers something over 5 pages about a foot long, and itemizes what I think is switchboard apparatus.

Q. Was that material used to take the place of apparatus theretofore installed in the South Exchange, or new apparatu- which was installed at the time the bill was made?

A. The invoice shows that it was new apparatus, and not for the purpose of replacement.

Q. How do you ascertain that fact?

A. The invoice is charged to Construction Equipment.

Q. Who charged it to Construction Equipment?

A. It was so charged in the office of the Purchasing Agent.

Q. Do you know, yourself, for what purpose the material represented by this invoice was used?

A. I know nothing further than what the invoice shows.

Q. I notice one item on this bill, 2150 No. 103 A Relays, $2.50 $5375.00. What are "A" Relays?

A. I don't know.

Q. Is that entire bill of $11,503.75 charged up as a part of the new construction for the year 1902?

A. It was so charged.

630 Q. I show you voucher No. 2586, June, 1902, which seems to have $4916.64 charged up to Equipment Construction for the Louisville Exchange. Will you tell me what that item represents?

A. The charge is from two invoices, as follows: June 5, 1902, One G. I. 1¼ 115 volt motor per Tel. #6366; One M. I. 30 volt generator, per Tel. 6367; 1 cast iron sub base with cushions. One flexible insulating coupling. Two line terminals for M. I. Generator. Amount $209.48. Also invoice of June 6th, for approximately twenty-five per cent. of the estimated cost of addition to switchboard at the south office, Louisville, Kentucky, amount $4707.16.

Q. The first item you refer to, of date June 5th, 1902, seems to be for motor and generator, and I should like to know what a motor and generator are used for in connection with the exchange?

A. I am not well up on the technical or mechanical or electrical sides of the business, but I think a motor and generator are used for ringing subscribers.

Q. Do they produce the electricity necessary to transmit messages over the wires?

A. You are asking me questions on a subject that I am not familiar with; but my answer to that is that I think not.

Q. Are they necessary in connection with operating a telephone system?

A. I believe them to be, otherwise they would not have been bought.

631 Q. Were those motors and generators to take the place of others that were displaced for some reason, or were they new?

A. The invoice indicates new.

Q. Does the invoice indicate whether they took the place of old ones that were removed?

A. It indicates that they do not.

Q. In what way?

A. The charge is to Equipment.

Q. Do you know yourself whether the material mentioned in this voucher did take the place of other equipment which was removed?

A. I know nothing further than what the voucher shows on its face.

Q. And this item is part of the gross item making up the construction account for the Louisville Exchange for the year 1902, is it?

A. The item mentioned was charged to Louisville Construction in 1902.

Q. Was this material used in connection with sending toll messages, or Exchange messages?

A. I don't know.

Q. The other item you mention I believe was payment on the South Exchange Board?

A. Invoice for a payment due on the South Exchange board.

Q. It seems to be for 3 sections 7 panel 3 operator switch board equipped for 8 subscribers operators' additional switchboard equipment: is that the correct item?

632 A. The invoice shows that.

Q. The next voucher I show you is No. 2287, October, 1902. There seems to be among the papers in this voucher an invoice in favor of the Western Electric Company for $6480.00. Please state what that payment represents?

A. That invoice reads in part as follows:

"To first installment of 25% due this date for the furnishing and installing of 5 sections 6 panel 2 operator switchboard No. 1 Relay multiple type equipped with 10 trunk operators, 3 sections 6 panel 3½ operator switchboard. No. 1 relay multiple type equipped for 7 subscribers' operators, at main exchange, Louisville, amount $6480.00."

Q. Do you know when that equipment was installed?

A. The invoice is dated September 30th, 1902. Further than this I know nothing about it.

Q. This invoice represents a fourth of the total cost of this particular installation, does it?

A. It represents 25% of the estimated cost.

Q. Do you know what five sections are referred to in this invoice—what their numbers are?

A. No.

Q. Do you know whether any equipment was placed in the main exchange in Louisville during the years 1901 and 1902, and afterwards removed from the main exchange?

A. I am not familiar with the subject. I have a faint

633 recollection of one or two sections of switchboard having been taken out of Louisville and transferred to another exchange; but this recollection of mine is not clear.

Q. Do your records show any item crediting to the Construction

account at Louisville any such switchboards so removed from the Louisville Exchange?

A. As I say, my recollection is dim. If such transfer is made, the records will show it.

Q. Will you investigate your records and let me know whether they do show any such removal?

A. I can do so, but I would like to state beforehand that it may require a few days to do it.

Q. I will withdraw the request, then, for the present. Mr. Smith, I show you voucher No. 2652, for November, 1902, in which there is contained an invoice of date Oct. 22, 1902, amounting to $245.95. I will ask you what that expenditure represents.

A. The invoice shows that it represents A toll record of switchboard equipment to be installed at the Main office Louisville, Ky., the amount of the invoice $245.95.

Q. Is that charged up to the construction account of the Louisville Exchange, for that year?

A. It was, properly so.

Q. I notice another invoice of date October 31, 1902, $6480.00. Please explain that item.

A. That is the second installment of 25% for the 5 section 6 panel 2 operator switchboard, etc., for the main office Louisville.

634 Q. Mr. Smith, what is the difference between the switchboard equipped for 4800 subscribers' lines and equipped for 4800 circuits?

A. I don't know; they seem to me about the same.

Q. In the same voucher, No. 2652, I find a bill of the Western Electric Company, of date October 27th, 1902, for a No. 1 Relay switchboard equipment to be installed for the Cumberland Telephone and Telegraph Company, Nashville, Tenn., the same seeming to contain 13 sections 7 panel 3 operator switchboard equipped for 1 switching and 36 subscribers' operators. I notice a memorandum attached to the back of that invoice which reads as follows:

"Cost of Nashville switchboard power plant power switchboard generator equipment, storage plant, conduits and cables in this building, chief operators', wire-chief's sections, etc., $75,769.87, connected and ready for use as equipment for 4500 circuits, cost per circuit $16,838. Cost of toll board not included."

Can you explain the meaning of that memorandum at the back of that invoice?

A. You have not read it as it is there. The cost per circuit is $16.83.8 (sixteen dollars and eighty-three and eight-tenths cents). What is it you would like to have me explain?

Q. Does that memorandum mean that the Nashville of-
635 fice equipped its plant with the switchboard and the other items I have mentioned, for 4500 circuits, for $75,769.87?

A. The memorandum seems to indicate that.

Q. Does that memorandum mean that the cost of the toll board connections is not included as a part of the $75,000?

A. I think the memorandum states that. Of course you under-

stand that no two sections on a switchboard are the same or cost the same amount. The cost given by you of the Nashville switchboard is as originally installed, and does not include any additions thereto, which have since been made.

Q. I show you now voucher No. 2766, for November, 1902, which has, as a part of it, an invoice in favor of the Western Electric Company for $2218.44, and ask you to state for what purpose that expenditure was made?

A. The invoice reads: "For power apparatus to be installed for Cumberland Telephone and Telegraph Co. at main office, Louisville."

Q. Had there been any power apparatus at the main exchange at the Louisville office, prior to this date?

A. I presume so.

Q. Do you know whether this was installed to take the place of the power apparatus that was in use prior to the installation of this plant?

A. The invoice shows that it was new.

Q. Does the invoice show that it took the place of another one that was removed

636 A. It does not.

Q. Do you know whether it did take the place of another that was removed?

A. I know nothing further than what is shown in the invoice.

Q. Was that item of $2200.00 charged up to the construction account of the Louisville Exchange for the year 1902?

A. Yes sir.

Q. I show you voucher No. 2617, for the month of November, 1902, which seems to be in part an invoice in favor of the Western Electric Company for $19591.30. Will you please explain what the articles represented in that invoice were used for?

A. We have already referred to two 25% bills on account of additional switchboard equipment at the South office in Louisville. This is the final bill for that equipment. The total cost of the installation is shown as $19,591.30, but from this is deducted the two 25% bills previously referred to, leaving balance of this bill $10,176.98.

Q. I will ask you to read the writing which appears on the first page of this bill immediately before the particular items which go to make up the bill.

A. The caption of the bill reads as follows:—

"An additional switchboard equipment to be installed for Cumberland Telephone and Telegraph Company at South office,

637 Louisville, Ky. 3 sections 7 panel 3 operator switchboards equipped for 8 subscribers' operators; 2 sections 9th and 10th subscribers' multiple switchboard."

Q. Were the items represented in this bill charged to the Construction account for the year 1902?

A. Yes.

Q. I show you voucher No. 2382, for the month of December, 1902, which contains, among other papers, an invoice in favor of

the Western Electric Company, of $3870.41. Please explain what the items represented by that invoice were used for?

A. The invoice shows that the shipment was for work at the South office, Louisville, Kentucky. It reads, in part, as follows:—"Miscellaneous Material shipped since our bill of April 30, 1902 and November 22, 1902." It states that credit will be given for any material returned. The amount of this invoice was charged to Construction.

Q. I show you an item in the same voucher which seems to be in favor of the Western Electric Company, $56.67. Will you please explain that item?

A. Invoice, dated Dec. 9th, 1902, states that it is for one No. 2261 Combination bridge rheostat and galvanometer.

Q. Do you know where that was used?

A. It is charged to Louisville, and it must, therefore, have been installed at Louisville.

Q. Do you know, as a matter of fact, whether it was installed at Louisville?

A. Nothing further than what the invoice shows.

638 Q. Does the invoice show that it was installed at Louisville?

A. The invoice shows that it was charged to Louisville.

Q. Do you know whether it was to take the place of another instrument of that nature?

A. I know nothing further than what the invoice says.

Q. Do your records show any charge for equipment against Maintenance for the years 1900, 1901 and 1902?

A. I don't know; I would have to analyze charges to determine.

Q. You have stated, I believe, that all reconstruction charges for the years 1900, 1901 and 1902 are included as a part of Maintenance?

A. All reconstruction done during those years was charged to Maintenance.

Q. Have you before you a book for any one year showing the items that go to make up the Maintenance charges for the particular year in question?

A. I have before me a book showing charges to Maintenance from vouchers and other original records, but the charges are in total and not in detail. To get them in detail it is necessary to refer to the original records.

I am handing you herewith nine more vouchers from the Western Electric Co., as requested on your written memorandum, for the year 1903.

Q. I hand you voucher No. 2526, for the month of January, 1903, which seems to include an invoice in favor of the Western

639 Electric Company for $6480.00; is that one of the payments of the same amount about which you have already testified?

A. This invoice is dated December 11, 1902, and is the third installment of 25% due date bill for furnishing certain apparatus for Louisville which has already been referred to twice.

Q. That was in connection with the main Exchange, I believe was it not?

A. Yes.

Q. I hand you voucher No. 2849, for the month of March, 1903, which contains an invoice in favor of the Western Electric Company for $6,160.00. Please explain what that item represents.

A. The invoice is dated March 6, 1903, and is in March voucher No. 2849. It covers the first installment of 25% for the furnishing and installing of four sections 7 panels 3 operators No. 1 Relay multiple switchboards equipped for 10 subscribers' operators and 1 testing operator; one section 5 panels 2 operators No. 1 relay multiple switchboard equipped for 2 trunk operators; one section 7 panels 3 operators, No. 1 relay multiple switchboard equipped for 1 trunk and 1 switching operators, at East Exchange, Louisville, Ky., amounting, the first installment, to $6,160.00.

Q. Was the East Exchange installed and equipped at about that date?

A. The invoice indicates that.

640 Q. Did the Western Electric Company furnish the apparatus and equipment for the East Exchange?

A. The Western Electric Company furnished and installed the central office apparatus.

Q. What additional apparatus was needed or used, if any?

A. Subscribers' apparatus.

Q. That means the telephone instrument itself?

A. Yes, and apparatus in connection with cables.

Q. Who furnishes that?

A. We get some of it from the Western Electric.

Q. Is any of that included in this bill?

A. This bill covers a central office equipment only.

Q. Does the central office equipment include cables running into the central office?

A. It includes cables inside the building.

Q. So it would seem, then, that the original cost of installing and equipping the apparatus for operating the East Exchange cost something less than $25,000, would it?

A. That invoice indicates such to be the case.

Q. I show you voucher No. 2609, for the month of July, 1903, for $6,160.00; is that correct?

A. Yes sir.

Q. What does that represent?

A. That invoice is for the second installment of 25% due on central office apparatus described just above, for the East Exchange, Louisville, Ky.

641 Q. Were both of the items you have just mentioned charged to Construction account of the Louisville exchange, for the year 1903?

A. Yes.

Q. I show you another voucher, 2515 which has connected with it an invoice in favor of the Western Electric Company, for $6,160.00. Is that the third payment of the indebtedness for installing the East Exchange, the first two of which you have just mentioned?

A. Our reference is to August voucher 2515. The invoice mentioned covers the third installment of 25% due on the East office

switchboard. It is for $6,160.00, and was charged to Construction equipment, Louisville.

Q. I show you voucher No. 2552, for the month of August, 1903, which contains an invoice in favor of the Western Electric Company for $4,095.00. Will you please explain what that expenditure was made for?

A. The invoice, dated August 1, 1903, reads, in part, as follows: "To first installment of 25% due this date for the furnishing and installing of 5 sections 6 panel 2 operator No. 1 relay multiple switchboard equipped for 9 subscribers' and 1 testing operator; 2 1-3 sections 6 panel 2 operator No. 1 relay multiple switchboard equipped for 3 trunk and 1 switching and incidental trunk operators, at West Exchange, Louisville, Ky., amount $4,095.00.

Q. When you say equipped for 9 subscribers, do you mean 9 subscribers' operators?

A. 9 subscribers' and 1 testing operators, making 10 oper-
642 ators.

Q. It was then equipped for 9 subscribers' operators, was it?

A. Yes.

Q. Do you know whether or not the West office was equipped and installed at about that date?

A. The invoice I have just read from is the first installment, which ante-dates the completion of the installation.

Q. Do the facts you have stated with regard to the extent of the equipment in regard to the East Exchange apply to this bill in so far as equipment of the West Exchange is concerned?

A. Do you mean have the invoices for the East Exchange Equipment antedated the completion of the installation?

Q. No. You stated in connection with the East Exchange that the equipment and installation covered by the bill rendered by the Western Electric Company was for the switchboard and all equipments, including cables in connection therewith inside the building. Is that also true of the bill here represented for the installation of the West exchange?

A. I think what I stated regarding the East exchange applies to the West exchange, except as to the amount; and I would here add that it is possible that some additional invoices may have been rendered for installation and other material that it was found necessary to add. These invoices for installments are based on estimates.

643 Q. It would seem, then, that the Western Electric Company's bill for installing and equipping the West Exchange was less than $17,000.00, would it?

A. I think so.

Q. And that item was charged up as cost of construction for that year, was it?

A. The invoice mentioned was.

Q. I hand you voucher No. 2356, October, 1903, which has as a part of it an invoice in favor of the Western Electric Company for $4,095.00. Will you please explain that item?

A. That item is the third installment for the West exchange switchboard.

Q. And the facts with regard to the other two installments apply to this also?

A. Yes.

Q. I hand you voucher No. 1183, December, 1903, which contains, as a part of it, an invoice in favor of the Western Electric Company, Nov. 30, 1903, in the total sum of $16,997.14. I will ask you to explain that invoice.

A. This invoice, covering 22 large sheets of invoice paper, shows the total cost of the West office switchboard and equipment. It shows that the cost of this was $16,997.14, but from this amount is deducted the total of the three 25% installment bills of $4,095.00 each, which have been heretofore referred to. The balance due is bill amounting to $4,712.14.

644 Q. I will ask you to read the caption of this invoice. By caption I mean the part which immediately precedes the individual items that go to make up the total.

A. The invoice reads in part as follows:

"A No. 1 relay multiple switchboard equipment to be installed for Cumberland Telephone and Telegraph Company at West office, Louisville, Ky. Ultimate capacity 4,800 subscribers' lines, 500 outgoing trunk lines, 106 incoming trunk lines; present equipment, 1,000 subscribers' lines, 120 outgoing trunk lines, 106 incoming trunk lines; 2 1-3 sections 6 panel 2 operator switchboard equipped for 3 trunk operators and 1 switching and incoming trunk operator, 5 sections 6 panel 2 operator switch board equipped for 9 subscribers' operators and 1 testing operator."

Q. Did the equipment represented by this bill include power plant?

A. Page 18 of the invoice bills miscellaneous power plant parts.

Q. I also notice on the same page an item, I notice the word Conduits, under which there are a number of items. What would be your explanation of that part of the bill?

A. I don't know.

Q. Do the cables run into the building in which the switchboard is located in conduits, or do they run into the switchboards overhead?

A. I don't know.

Q. If they run into the building through conduits, then
645 it would seem, from this bill, that a part of the conduit system outside of the building would be included in the total payment of $16,997.14, wouldn't it?

A. I think not.

Q. Where else would the conduits be except outside the building?

A. A conduit is sometimes inside the building, even in through the walls of the building.

Q. Aren't they called cables when they are inside the building?

A. Cables are entirely different from conduits.

Q. In the equipment and apparatus for the South exchange I

notice there were certain toll lines provided for as a part of the equipment; is that true of the East and West exchanges, also?

A. I don't know that toll lines run into the South exchange; and I don't know that any toll lines run into the East or West exchanges.

Q. I now hand you voucher No. 950, which seems to be for the month of November, 1903, and contains, among other papers, an invoice in favor of the Western Electric Company for some $24,940.58. Will you please explain that invoice?

A. The invoice, dated October 30, 1903, is for $6460.58. It is 18 pages, and shows in detail apparatus and cost of the switchboard built and installed for the East Exchange, at Louisville. From the
646 total cost of installing the Board is deducted the total of the three installments heretofore referred to, for $6160.00 each.

Q. What was the total cost?

A. The total cost, as shown by the invoice, was $24,940.58.

Q. And what is the caption of the bill?

A. The caption is as follows:—

"A No. 1 Relay multiple switchboard equipment to be installed for Cumberland Telephone and Telegraph Company at East Exchange, Louisville, Kentucky. 1 Section 7 pannel 3 operator switchboard, equipped for 2 trunk and 1 switching operators, 1 section 5 panel 2 operator switchboard, equipped for 2 trunk operators; 4 sections 7 panel 3 operator switchboard equipped for 10 subscribers and 1 testing operator."

Q. I will ask you to examine pages 11 and 13 of the invoice and state whether the cost of the power and generator equipment and storage battery equipment appear as part of the cost of the apparatus and equipment furnished by the Western Electric Company and charged up as a part of the $24,000?

A. Page 11 shows charges for power apparatus; page 13 shows charges for storage battery equipment.

An adjournment was here taken until 9:30, A. M., to-morrow.

647 WEDNESDAY MORNING, *September 8th*, 1909.

The further cross-examination of Mr. H. BLAIR SMITH was resumed this morning, September 8th, 1909, at 9:30 o'clock.

A. Mr. Blakey, I hand you herewith seven more vouchers which you have asked for specifically on your memoranda.

Mr. BLAKEY:

Q. In voucher No. 906 which I find for the year 1904, I do not know what month, I find an invoice in favor of the Western Electric Company, dated January 19th, 1904, and with a total of $370.02. Please explain that item?

A. The invoice reads in part, as follows; Material used in addition to specifications on West Office installation and installed in switchboard not included in our bill of November 30th, 1903, and the amount is $370.02.

Q. Would you say from that invoice that the material there speci-

fied was used in connection with the installation of the West exchange and was in addition to the material heretofore referred to by you?

A. Clearly.

Q. I also show you paper headed Western Electric Co., dated January 16th, 1904, which seems to be for goods returned, amounting to $87.86. Please explain that item?

A. The credit memorandum shows that it covers goods re-
648 turned which were billed in the Western Electric Co. bill of November 30th, 1903. The amount of the credit memoranda is $87.86. These goods were shipped for the West exchange and upon being returned are credited thereto.

Q. You mean to say then of the material referred to in the bill immediately preceding this one, there was material to the extent of the value of $87.86, which was not used in connection with the West exchange?

A. It says that the bill applies to material returned, which was billed in Western Electric Co. invoice of November 30th, 1903. The other invoices which you have mentioned, is material used in addition to that billed in invoice of November 30th, 1903.

Q. This material shipment is then either included in the material originally sent or in the material sent on January 19th?

A. You mean material billed on the 19th. It was material which was sent but not used, and returned.

Q. I show you invoice in the same voucher, dated January 28th, 1904, in favor of the Western Electric Co. for $284.90 please explain that bill?

A. This invoice is for 2, 3x7, oak Monitor switchboards, frame work and wiring. The goods were shipped to Louisville and charged to Louisville construction, equipment.

Q. Does that bill represent material used in connection with private branch exchanges?

649 A. The bill, at the bottom, states, one board for Southern National Bank; one board for McElroy & Shannon Co.

Q. Is the price for those private branch exchanges the average price paid for private branch exchanges?

A. These are private branch exchange switchboards and I take it if they could have been gotten cheaper, or if we could have built them cheaper, we would have done so.

Q. What I want to know, Mr. Smith is, without going through the various vouchers to ascertain what you paid for private branch switchboards is to know in a general way if this is about the price that was usually paid for private branch exchanges?

A. I am unable to answer that, as it is a technical question. There are several different classes of private branch exchange switchboards and each of those classes has different sizes.

Q. Do you know how many stations were connected up with these two switchboards about which you have just testified?

A. I do not.

Q. In the same voucher, under date of February 8th, 1904, appears an invoice which seems to be for two switchboards. Will you

please examine the paper, see if that is correct, and state what was paid for those two switchboards?

A. The invoice does cover two switchboards for private branch exchanges. The two cost $776.50.

Q. Where were they installed?

A. The invoice shows that one board was for Grabfelder &
650 Co. the other for Bradley, Gilbert & Co.

Q. In the same voucher appears another invoice in favor of the Western Electric Company of February 9th, 1904, which seems to be for one switchboard. Will you please state whether that is correct and the amount charged therefor?

A. The invoice referred to in February Voucher No. 906, is for a private branch exchange switchboard for Messrs. Snow, Church & Co. and cost $142.45.

Q. In the same voucher appears an invoice in favor of the Western Electric Co., dated February 9th, 1904, which seems to be for private branch exchange switchboard. Will you please state whether or not that is correct and the amount paid therefor.

A. The statement is correct and the amount paid therefor was $142.45. You understand, of course, that I am not testifying that these switchboards were complete and *and* they were not installed by the company building them. I am merely reading from the invoices referred to me.

Q. Where was that exchange installed?

A. The invoice shows that the switchboard was for the International Harvester Machine Company of America.

Q. Do you know how much additional charges, approximately, were needed to install the switchboards and place it in operating condition?

A. That depends very greatly on the character of the building,
the location of the stations, the number of stations, the num-
651 ber of trunk lines required to the central office, etc.

Q. If there were one trunk line and five stations and the switchboard was installed within half a mile of the exchange in the ordinary business building of the city, what would be your judgment as to the additional cost?

A. It depends whether those five stations were in one room or whether they were in different rooms of the building, and it was necessary to go through solid walls, but, I believe the average cost for installation per station, including wiring, labor, etc., for a private branch exchange, simply considering the wiring from the the switchboard to the instruments, runs from five to fifteen dollars.

Q. Five to fifteen dollars per set?

A. Yes, per station. That does not include the cost of installing the switchboard.

Q. I show you voucher No. 872 for March 1904, which contains an invoice of March 7th, 1904 in favor of the Western Electric Co., for $699.59. Will you please explain that invoice?

A. The invoice states that it is for one two-position wire chief's desk for Louisville, Ky.

Q. What office was that used in?

A. The invoice does not state.

Q. Have you a wire chief's desk in the main office?

A. I believe so.

652 Q. Have you one in the South office?

A. I believe so.

Q. In the East office?

A. I think so.

Q. In the West office?

A. I think so.

Q. From the size of that bill and the items contained in it what would be your judgment as to where that desk was installed?

A. I would not like to guess.

Q. Did the various exchanges have a wire chief's desk at the time they were installed?

A. I don't know. The invoices will show.

Q. Did the main office have a wire chief's desk in 1903?

A. I presume so.

Q. If this wire chief's desk was installed in the main office would it be for the purpose of taking the place of one theretofore installed or would it be supplementing the one theretofore installed?

A. It is charged on the invoice to equipment, and I therefore believe it was new and not to substitute something else.

Q. Would there be more than one wire chief's desk in the main office?

A. The invoice states that it is one two-position wire chief's desk. And there might be more than one two-position wire chief's

653 desk in the main office.

Q. Can you determine from your records whether this desk was installed in the main office to take the place of one which was taken out?

A. My records would not show.

Q. Are there any records in the office that would show?

A. Not in my office.

Q. What office then?

A. It would be in the department of the general manager.

Q. Was that item charged up to Louisville construction account for that year?

A. Yes.

Q. I hand you voucher No. 354 for November 1904, which seems to be for $1421. Will you please explain that voucher?

A. This voucher is in favor of the Gray Telephone Pay Station Company and it contains an invoice therein for 22 #7 pay Stations, $1400 shipped to Louisville and used at that exchange.

Q. Were those pay stations used in connection with the Louisville exchange?

A. They were.

Q. What are the articles that go to make up a pay station as charged for in this bill?

A. The item charged for in this bill is nothing more nor less than the automatic coin device attached to the instrument at the pay station.

you if anything in that voucher was charged to Louisville construction account; if so, how much, and also, will ask you to explain the items?

A. This voucher represents the value of supplies withdrawn from stock of supply stations for the month of March. It shows that at Louisville there were issued supplies as follows; Aerial construction, $2601.67; construction, equipment, $3320.47; construction, underground, $114.45; it also shows that $739.24 of material was issued for maintenance.

Q. From where was that material issued?

A. The voucher does not specify. It was issued from supply, and probably the larger part of it from the Louisville supply station.

Q. Have you any data from which you can tell what was the character of supplies issued to the Louisville exchange?

A. Not in my office.

Q. In whose office would such data be found, if it could be found at all?

A. In the purchasing agent's.

Q. Is the supply department under the supervision of the auditor?

A. No.

659 Q. Is the supply under any department and if so, under whose supervision?

A. The general manager.

Q. How do these papers I have just shown you get into your office?

A. They come from the supply department as a monthly report.

Q. Then, the supply department reports to you?

A. The supply department makes a monthly report to the auditor of the supplies issued and for what purposes.

Q. Do you know, of your own knowledge, that any of the items charged to aerial construction, equipment, or underground construction, the materials were used in connection with the Louisville exchange for new construction?

A. The voucher you refer to shows supplies issued to three or four hundred exchanges; Louisville is one of these; it is impossible for me to see every item of material issued put into the plant. The items which I have read to you as applying to Louisville, are from a report which has been compiled systematically and regularly, and certified to by those who are familiar with it.

Q. Are all of the supply vouchers in your office in which appear items charged up to original construction in the Louisville plant in substantially the same form as the voucher which you have just testified about?

660 A. Yes, if by supply voucher you mean a monthly report from the supply department similar to the one which we have before us.

Q. From such reports as this you charge up to construction the items appearing on the report, in the same way you would charge up the items appearing on a voucher for construction, do you?

A. Just exactly. This supply report is a voucher itself.

Q. This list I hand you Mr. Smith calls for additional vouchers I wish?

A. I hand you eleven special vouchers for the years 1900 and 1901 which you have specifically requested on the written memoranda.

Q. Of what do the supplies for equipment consist in the year 1901, if you know?

A. Well, roughly speaking we charged to equipment central office apparatus and its installation and subscribers' station apparatus and its installation.

Q. Does the central office apparatus come from the supply department?

A. Parts of it may.

Q. According to the vouchers we examined on yesterday from the Western Electric Co. for items from them, it would seem that the central office equipment was furnished and installed by the Western Electric Co. direct to the Louisville office, does it not?

661 A. Largely.

Q. Then, what would you say would constitute the bulk of the supplies furnished by the supply department and charged to equipment?

A. Without analyzing the books I should say private branch exchange switchboards, subscribers' sets, booths, signs, interior wiring and miscellaneous apparatus and expense.

Q. Expense would not be included in the vouchers from the supply department, would it?

A. The supply department does report material issued for expense purposes.

Q. What material is charged for expense purposes?

A. Material for repairs and for reconstruction.

Q. That would not occur under original equipment, would it?

A. I don't understand the question.

Q. Read his answer?

(Questions and answers read.)

Do you understand it?

A. If I understand correctly, you want to know if any items of cost incurred in installing original equipment are charged to expense. My answer to this is that the total cost of installing new equipment is charged to construction.

Q. I hand you seven vouchers for the year 1901, which seem to be from supply department and will ask you to state the total charges contained in those seven vouchers against Louisville

662 construction and equipment for that year?

A. Do you want expenses stated too, Mr. Blakey?

Q. All I desire is the amount charged from the supply department to Louisville, and charged up on your books as original cost of equipment?

A. January, 1901, $1,818.08; March, $6,723.63; May, $4,099.45;

September $4,806.24; October, $3,152.08; November, $3,950.02; December, $2,432.57; total, $26,982.07.

Q. Assuming that Voucher No. 1973 for April 1901 is $2549.88; Voucher No. 1815 for June 1901, is $2801.47, and Voucher No. No. 1719 for July 1901 is $2033.72 and voucher for August seems to have no Nuumber, amounts to $1880.53, are the correct amounts in the supply vouchers which you are now asked for, what would be the total amount charged to original construction for equipment from supply department for the year 1901?

A. This makes only eleven months. The total of the figures which you have called to me and those enumerated by me in an answer just given is $36,350.57.

Q. That total, then, would represent the amount which the supply department had furnished in the way of equipment for the year 1901, and which was charged to original construction, would it?

A. If the figures you have called me are correct and represent all the vouchers for the year.

Q. Now, private branch switchboards are purchased direct
663 from the Western Electric Co. are they not?

A. Sometimes.

Q. Are any of them kept in stock?

A. Yes, now.

Q. Were they in 1901?

A. I don't remember.

Q. Are any purchased new from the Western Electric Co. and put in the supply department now?

A. I think not.

Q. Where do those that are kept in stock now come from?

A. The shops of the company build them.

Q. Where did they come from in 1901, if any were in the supply department?

A. I don't know whether the shops built any at that time or not. I presume most of them were probably bought from the Western Electric Co.

Q. From the vouchers I have shown you, the private branch switchboards were, in the year 1901, being installed by the Western Electric Co.?

A. They were not.

Q. Being purchased then from the Western Electric Co.?

A. Some of them were.

Q. Do you know whether or not any of them were made at that time by your shops?

A. No, I do not.

664 Q. Now, when a telephone instrument is taken from the supply department and charged to equipment for the Louisville exchange, how much is charged to the Louisville exchange?

A. The cost of the apparatus taken from supply.

Q. Do you know the cost of telephone instruments?

A. There are, I believe, as many as fifty to seventy-five different types of bells which are part of what you term the instrument. I am not familiar with the cost of the different types.

Q. I show you a telephone instrument on a desk, known as a desk set, I believe; it seems to be a metal instrument, with green cord attached to it and which can be moved about from place to place on the desk or other parts of the office. Can you tell me, approximately, the cost of that instrument?

A. You understand what you see does not represent all of the apparatus used for the installation. I am not familiar with the cost of the different pieces or in fact, the technical names of the different parts that must be assembled to make a complete instrument.

Q. Is there anything connected with the installing of the desk set about which I have just asked you, except the wiring and the bell?

A. You are asking me technical questions.

Q. Can you answer the question?

665 A. I am not an electrician.

Q. Read him the question. (Question read.)

A. Yes.

Q. What else?

A. I know there are other items of apparatus, such as condensers, induction coils, etc., but what they all are, I do not know.

Q. Now, when an instrument is installed with all the apparatus necessary to make it a working instrument, to what is the cost of installing that instrument charged?

A. Originally and for several years, we charged the total cost of the wire and the labor in addition, to the apparatus, to construction. Later we charged simply the apparatus to construction, charging the interior wire, labor, transportation, etc., to maintenance.

Q. When did this change take place in your accounts?

A. Offhanded, I don't remember. I could probably give you an answer after an investigation of half an hour or an hour.

Q. What is your best recollection about it now?

A. I don't remember.

Q. Was it in 1901?

A. I don't remember.

Q. Don't you know, as a matter of fact, it wasn't in 1901?

A. I don't remember.

Q. Did you ever at any time make a charge of ten dollars against construction account for instruments installed?

666 A. We made a charge at one time of ten dollars against construction account for each instrument gained and very legitimately so.

Q. When was that done?

A. Off hand, I don't remember.

Q. About when?

A. If you will allow me to refer to my records, I will give you the date.

Q. Was it in 1901?

A. I say, Mr. Blakey, I don't remember.

Q. Well, what is your best judgment on the subject?

A. I don't like to guess.

Q. At the time you did this were the supplies used for installing

a telephone instrument charged to construction account, other than the instrument itself?

A. I think so, that is, the apparatus.

Q. Now when that telephone instrument was taken out was anything credited to capital?

A. Yes.

Q. What?

A. The apparatus, and by considering it as a removal, not charging any part of the $10. for some other instrument gained.

Q. Did the labor and material charged to construction account for the installing of that instrument remain a part of the capital account, or rather, a part of the construction account for the

667 exchange?

A. If you will analyze my answer, I think you will see that it did not.

Q. I believe you said that all supplies used in connection with installing an instrument was charged to construction account at the time the instrument was installed, did you not?

A. All apparatus.

Q. That is correct, is it?

A. My answer is correct.

Q. You mean that your answer would be yes, if I had used the word apparatus?

A. Yes.

Q. Now when you come to take that instrument out if we assumed you charged to construction account $10 for installing the instrument and fifteen dollars for the labor and material used in connection with installing the instrument, you then give the construction account credit for ten dollars when the instrument is removed, is that correct?

A. It is not.

Q. Now explain just how any credit is given to construction account for say the labor and material used in equipping and installing the subscribers' instruments?

A. During most of the period during which we have owned

668 the Louisville exchange, we have charged almost wholly the cost of livery and installers' services and interior wire for single, and party line instruments to expense. We have never charged as a part of construction any cost of general office supervision, interest on supplies, engineering plans, work in the central office in testing the new instrument or stations and running connections to the terminal frames therefore, to construction direct. After a study of the proposition it was during a short period of time the custom of the company to charge what it considered it had a right to charge for construction for instruments gained, coming from the sources outlines above. As long as the exchange continued to gain, it will be readily seen that as this charge was for instruments gained only, that it was proper. This was stopped before the Louisville exchange showed any losses. Hence, any charge which has gone to construction from this source is a proper charge and should be in construction account.

Q. Now, confine your answer exclusively to the time at which you charged ten dollars for installing the subscribers' instrument, I would like for you to tell me at that time whether you charged the cost of the supplies which went to make up the apparatus and also the labor used in connection with installing the subscriber's instrument, whether at that time these items were charged to cost of construction?

A. My best recollection is that we did not.

669 Q. Will you have time after we adjourn at four o'clock or at lunch time to procure for me the information as to when the company ceased charging to construction account in Louisville the material and supplies and labor used in connection with installing subscribers' instruments?

A. Mr. Blakey I am giving the best part of every day, and have now for almost a week, exclusively to you. Work is accumulating on my desk and it is as much as I can do to keep things running, by coming to the office before eight o'clock and leaving the office after six o'clock. If any information is needed by you, I think it should be gotten during the time of day that I am giving up to you.

Q. Have you any assistants whom you could request to get this information for me?

A. I don't know of anyone as familiar with it as I, or anyone whose report I would rely on like my own. Few of my men have been with me long enough to know anything about the records this far back.

Q. What is your system at the present time in so far as making this charge of $10 against construction account when subscribers' instrument is installed?

A. We do not make it, though I think we have a legitimate right to do so, but we prefer not to do it, desiring to be as conservative as possible.

Q. When did you cease making this charge?

A. Many years ago.

670 A. I answered the question several times by stating that I do not know. I would like to add that the American Telephone Company makes a careful audit of accounts of this nature yearly. One of their representatives, high in position, told me that he had made a thorough analysis of this matter and he considered that under many conditions a charge of as much as ten or fifteen dollars was legitimate.

Q. Who employs the American Audit Co. to do this?

A. I didn't say the American Audit Company did it.

Q. The American Telephone Co. I believe you said instead of the American Audit Co.?

A. Yes.

Q. Have your subsidiary books been balanced in the last two years?

A. We have hundreds of subsidiary books.

Q. Have they been balanced in the last two years?

A. I believe so, those that are intended to be balanced.

Q. What about your individual expense ledgers, when were they balanced?

A. I don't know of any such ledger that we keep.

Q. I think I will ask you to obtain the information in regard to the time at which you kept your books in such a manner as to charge construction with supplies, material and labor used in installing the subscriber's instrument and also the time at which you charged to construction ten dollars for each subscriber's instrument installed?

671 A. I notice that each time you ask this question, you state we charged ten dollars for each subscriber's instrument installed; but, as previously stated, this is not a fact. It is ten dollars for each subscriber's instrument gained.

A. I will secure the information asked for. Mr. Blakey, I hand you herewith, four more supply vouchers for the year 1901 which you have requested specifically by number.

Q. I will ask you to state whether the amounts which I assumed to be correct a few minutes ago, were substantially the amounts as they appear on the supply vouchers?

A. They are.

Q. Mr. Smith, you have produced auditor's bill No. 46861, which seems to be for $3,663. Will you please explain that bill?

A. That bill reads, estimate cost of installing new instruments during May, 1907, actual amount charged to expense in vouchers. I thought the practice had been discontinued prior to this date.

Q. It would seem then from this bill that as late as August 1907 the cost of installing new instruments was charged to construction account, that is, the gain for each exchange was charged to construction account, would it?

A. The bill is for May 1907. The rest of your question is correct.

Q. Now, do you know whether as late as this date the cost of supplies and material used in connection with installing sub-

672 scriber s instruments, was charged to the cost of construction?

A. My belief is that such costs were charged direct to expense.

Q. In May 1907?

A. Yes.

Q. What were the items of supplies for the year 1901 aggregating the sum of thirty six thousand dollars, intended to represent?

A. I presume you speak of the charges from the supply vouchers to construction equipment, Louisville. I explained in a previous answer this question.

Q. Were those items included and would they include interior wiring or wire for interior work, bells, cords and material of that nature used in connection with installing the subscriber's instrument?

A. Are you asking this question as relating to 1901 accounts or 1907 accounts?

Q. 1901 accounts?

A. As to 1901 accounts, I cannot answer from memory.

Q. What would be your best judgment on the subject?

A. I would prefer not to guess.

Q. What could possibly represent the items of supplies furnished to the extent of thirty-six thousand dollars to the Louisville exchange for the year 1901 unless it was just such items as I have asked
673 you about?

A. Many supplies furnished would relate, as previously stated, to the equipping of central offices and subscriber's station.

Q. Did you not state awhile ago that the bulk of it would be for subscriber's stations?

A. I believe such to be the fact.

Q. Well then, what is expended in connection with subscriber's stations except the interior wiring, the labor performed in installing the instruments, and the other incidental matters which you have heretofore mentioned?

A. There are private branch exchange switchboards, booths, automatic coin boxes, pay station signs, etc. Those, I believe represent the bigger items.

Q. You still are not willing to say in your judgment that this thirty-six thousand dollars for 1901 represented or included the supplies furnished and used in connection with installing using subscriber's instruments?

A. If I knew such to be the fact, I would not hesitate the least bit in telling you. If it is a fact, it is entirely proper.

Q. Now, was any part of this auditor's bill #46861 charged to Louisville, Ky.?

A. $240.48 of this bill was charged to Louisville.

Q. Was any part of it charged to aerial construction?

A. Yes, $160.32.

674 Q. Now, how many subscribers' instruments were gained over the last month in Louisville, for that month?

A. Sixty-two.

Q. At ten dollars per subscriber for the gain it would be $620.00 would it not?

A. That is correct.

Q. Then will you explain what you meant awhile ago by insisting it was not ten dollars per instrument that was installed, but ten dollars for the net gain per instrument?

A. I said the greatest charge, or rather, I should have said, the greatest charge ever made for that service was ten dollars for an instrument gained. This bill represents a little less than four dollars for each instrument gained.

Q. Had you any method at that time for determining what you would charge against the construction account for the net gain?

A. We did.

Q. What was that method?

A. The instruments gained for the company as a whole, less those known a farmers' line instruments and instruments in private branch exchanges, were considered and the charge had been reduced to nine dollars, which was pro rated on the basis of new put ins, to the different exchanges.

Q. If an exchange had a net loss, was it charged with any-
675 thing?

A. Louisville was not.

Q. If any exchange had a net loss was it charged with anything?

A. As long as the big exchanges where this plan was effective, continued to gain, the plant was kept up. I do not think any of the big exchanges were ever so charged.

Q. If at the time the system was in force the Louisville exchange had shown a loss in instruments, other than the switchboard stations, would it have been charged with any part of the total sum which was charged to construction for the month?

A. I don't understand what you mean by switchboard stations.

Q. I understood you to say awhile ago that this plan did not take into consideration instruments connected with private switchboards?

A. No, I don't know of any private switchboards in Louisville.

Q. I should have said private branch exchanges?

(Last several questions and answers read.)

A. In case Louisville had shown a loss, Louisville would have been charged with some part, and legitimately so.

Q. In making your estimate of the number of gains each month, did you take into consideration the gain or loss of instru-
676 ments connected with private branch exchanges?

A. The bill before us shows that from the total gained, is deducted private branch exchange instruments gained.

Q. What would that indicate?

A. That indicates that in the installation of private branch exchanges, the cost thereof was charged to construction direct, in most instances.

Q. Would it also indicate that the gain or loss was not affected by the gain or loss in private branch exchange stations; I mean, the gain or loss on which it was based.

Q. I mean, the gain or loss on which your estimate is made for that month?

A. The gain or loss is exclusive of private branch exchange stations.

Q. Now, was this system in force in the year 1901?

A. I cannot answer.

Q. Did you have any system in force for purchasing—or to be more accurate, after you acquired the Ohio Valley Telephone Co. other than the system which you now have in force and the system which was in force in May, 1907, dealing with this particular subject?

A. This system was put into effect some time prior to May, 1907. Just what year, I do not recall. There may have been some details in the system changed during the time it was in effect, I do not recall.

Q. Now when a subscriber's station was abandoned and the
677 instrument was removed, what was done with it?

A. With the instrument?

Q. Yes.

A. It was returned to stock, unless it was replaced before.

Q. Was that instrument subsequently used for installation for another subscriber?

A. If it could be made fit for future use, it was so treated.

Q. If it could not be made fit for future use what was done with it?

A. It would be shipped to the general shops of the company at Nashville, and there, whatever of value was in it, would be utilized.

Q. Utilized in what way?

A. For repair of other instruments or the building of other instruments.

Q. When the instrument reached the Louisville stock department, from what source is it taken?

A. That is more closely connected with the supply department than mine; I think it would be one of two plans. There is, I believe, a local supply room where some small supplies are carried for the Louisville exchange exclusively. They may have been returned to this stock room and accumulated, then turned over to the supply department stock room.

Q. Now, when it reaches the Louisville stock room, is the
678 Louisville exchange charged with the cost of that instrument?

A. Until the instrument reaches the supply department, the Louisville exchange remains with the instrument.

Q. At the time the Louisville exchange gets it, it is charged with the cost of it?

A. Yes.

Q. Now if the instrument can no longer be used and is shipped to Nashville for use in repairing other instruments, is the Louisville exchange given any credit for it on the construction account of the Louisville exchange?

A. It is given full credit for it.

Q. What do you mean?

A. Given credit at its cost.

Q. Where do you ascertain that fact?

A. That is the plan followed by the company.

Q. Have you any records showing any credits for any such instruments?

A. Not in my department. Such records would be in the supply department.

Q. Your records show the entire cost of constructing the Louisville plant, do they not?

A. Yes.

Q. Do those plans show any credits for the value of instruments returned?

A. In making the report to me, the supply department
679 makes a net report, material issued for construction, less material returned from construction. My books show the net results.

Q. Now will you point out to me on one of the supply vouchers any fact that would indicate that the plan is followed which you have just detailed?

A. I can point out the construction account for the year 1908. You will note from the joint report of the accountants that construction is credited for that year instead of being charged. That is, construction has a net credit.

Q. Read him my question.

(Question read.)

A. I have stated that the supply voucher shows the net result for the month. It does not show the debit less the credit, but shows the difference.

Q. It purports to show the amount of supplies furnished to Louisville?

A. It purports to show the next amount furnished to Louisville.

Q. How do you ascertain that fact from the examination of the voucher itself?

A. I do not ascertain it from the voucher itself.

Q. Then how do you ascertain it?

A. I knew it to be the plan followed.

Q. You don't have under your jurisdiction the supply department, I believe?

680 A. You are correct.

Q. Then, all you know is what somebody has told you about it, is it?

A. I was interested in formulating the system.

Q. But you do not know of your own knowledge that that is carried out?

A. The supply account would not be in adjustment if it were not.

Q. Now, the eleven thousand dollars credit in 1908 about which you spoke a few moments ago, is a credit for instruments returned to the supply department, is it not?

A. I believe some of it is.

Q. And you don't know whether those instruments were in good shape or poor shape, do you?

A. They are usually in poor shape.

Q. If the exchange has more instruments in its stock than it has any use for, which are in good condition, they are returned to the supply department, are they not?

A. They should be.

Q. Are they or not?

A. I say as a practice, yes.

Q. And so, you don't know whether the instruments which are returned and given credit for, are instruments in good shape

681 or dilapidated instruments, do you?

A. No, it is not necessary.

At this hour, 12:15 p. m., a recess was taken until this afternoon at two o'clock.

682 H. BLAIR SMITH, Cross-Examination, Continued.

2 p. m., SEPT. 8, 1909.

By Mr. BLAKEY, for the Defendant:

Q. Mr. Smith, have you ascertained when the plan was adopted of making a charge against the Exchange when an instrument was installed?

A. I find the first charge was in March, 1902.

Q. Prior to that date, what was your system, in so far as making charges against construction for instruments installed?

A. The only charge made was for labor and material.

Q. Did material include the instrument?

A. Technically the instruments are the telephone and the transmitters. These have never been charged to construction, as they do not belong to us.

Q. What do you mean by telephones and transmitters?

A. The telephone is the device which is placed to the ear; the transmitter is the small cap or device through which the talking is done.

Q. And on the desk set, on the table here, the set itself as I understand it, contains attached to it what seems to be a gutta percha apparatus which is placed to your ear when you wish to use the telephone, is that correct?

A. That is known as the telephone or the receiver.

Q. Is the receiver the entire gutta percha apparatus that is some six inches long, or is it the small cap or instrument within the gutta percha instrument?

683 A. It is the whole of the gutta percha instrument, including the nickel-plated nuts attached to it.

Q. And the metal part of the desk set is the part that the company furnishes itself, is it, and is not the part which is owned by the company which furnishes you the receiver and the transmitter?

A. Part of the transmitter is metal. The transmitter begins at the screw which attaches the metallic disk and mouthpiece to the stand.

Q. How large an instrument is the transmitter?

A. The instrument known as the long distance transmitter is biscuit shaped, with a rubber mouthpiece attached; it is about three and one-fourth inches in diameter.

Q. And how thick?

A. About an inch thick, and includes the rubber mouthpiece.

Q. Now was any charge made for the balance of the instrument used in connection with a subscriber's telephone such as the metallic desk set itself or the wall set, was any charge made for that part of the telephone against the construction account?

A. Yes sir.

Q. Prior to the date in 1902 you have just mentioned when the different plan was established, was any credit given to the construction account for any sum when a subscriber's station was discontinued?

A. Undoubtedly.

684 Q. What sum was credited to construction account?

A. Construction should and did receive credit for the apparatus which had entered into the construction cost at the time of installation.

Q. Have you any record showing that fact?

A. The records of that would all be in the supply department.

Q. If the apparatus was taken from the place where it was installed and placed into the stock account of the Louisville exchange, and not returned to the supply department, would any credit be then given?

A. It would not.

Q. Now as to the balance of the labor and material used in installing that subscriber's station, would the Construction account be credited with any part of that?

A. During what period?

Q. During the year 1901?

A. No special entries were made at that time crediting that.

Q. Now during the period when the ten dollar plan, the plan that I will call the ten dollar plan, which was established in 1902, seemed to have continued certainly until 1907, when a subscriber's station was discontinued, was any credit given to the construction account for the labor and material other than the instrument, on account of such discontinuance?

A. I answered that question fully before the lunch hour.

685 Q. Well, I ask you to answer it again in this connection, as I do not now recall.

A. I would like to have my answer read to me.

Q. The stenographer tells me that he cannot now read it.

(—because of a change of shifts, the notes now being transcribed by Mr. Duke.)

A. Then I will ask him to please refer to his notes and copy my answer here.

Q. Is there any reason why you should not answer the question now?

A. Nothing further than that I went into it very thoroughly before the lunch hour.

Q. What did you say in that answer?

A. Please to copy it here.

Q. Will you now tell me what you said in that answer?

A. Please copy my answer.

Q. Read the question to him, will you?

(Above question read.)

A. To go into this thoroughly would require about as much explanation as I gave before the lunch hour. If I have not fully and thoroughly explained the matter already, I would like for you to state just in what particular I have not done so, and I will try to make that clearer.

Q. As I recall, you said that at the present time the cost of

material and labor of installing a subscriber's instrument was charged to Expense, is that correct?

A. That is correct.

686 Q. Did that apply to the period prior to March, 1907?

A. I would like to add to my answer, "yes, including the labor, transportation, wire, tacks, testing, etc.

Q. Not the apparatus?

A. To a part of the period I believe it did.

Q. What part of the period?

A. This is now being investigated for you at your request.

Q. Well, for the part of the period to which it does apply, was any credit given to the Louisville exchange for such labor and material when the subscriber's station was discontinued?

A. No, because it had not been charged to construction.

Q. My question was intended to apply to that portion of the period during which the labor and material had been applied to construction.

A. I believe you are assuming that at one time this was the case. You asked me to investigate whether it was or not. This investigation is now in progress.

Q. I believe you said a few minutes ago that that was the case during a part of the period, did you not?

A. I said I thought probably it was.

Q. Well, if it did then was any such credit given?

A. This is all speculation.

Q. Well, will you answer the question?

A. I don't know.

Q. Do you know the cost of the part of the instrument which was purchased and owned by your company during the

687 period of 1901?

A. I think I answered this question this morning by stating that there were from 25 to 50 different styles of subscriber's bells, and there are a great many other items of equipment which enter into what is generally termed the instrument. I do not know the prices of the various articles.

Q. Now you say that no charge was made during the period the ten dollar plan was in force, for the apparatus going to make up the instrument, I believe?

A. I said that we have never charged to construction the cost or value of the telephone and the transmitter.

Q. During the time the ten dollar plan was in force, did you charge to construction at any time the value of any part of the telephone instrument set, or wall stand?

A. My belief is that at all periods we have charged to Construction the cost of the apparatus used which was owned by us.

Q. During the time the ten dollar plan was in force you charged it by means of that plan, did you not?

A. Regardless of the plan which you term the ten dollar plan, we have always charged to construction all apparatus placed at subscriber's stations.

Q. And while the ten dollar plan was in force you charged certain amounts in addition to the cost of the apparatus, did you?

A. Yes.

688 Q. Now you have detailed the facts in regard to a number of vouchers here aggregating some $36,000.00 furnished to the Louisville exchange and charged to Construction for the year 1901. Can you furnish me any data showing what articles are represented by these vouchers?

A. These vouchers were compiled from original memoranda and receipts in the supply department. The original papers have never been in the possession of the Auditor.

Q. The Supply Department is a department of the Cumberland Telephone & Telegraph Company, is it?

A. Yes.

Q. I will ask you to furnish me the individual items going to make up the sums appearing on these vouchers which you have referred to for the year 1901, and which aggregate a total of something like $36,000.00.

A. The request must necessarily be referred to Mr. Granbery who is not now present. I have no control over the Supply records.

Q. Will you, or will you not produce it?

A. I will refer the case to Mr. Granbery. I cannot produce them myself.

Q. In these vouchers you have submitted to me, which appear to contain items furnished the Louisville exchange from the Supply Department, are there any additional items appearing in those vouchers furnished from the Supply department and charged to the Construction account for the period covered by the voucher?

689 A. Yes, and to the expense account also

Q. Just give me the items, will you, in addition to the ones you have already given which appear in these vouchers and which were charged to the Construction account of the Louisville exchange?

A. —

	Construction.	
	Aerial.	Underground.
January, 1901	$2,577.60	$63.91
March, 1901	3,102.92	.....
April, 1901	3,815.75	.....
May, 1901	7,448.78	110.10
June, 1901	7,414.94	377.60
July, 1901	6,439.06	.....
August, 1901	6,298.35	.....
September, 1901	6,997.25	.....
October, 1901	6,867.71	203.07
November, 1901	4,599.93	541.22
December, 1901	3,710.10	287.33

Q. Do you know what articles were furnished to the Louisville exchange which are represented by the charges you have just read off?

A. The articles which are charged to Construction aerial, repre-

sent poles, cross-arms, insulator pins, insulators, guy wire, brackets, braces, pole steps, cables, cable boxes, equipment in cable boxes, open wire, etc.

Q. What do you know, of your own knowledge, whether those articles so furnished were used for original construction or
690 whether they were used for reconstructing parts of the plant?

A. The information which I have was received by me in the regular channels. I have never personally acted as an inspector.

Q. You mean, then, that you have no personal knowledge on the subject?

A. I have no information except that which has come in regular channels and without direct inspection of the property.

Q. Do you mean by the regular channels the examination of these vouchers?

A. I don't understand the question.

Q. Is there anything on these vouchers to indicate what character of articles were furnished, or what the articles were used for?

A. The vouchers show the value of materials issued during the month, classified to show the amount chargeable to Expense, the amount to Aerial Construction, Construction Equipment, Underground Construction and Toll Line Construction. The items in detail are not furnished the Auditor's office.

Q. Will you furnish me the individual items going to show the articles which were furnished, according to these vouchers which you have just read?

A. As stated in regard to Equipment charges, the papers
691 in detail are not in my charge, and I must necessarily refer your request to Mr. Granbery.

I now hand you herewith ten vouchers, for the years 1902, 1903 and 1904, which you have requested specifically on a written memorandum.

Q. Have you any data from which you can tell the number of horses your company acquired at the time it took charge of the Ohio Valley Company's plant in Louisville, Ky.?

A. The detailed records of tools and teams are kept in the Supply Department. Whether they can produce records this far back. I don't know.

Q. You cannot tell from your records?

A. I have no records.

Q. I show you voucher No. 2169, of April, 1902, which has two invoices, one in favor of W. L. Drake & Co., for $90.00 and one in favor of Chas. J. Fegenbush for $75.00. Will you explain what those invoices were for?

A. The invoice of W. L. Drake is for one gray mare, sound and a good worker, cost $90.00. The other invoice is for one bay mare about 6 years old, and cost $75.00.

Q. Were those two items charged to the Construction account, Louisville Exchange?

A. They were.

Q. Were those two horses purchased to take the place of other horses that were sold or had become useless?

A. The two invoices are charged to Construction account,
692 and attached thereto I note a letter signed by the Assistant General Manager, authorizing their purchase for use to two new trouble wagons.

Q. I show you voucher of July 31, 1902, which contains an invoice in favor of W. L. Drake & Co. for $210.00. Will you please explain that item?

A. It is for one bay horse, $110.00 and one brown horse, $100.00.

Q. Were those horses purchased to take the place of horses which had died or been sold and become useless?

A. The letter attached to the invoice authorizes the purchase of three horses for trouble wagons, and states "that trouble wagons and harness will be shipped you from Nashville."

Q. Was that item charged up to Construction Account, Louisville Exchange?

A. Yes.

Q. I show you voucher No. 2405, for March, 1903, which seems to be for expenditure of $320.00. Will you please examine that voucher and explain what it means?

A. The voucher is for one pair of mules.

Q. Is there a letter attached to that voucher explanatory of why the mules were purchased?

A. There is a letter of authority for their purchase from the purchasing agent attached to the voucher; it does not specify.

Q. Will you kindly read that letter.

693 A. The letter is dated March 17, 1903. To "Mr. L. K. Webb, Assistant Manager, Louisville.

DEAR SIR: Replying to yours of March 16th, this letter attached to receipts properly vouchered, will secure credit in our Auditing department for the purchase of a good sound pair of mules 16 hands high at a cost of $320.00 for the pair.

(Signed) J. C. SYMMES,
Purchasing Agent.
By B."

Q. I see some pencil memorandums in the left hand corner of the invoice. Please examine those pencil memoranda and tell me what they are, and what they mean, if you can?

A. There is a memorandum reading: "New work, Bardstown. Kentucky Aerial."

Q. If you will look on the inside of the cover of that voucher you will find on the top line some writing in ink. Will you please read that and explain it?

A. Written on the inside of the cover is "Mules to use on new work, Bardstown, Ky."

Q. Was the cost of those mules charged to the Louisville Construction account?

A. Yes sir.

Q. What does the language on the inside of the cover which you have just read mean?

A. It means what it says, I presume.

Q. I show you Voucher No. 305, for the month of April,
694 1903, which contains among the papers an invoice in favor of Hudson Bros. & Co. for $340.00. Will you please examine that voucher and explain the meaning of that item?

A. The voucher is for a pair of mules, four and six years old. The letter and the voucher state that they are to be used to construct the Harrod's Creek Exchange.

Q. Was that item charged to the Construction account, Louisville Exchange?

A. Yes.

Q. I show you voucher No. 968, for May, 1903, which seems to be a voucher in favor of T. L. Hornsby, $400.00. Please examine that voucher and explain it.

A. The voucher is for one pair of mare mules, 16 hands, straight and sound, $400.00.

Q. Is there anything on this voucher to indicate that those mules were purchased for use in Louisville, Ky.?

A. There is not, except the fact that the voucher is charged to Construction account, Louisville.

Q. The bill is made out as at Shelbyville, Ky., is it now?

A. Yes.

Q. What does "O.K., H." in blue pencil mean on the bill?

A. It is the O. K. of Mr. Hunter.

Q. Who was Mr Hunter?

A Mr. John W. Hunter was at that time Assistant in the Assistant General Manager's office.

695 Q. At Nashville?

A. At Nashville.

Q. Do you know, as a matter of fact whether those mules were used at Louisville, Ky.?

A. I know nothing further than what the voucher shows.

Q. Do you know whether they were purchased to take the place of other mules that had died or been sold?

A. I presume not, as they are charged to Construction.

Q. I show you voucher No. 836, April 9, 1904, which seems to be in the shape of a draft to Hudson Bros. & Co. for $350.00. Will you examine that and explain its meaning?

A. The voucher is not in the shape of a draft, Mr. Blakey. A bill or invoice was rendered for two horses, for $350.00.

Q. Is there anything among these papers to indicate that they were to be used in Louisville, Ky.?

A. Nothing except the charge of the voucher to the Louisville, Ky. Exchange, and the approval of the Assistant Manager thereon, and Supply Department.

Q. Do you know, as a matter of fact, whether those horses were used in connection with the Louisville exchange?

A. I never saw the horses.

Q. You don't know, then, where they were used?

A. Nothing further than what the voucher shows.

Q. Was that sum charged to Construction account, Louisville Exchange?

A. Yes.

Q. Do you know whether those horses were purchased to
696 take the place of other horses which had died or been disposed of?

A. The memorandum on the voucher indicates to me that these horses were to take the place of other horses, and that the salvage value of the other horses plus the loss was credited to the Construction account.

Q. What memorandum do you find on that voucher that indicates any such fact?

A. The voucher refers to Auditor's bill of May 11, 1904, for $180.00. That memorandum causes me to believe what I stated.

Q. Will you furnish me Auditor's bill No. 19113?

A. I hand you herewith bill No. 19113, which explains the transaction. It states that one of the horses purchased from Hudson Bros. failed to come up to the guarantee, and was sold back to Hudson Bros. for $180.00, and the $180.00 is credited back to Louisville equipment. I therefore withdraw my previous explanation in reference to the note on the voucher.

Q. What is now your explanation?

A. In regard to what?

Q. In regard to this voucher. Do you mean to say that of this $350.00 one horse was resold for $180.00?

697 A. One horse was returned for $180.00, leaving the other horse in the company's possession at the cost of $170.00.

Q. You don't know whether that other horse upon remaining in the company's possession was used to take the place of some horse that had died or been disposed of, do you?

A. The voucher is charged to Construction; I therefore believe that such is not the case.

Q. Here is voucher No. 290, for June, 1904, which contains an invoice of $165.00. I will ask you to explain that invoice.

A. This invoice is for one 7 year old bay mare, weight 1400 pounds, for $165.00. This horse seems to have been purchased to replace the horse returned to Hudson Bros. at $180.00.

Q. Is there anything on that invoice to indicate whether that horse was to be used in Louisville or outside of Louisville?

A. The cost of the horse is charged to Louisville Construction, and has the approval of the Assistant Manager thereon. This would indicate to me that the horse was purchased for Louisville.

Q. The invoice which you examined a few minutes ago for horses to be used at Bardstown, Ky. had the assistant manager's approval, did they not?

A. I believe so; and also the explanation made by him thereon.

Q. Here is voucher No. 353, June, 1904, for $475.00, which seems to be an invoice in favor of Prince Wells. Will you explain that?

A. The invoice is for a Rambler Automobile for Louis-
698 ville, for $475.00.

Q. Do you know whether that automobile was to be used in Louisville?

A. At the time the automobile was paid for I wrote on the invoice, "for Louisville."

Q. You wrote that yourself?

A. Yes sir.

Q. Do you know whether it was used in Louisville?

A. If I had not investigated it and found such to be the fact I would not have written it there.

Q. Well, do you know whether it was actually used in Louisville or not?

A. No, I do not.

Q. Do you know whether it was for use in connection with trips out from Louisville over the various toll lines, and for the purpose of visiting other exchanges in the vicinity of Louisville?

A. I do not.

Q. Was the item charged to original construction?

A. Yes sir.

Q. Do you know whether the automobile was purchased to take the place of horses or vehicles that had theretofore been used for the purpose for which the automobile was thereafter used?

A. I think not.

Q. Why?

A. Because it is charged to Original Construction.

699 Q. Any official or employee of the company in Louisville who would require the services of an automobile in 1904 would require some sort of vehicle to travel in prior to 1904, would he not?

A. Yes, but the Exchange was growing rapidly and it was necessary to do much purchasing at that time, in order to keep it fully equipped.

Q. Wouldn't the purchase of an automobile necessarily supplant the use of some sort of vehicle?

A. I presume it would for the person who used the automobile, and that he would pass whatever method of transportation he had been using down for another purpose.

Q. Do you know when that automobile was sold, if it was ever sold?

A. No, but in such case the records would show.

Q. I would like to see Auditor's Bill No. 23778.

A. I beg to hand you the Auditor's bill requested.

Q. Please explain that Auditor's bill will you?

A. This Auditor's bill charges the Louisville Cashier and credits Louisville Construction Equipment with $400.00, being for the sale of one automobile. The explanation on the bill reads as follows:

"Above auto brought from Prince Wells for $475.00. Voucher issued for $875.00 being difference in cost and selling price. Note correspondence attached."

Q. Now was any credit made to the Construction account on account of the sale of that automobile?

700 A. Yes.

Q. How much was Construction account credited with?

A. $475.00.

Q. Where do you ascertain that fact?

A. From the Auditor's bill from which I have just read.

Q. I would like to see voucher No. 533, for December, 1904.

A. I beg to hand you the voucher called for.

Q. I show you part of voucher No. 533, and will ask you to explain that item?

A. The voucher is 533 for December, 1904. It credits Construction Equipment, Louisville, Ky. with $75.00 and charges this to what is termed "Auto Account, Traveling," this being an expense account. The explanation in the voucher is this:

"Above auto sold for $400.00 to A. W. Metzger, original cost of same, $475.00, purchased of Prince Wells, Louisville, Voucher No. 353 for June, 1904."

Q. Now was that $75.00 charged in as a part of the cost of operating the plant for that year?

A. I would prefer looking at the record before answering.

Q. What would be your opinion on the matter, from that memorandum you have read?

A. I don't know whether we had a separate account for Auto account, or whether the expense was charged into Louisville. I think it should have been charged into Louisville.

701 Q. I show you Voucher No. 290, for July, 1904, which has an invoice in favor of Wakefield & Barringer, $150.00. Please explain that, will you?

A. The invoice is for one bay horse, 15¾ hands high, 5 years old, for $150.00. The Assistant Manager has okayed it, and states that the horse will be used in Louisville by City Foreman, O. O. Mitchell.

Q. Do you know whether that horse was purchased to take the place of some horse that had died or been disposed of?

A. The horse is charged to the Equipment account. If he was bought to replace a horse which had died or which had been disposed of the records would show it.

Q. You don't know though of your own personal knowledge, do you?

A. I have never seen this horse that I know of, and know nothing further than what the voucher shows.

Q. I show you another voucher No. 353, for July, 1904, for $175.00. Will you please state the facts with regard to that voucher?

A. This voucher is for the purchase of a brown mare for $175.00, from W. L. Drake & Co.

Q. What is the date of it?

A. It is dated June 27, '04.

Q. Does that bill show for whose use that horse was purchased?

702 A. The letter of authority attached to the invoice states that it is for Construction Foreman Mitchell's use.

Q. Just read that part of the letter, will you, which deals with the use to which the horse is to be put?

A. The letter reads, in part, as follows:

"This letter will authorize the purchase of a five year old mare

for Construction Foreman Mitchell's use, at $175.00, superseding authority previously sent you authorizing first purchase at $150.00."

Q. Now the horse that you spoke of and which is mentioned in Voucher No. 290 was also purchased for Construction Foreman Mitchell's use, wasn't it?

A. The invoice states so.

Q. Do you know what became of the horse mentioned in voucher No. 290?

A. Neither of the vouchers show just what was done in regard to the duplicate purchase. The records probably do. If you wish it investigated I will do so.

Q. The second voucher of June 27, 1904 contains the following statement, does it not?

"This is the first animal we have found for some time at any price suitable for the purpose. We have had to rent a horse for Mr. Mitchell's use for the past week or ten days."

Is that correct?

703 A. That is in a letter which is included in the voucher

Q. Was this second voucher, No. 353, charged to Original Construction, Louisville Exchange, for that year?

A. Yes.

Q. Was the first voucher, No. 290 also charged to original construction for that year?

A. $150.00 voucher No. 290 was.

Q. That was the part that represented the purchase of the horse for Mr. Mitchell, was it?

A. Yes.

Q. Did Mr. Mitchell perform services exclusively within the city of Louisville?

A. The voucher states he was foreman of the Louisville Exchange.

Q. The voucher also speaks of him as Construction Foreman Mitchell, does it not?

A. Yes.

Q. Did he have charge of all the construction in and about Louisville?

A. My information would lead me to think that he was in charge of the Louisville forces.

Q. Exclusively?

A. The Louisville gangs were run by him; whether he had anything to do with other gangs I don't know.

Q. Now during the period covered by these vouchers did any horses die or were any horses disposed of by the Telephone

704 Company in the city of Louisville?

A. I do not know individually, but if such was the fact I believe the records will show it.

Q. If such is the fact would not credit be given to the Construction account?

A. Yes.

Q. What credit?

A. The credit at original cost.

Q. If a horse died, would the price of the original cost of that horse be credited to the Construction account?
A. Yes.

An adjournment was here taken until nine thirty o'clock to-morrow morning.

705 THURSDAY MORNING, *September 9th*, 1909.

The further cross-examination of Mr. H. BLAIR SMITH was resumed this morning, September 9th, 1909 at 9:30 o'clock.

A. Mr. Blakey, I hand you herewith thirteen specific vouchers requested of me on your memoranda of yesterday afternoon.

Mr. BLAKEY:

Q. I show you voucher No. 290, April 1905, which seems to be a purchase of one pair of mules for $350 from Gentry & Thompson by the East Tennessee Telephone Co. Will you please explain that voucher?
A. The voucher seems to be for the purpose of a pair of mules for $350.00.
Q. Was that pair of mules purchased for the East Tennessee Telephone Co.?
A. They are billed as to the East Tennessee Telephone Co.
Q. Does the voucher explain where those mules were to be used?
A. The voucher states the mules are to be used for construction work at Georgetown, Ky.
Q. Does the voucher show on whose order those mules were purchased?
706 A. On the order of the assistant general manager.
Q. Was the sum represented by that voucher charged to construction account of the Louisville exchange?
A. I will have to refer further to the records to determine. If the charge was made to Louisville and has not since been corrected, it is in error.
Q. Was the charge made to Louisville construction account?
A. I cannot tell from the voucher.
Q. Where was the voucher paid?
A. The voucher was paid through the Louisville office. If the $391.87 shown on the cover of the voucher, as charged to tools and teams, is charged to the Louisville account as Mr. Warren states it is, I will agree it is charged to Louisville in error.
Q. Is there any star on that voucher indicating it is to be charged anywhere, but to Louisville?
A. There is no star whatever on the individual sub-voucher which you mention.
Q. I show you voucher No. 290, May 1905 for $330 and will ask you to explain that voucher?
A. This voucher is for $330.00 for one pair of mules four years

old, guaranteed sound in every particular, purchased from Willard Shaffer, Corydon, Ind.

Q. Where were the mules delivered?

A. The voucher does not specify; they were bought at
707 Corydon, Ind.

Q. I call your attention to this paper appearing in this voucher and will ask you if that paper does not state on its face that the mules were delivered at Corydon, Ind.?

A. I stated that the mules were purchased at Corydon, Ind. and this paper does state delivered at Corydon, Ind., but does not state that they are to stay there.

Q. Do you know whether they were used in and around Corydon, Ind.?

A. The mules were charged to tools and teams, Louisville, which indicates to me that they were for Louisville. Authority for their purchase was given to the manager at Louisville, and he was authorized also to buy a double wagon and a double set of harness.

Q. Do you know, as a fact, that they were purchased for use at Louisville?

A. I know nothing further than what is shown by the voucher.

Q. Was that item charged to construction account of the Louisville exchange.

A. Charged to tools and teams, which is an asset account.

Q. Is that part of the items which go to make up the construction account for the year 1905 at Louisville?

A. At the time we began charging live stock and vehicles to tools and teams, we began the system by an inventory of what we had and since that, the live stock, vehicles, etc., have been in-
708 ventories periodically, and the records verified. If this pair of mules and wagon were charged to Louisville incorrectly, the Louisville account has since received credit.

Q. Well, was it charged to Louisville construction account?

A. The cost of the two mules were charged to property account, known as tools and teams, Louisville, which is a construction or investment account. This same answer will apply to the pair of mules purchased at and for Georgetown, Kenoucky.

Q. I show you voucher No. 290, for August 1905, $454.50. Please explain that voucher?

A. This voucher is for the purchase of a mule team for extra hauling in Springfield, Ky., and in development over the county. The mule team cost $365.00. The cost of the team was originally charged to Louisville, Ky., but I am certain that credit has since been given the Louisville account therefor, through the inventory and adjustment.

Q. How long would it require for you to ascertain whether Louisville was ever given credit on its construction account for the amount of this voucher?

A. Fifteen or twenty minutes.

Q. Was the $454.50 charged to Louisville construction account?

A. The entry $454.50, representing the purchase of the team

wagon and harness, was so charged, in error, and my explanation applies to the whole.

709 Q. I show you voucher No. 290 for October 1905, for $125.00. Will you please explain that voucher?

A. This voucher also is for the purchase of horse for Shelby County, charged to Louisville in error, and my previous explanation of corrections will apply to this item also.

Q. Will you read the letter addressed to yourself, which is a paper appearing in that voucher?

A. The letter reads as follows:

"LOUISVILLE, KY., *Oct.* 17, 1905.

Mr. H. Blair Smith, Auditor, Nashville, Tennessee.

DEAR SIR: We are herewith returning your voucher for one horse, amounting to $125, and with reference to the authority to purchase same, it was sent us on or about September 20th. This horse was purchased for county construction in and about Shelbyville. Mr. Symmes will remember the matter, inasmuch as it was taken up in connection with the harness and jolt wagon to complete an outfit for Shelby County.

Yours truly,

BEN S. READ, *Manager.*"

Q. I show you voucher No. 290 for October 1905, which seems to be a voucher representing the payment of $125. Please

710 explain that voucher?

A. It is for the purchase of a horse for use at Charleston, Ind., exchange. The charge is in error to Louisville and has since been adjusted.

Q. Do you know it has been adjusted?

A. I am satisfied of the fact.

Q. I will ask you now to examine your records and ascertain whether any credit was given to the Louisville exchange for the amounts charged to it on account of the last three vouchers about which you have testified?

A. Our April 1909 voucher, No. 553, adjusts the Louisville tool and team account as of February 28th, 1909. As of that date an inventory of the tools and teams was made and the inventory value found to be $7,998.34. The book value was $9,849.49. Louisville account was credited to show the correct or inventory value. That adjustment you will see, is in 1909.

Q. Do you mean to say then that on April 22nd, 1909, you credited the construction account of the Louisville exchange with something more than two thousand dollars on account of tools and teams?

A. At the end of April 1909 we credited Louisville construction account with $1,851.15.

Q. Now that $1,851.15, as I understand it, represented the difference between what your books showed to be the value of

711 your tools and teams and what an inventory showed to be the value of them?

A. That is correct.

Q. In making the inventory was the value of the tools and teams at the date the inventory was made, placed on each article, tools and teams, or was the value placed on them for which they were purchased?

A. As near the original cost as we could arrive at.

Q. How do you know that?

A. That is our practice.

Q. You don't know that, though, of your own knowledge?

A. I know that is our system. Further than the fact that it is our system, I do not personally know.

Q. Then, your inventory didn't show the value of the tools and teams as of April 22nd, but showed what you paid for them?

A. It showed the cost.

Q. Are your teams and tools as of April 22nd, as shown by that inventory, so, it was not the correct value of the tools and teams?

A. It may have been too small.

Q. It was not the correct value?

A. It was as near the cost, which I take it to be a very correct method of arriving at the value, as we could get. We keep our live stock in first class condition and keep tools and vehicles in repair.

Q. Did the $7,989.34 represented by the inventory in-
712 clude all of the tools and teams on hand at that time?

A. It included what was located at the Louisville exchange, and in the hands of Louisville employés.

Q. Now, if you had purchased $9,849.49 worth of teams and tools and charged that amount up on your books, and subsequently $1,851.15 worth of tools and teams had ceased to be a part of that plant, by reason of death of horses or the wearing out of tools, then on April 22nd, 1909 the inventory would not show but $7,989.34 would it?

A. It would not, if the condition you state was a fact.

Q. Now I show you voucher No. 2900 for October 23rd, 1905, which seems to have certain items charged to the construction account of the Louisville exchange. Will you please examine that voucher and explain it?

A. This is for the purchase of a dark bay mare, fifteen hands, two inches high, six years old, for use at Springfield, Ky., $135.00. I find in the same voucher the purchase of one horse mule, sixteen hands high, four years old for $150, for use at Mackville, Ky., both of which seem to have been charged to Louisville, and both charges have been adjusted in April 1909 voucher No. 553, if not adjusted before.

Q. In regard to the last mule purchased for $150., mentioned by you, I show you a letter dated October 11th, 1905, as
713 part of the voucher and will ask you to read it to the stenographer.

A. The letter of October 15th, 1905, reads as follows: "As per telephone conversation this P. M. of Mr. B. S. Read, Manager, Louisville, this will authorize the purchase of one 16½ hands high mule, four years old, guaranteed to be sound in every respect, for

your use, replacing one which died. The above mule to cost not exceeding $150.00.

Q. Are those two items contained in that voucher, properly charged to Louisville construction account?

A. It would be well here to state that it is the system of the company to charge purchase of new live stock to tools and teams account and to issue a voucher for the loss entailed through the death or sale of worn out live stock or tools. These two vouchers are properly charged to tools and teams account, but not to Louisville.

Q. And they do appear, do they, as a part of the construction account in Louisville, Ky., for the year 1905?

A. Unless a voucher correcting this was issued during that year. One correcting it has been issued.

Q. I hand you voucher No. 290B for December 1905, and will ask you to explain that voucher?

A. Under date of October 21st, 1905, one sorrel mare, six years old, sound, and buggy and harness, was purchased from N. B. White at Louisville for $100. Also, on November 9th, 1905, $50.00 was paid as the difference between the cost of a mare that
714 could not be used and a good sound horse weighing a thousand and fifty pounds, fifteen hands high, nine years old, well built.

Q. Are those two items charged to the construction account of the Louisville, Ky., exchange for that year?

A. They are, and properly so.

Q. Now I show you voucher No. 204 for 1906 for $500 and will ask you to explain that voucher?

A. This is an invoice of April 26th, 1906 in favor of Gentry and Thompson for two mules, $500. The mules were purchased at Lexington, Ky., and seem to have been originally used at Winchester, Ky.

Q. Against whom is the bill made out of Gentry & Thompson?

A. Against the East Tennessee Telephone Co., but was paid through Louisville. These errors which you are bringing to my attention must certainly have been discovered promptly and corrected.

Q. Was that $500 charged up to construction account for the Louisville exchange, for 1906?

A. It was originally so charged.

Q. I show you Voucher No. 753, June 1906, for $430.00 and ask you to explain that voucher?

715 A. This voucher is for the purchase of two mules for $430. The mules seem to have originally been used for building Charleston, Ind., exchange. The charge for the mules seems to have been incorrectly made against the Louisville exchange, temporarily at least.

Q. Did you approve that voucher?

A. I did.

Q. Did you approve all of the vouchers which have been shown you?

A. Not personally.

Q. Did you approve this one personally?

A. Yes, but I know it was without a careful examination, as I should not have permitted the charge to be incorrectly made, even temporarily, intentionally.

Q. I show you voucher No. 753 for April 1906, for $500, and ask you to explain that voucher?

A. This voucher is for the purchase of two mules, $500 for trouble, Louisville District. The charge was made to Louisville tools and teams, correctly.

Q. Does that amount go to make up the total of the construction account about which you have testified for the Louisville exchange for the year 1906?

A. That charge was originally made to that account.

Q. I show you voucher No. 204, February 1906, for $200. Please explain that voucher?

716 A. This invoice is dated January 19th, 1906, in favor of Hudson Brothers & Co., for the purchase of one dray horse, $200.00. It is charged, properly, to Louisville tools and team account.

Q. Do you know whether that horse was used in Louisville or not?

A. The statement on the voucher is that it was for a dray horse. It does not show to the contrary, and I believe it is correct.

Q. Do you know whether that dray horse was intended to take the place of another dray horse that had died or been sold?

A. If such had been the case the voucher for the dray horse that had died or been sold, would be made, crediting the tools and team account.

Q. How long would it take to examine your records and furnish me with a statement of any credits to construction account made on account of the death or sale of horses over the period we have covered, in 1900 to 1906 inclusive, Mr. Smith?

A. I think it will require two or three days.

Q. I show you voucher No. 753, February 1906, for $275. Please explain that?

A. The invoice is dated Louisville, January 13th, 1906, is in favor of Killgore & Stilz and is for one new platform truck
717 wagon at a cost of $275.00. It is charged to Louisville, tools and team account.

Q. Do you know whether that wagon was used in connection with the Louisville exchange or not?

A. Louisville's notation on the voucher is that it should be charged to tools and team account. My information from the voucher leads me to believe that it was used in Louisville.

Q. Do you know whether it was used to take the place of some wagon which was worn out?

A. If such was the case, the other wagon has doubtless been already charged off.

Q. Do you know that it has been charged off?

A. Not individually.

Q. Would it be credited to construction account of the Louisville exchange, or charged off to profit and loss account?

A. It would be charged off by credit to tolls and teams account and a charge to expense.

Q. Would the construction account be given credit for the wagon which had worn out?

A. Tools and team account would be given credit, even though the wagon were worn out in the performance of construction.

Q. Read him my question Mr. Duke.

(Question read.)

718 A. If you consider tools and team account as a construction account, it would be.

Q. You have stated that for the year 1906 you charged a certain gross sum to construction of the Louisville exchange. If this wagon had been used to take the place of another wagon which had worn out, would the gross sum which had been charged to the construction of the Louisville exchange, be credited with the original cost of the wagon which was supplanted by this wagon?

A. I don't recall testifying specifically to the fact that certain gross charges were made against Louisville in 1906, further than that as the items have been brought up. In my direct examination I gave a statement of net charges at the end of the various years. If the wagon being discussed, was to take the place of another wagon, a voucher for the original cost of the other wagon provided it has been sold or torn to pieces or otherwise disposed of, should, and I believe, has, been made, and such voucher would credit tools and team account, which is, and has been, considered a part of the construction account.

Q. I show you voucher No. 350, January, 1906. Please explain that voucher.

A. The invoice is for the purchase of two model C Ford Automobiles, as runabouts, at $600 each and one like automobile
719 with tonneau for $650. The voucher shows that the automobiles were received at Louisville January 24th, 1906.

Q. Do you know whether those automobiles would be used in connection with the Louisville exchange exclusively?

A. I believe they were.

Q. Do you know, as a matter of fact, that those automobiles are used to travel over the Louisville district?

A. Does not the Louisville District cover the Louisville exchange?

Q. You have testified that the Louisville District comprised a number of towns surrounding Louisville?

A. It is possible that these automobiles were used to make inspection trips to the nearby exchanges, but I do not know that this is a fact and do not so testify.

Q. To what account was that item charged?

A. Tools and team account—auto, Louisville, Ky.

Q. Did that go to make up the total of construction account about which you have testified, for the year 1906 Mr. Smith?

A. Yes.

Q. Do you know whether those three automobiles were used to take the place of certain horses, the use of which was discontinued?

A. If such is the fact, the value of those horses was credited to Louisville.

720 Q. I show you voucher No. 352 for June, 1908, for $800 and ask you to explain that item?

A. The item of this voucher is for one second-hand, four cylinder Peerless automobile, with canopy top purchased for $800.

Q. Where was it purchased?

A. Purchased at Louisville.

Q. Was it charged to the Louisville construction account for that year?

A. It was charged to Louisville construction account. I find a notation on the voucher which shows that the charge was in error and that it should have been to general account.

Q. Was there a correction made of that charge?

A. The voucher shows such to be the case.

Q. Read the item showing that correction?

A. Correction in July 1909.

Q. Was that correction made after the two accountants had gone over your records?

A. I don't know whether they had this voucher before or after that correction was made.

Q. Do you know who made that memoranda on that voucher?

A. Mr. Armstrong.

Q. Did you direct him to do it?

A. Yes.

721 Q. At whose direction did you direct him to do it?

A. At the suggestion that the voucher was in error.

Q. Who made that suggestion?

A. The fact that I recalled the automobile had been purchased in Louisville, and that it had been driven through the country. It was done at the time of an inventory.

Q. Did Mr. Wilkinson suggest to you it should be charged to general account?

A. He did not.

Q. Did he ask about it?

A. He did not.

Q. Is there any notation on any of the other vouchers which you have said were erroneously charged to Louisville of a nature similar to the memoranda you have just read on this voucher?

A. I think not.

Q. Now what goes to make up the items of tools and team account.

A. Do you mean what articles are charged to tools and team account?

Q. Yes.

A. General tools used by employés in the exchange, provided they belong to the company; teams and individual horses and mules, wagons and harness, and automobiles.

Q. Do you know how many automobiles are now in service
722 in connection with the Louisville exchange?

A. I do not, but the records will show.

Q. When tools are purchased to replace tools which have become useless, are they charged to construction account of the Louisville exchange?

A. When tools are issued to foremen for construction purposes, or for any other purpose in the Louisville exchange, they are charged to the Louisville exchange.

Q. Does that mean to the construction account of the Louisville exchange?

A. Yes.

Q. Is any credit given on the construction account for the tools which they are intended to replace?

A. As explained, it is the custom to make periodical inventories of the tools and teams and at such inventories to make adjustments, which have not been made as such tools and teams may have been driven away, lost or worn out. It is our effort to keep at this time the tools and team account as nearly accurate, from day to day, as possible.

Q. How long has the inventory plan about which you have just testified, been in force in connection with the conduct of your business?

A. It was begun about two or three years ago.

Q. Prior to that time was any such credit made to construction account, where tools were replaced?

A. I believe such was the custom

723 Q. You don't know that to be a fact?

A. Not positively.

Q. Now in a general sort of way, please state what items you are accustomed to credit to construction account, if any, prior to the inventory plan?

A. In regard to what?

Q. All through your deposition there have been a number of instances mentioned in which you said, credit has been given the construction account for certain items which were taken out and became no longer a part of the Louisville exchange system. Now I would like to know in a general sort of a way, what character of articles go to make up the items of credit to construction account?

A. Do you refer to tools and teams or the whole account?

Q. The whole account.

A. The reconstruction account would represent mainly the cost of credits to construction, that is, when properties were reconstructed or replaced, instead of crediting construction with the cost of those properties and charging construction with the cost of the new properties taking their place, the system was to charge the cost of the original properties replaced to reconstruction account.

Q. Now please read him my question again, will you?

A. Will you kindly specify one of the items in my deposition, to which you refer?

724 A. Well, some of them were mules and some were automobiles and I cannot recall them all, but irrespective of whether you have referred to them or not, I should like to have an answer to my question?

A. I cannot answer your question, unless you make the question specific.

Q. Well then you state that when mules or teams die or were disposed of, that the original cost was credited to construction account, I believe?

A. That is the system.

Q. And the same is true in regard to automobiles?

A. That is correct.

Q. And the same is true in regard to tools?

A. That is correct.

Q. Now are there any other items of which that is also true?

A. Those are all the items involved in the account known as tools and teams and it was in referring to such items that I stated, construction would and should be credited with articles disposed of in any way. All of these properties are movable and exceedingly difficult to keep up with. They can be driven through the country, carried off, worn out and thrown away, and it is difficult to get prompt and accurate reports. New teams and new automobiles can be brought into Louisville in the same way, so that the only satisfactory way we have found to keep the accounts in proper condition regarding these movable items, is by the method described.

725 I did not say the method for tools and teams applied throughout.

Q. Well, does it apply to anything else?

A. Not in the past, that I recall now?

Q. What about office furniture?

A. The custom was to charge new furniture either to construction or reconstruction, according to the facts.

Q. What about telephone instruments?

A. Telephone instruments are credited to construction when returned to supply stock.

Q. What about private branch exchange switchboards?

A. The same is true.

Q. What about the telephone booths?

A. The same is true.

Q. Can you recall any other articles of which that is true?

A. If articles are removed because not wanted or needed, and are not replaced, then the system was to deduct such from construction account.

Q. You mean by that, give construction account credit for the cost of the articles?

A. Yes.

Q. The only other voucher I can recall that I desire to look at now is Voucher No. 2544, July, 1902. Mr. Smith, I asked you yesterday for the period during which the cost of installing subscribers' station was charged to construction. Have you got-

726 ten that information?

A. I have examined at random, pay rolls from Louisville

for the whole period from 1900 to the present date, and specifically, the following vouchers: February 1900, No. 502; November, No. 1695; September 1901, No. 163; December 1902, No. 1875; July 1903, No. 526; February 1904, No. 301; September 1905, No. 301. April 1906, No. 205; August 1907, No. 480; and, during the balance of the period, I am personally able to testify about, and I find that the salaries of all instruments setters and instrument men have been charged to expense, and if you wish to examine the vouchers, or others, please ask for them.

(Counsel examines vouchers.)

Q. Mr. Smith, did you examine any vouchers other than the ones you have handed me?

A. I did.

Q. How many more?

A. About twice as many, and I found them all to be just the same as these and returned them to the files, because I thought the pile was too large.

Q. Do you know whether wages of any employés during that period which employés were engaged in installing instruments for subscribers, were charged to construction account?

A. The employés that I refer to are the men who run the interior wire and set and test the telephone, and the men in the central office who make connections on the route frames. My belief
727 is that these salaries have always been charged to expense.

Q. Now, what about the material furnished for installing such subscribers' stations: to what account is that charged?

A. I inquired of the supply department in regard to this and their records in detail do not go back further than October or November 1904. That is, their records are not in sufficient detail to determine this, but from that date to the present date the interior wire used in the central office, route frames and in the subscribers premises, with the exception of private branch exchanges, and also, the hand telephone cord and the long cord and any original batteries used, if any, have been charged to maintenance.

Q. Were any of those items you have detailed there, charged to construction account over any of that period?

A. I am advised by the supply department that they were not.

Q. You don't know that of your own knowledge?

A. I do not. I am not in charge of the supply department and the reports of material and its uses come to me in consolidated form from the supply department.

I hand you herewith July Voucher No. 2544 specifically requested.

Q. Mr. Smith, this voucher, No. 2544 has connected with it an invoice in favor of Stewart Bros., $1266.40. Will you ex-
728 plain that item?

A. The invoice is dated July 2nd, 1902, and states that it is for work and material building bay window by trouble clerk's room, and building room over court square according to contract The voucher is charged to Louisville real estate account.

Q. Does that go to make up a part of the items for construction for that year of the Louisville exchange?

A. It is a part of the real estate account which I think is not included in construction account by the Mutual Audit Co. in their report.

Q. Now I also call your attention to what seems to be a letter of May 5th, 1902, addressed to the Cumberland Telephone and Telegraph Co. Will you please read to the stenographer the body of that letter?

A. The letter reads. "May 5th, 1902. We propose to shore up walls and put in I beams in rear of second story walls of the Jefferson Street exchange building; also put in two I beams to span court and to support floor joists; stud up the west side and raise the east side of present bridge enclosure; put on tin roof and cover side with sheeting and corrugated iron, and plaster inside. Also move out the window in wire chief room about four feet; enclose sides with sheeting and corrugated iron and plaster inside. This window will be supported by six by six posts. Also take down stud par-
729 tition in Jefferson Street building, second story to throw hall into rooms and paint all new wood work for the sum of $1093.25. Do you want an explanation of the difference between the amount of the bid, and the amount of the bill?

A. No. Mr. Smith, I should like to have you detail now the items charged to construction account for the years 1901 to 1908, inclusive, for the Louisville exchange?

A. The joint report of the accountants, dated the 7th of July, 1909, shows amounts added to construction account of the Louisville exchange, as follows:

1900		$166,775.23
1901		178,549.14
1902		217,128.05
1903		163,486.84
1904		131,371.13
As total for the five years		$857,310.39
Added, 1905		60,591.21
1906		89,770.42
1907		20,770.42
Net taken out, 1908	$4,351.83	
Making the grand total for the nine years		$1,023,545.34

Q. Do those items show correctly the amount expended for construction for those years?

A. I believe they do. We had up one or two small items this morning which would affect them some little.

730 Q. Now we have gone through some of the items going to make up the total items you have referred to for each year and I should like to know in a general way, whether all of the items which go to make up the total item for each year as you have detailed

it, are substantially the same character of items represented by the vouchers which we have examined?

A. My belief is that so far the whole of the examination has been on specific items, which the Mutual Audit Co. picked out from all the vouchers which they examined and on which they felt they could throw some doubt as to their accuracy; that they have not taken up further items, because they felt satisfied that they can not in any way throw any shadow of doubt on them.

Q. Don't you know as a matter of fact Mr. Smith that until Tuesday morning of this week, Mr. Wilkinson had all of the working papers of the Mutual Audit Co. dealing with the construction account, and that the items about which you were asked and the vouchers selected prior to Tuesday morning of this week were asked for at random and without any memoranda whatever or any knowledge of what they would contain?

A. No, I don't know it. In the first place, I do not think it is material as to whether Mr. Wilkinson had the working papers or not. In the second place, one whole morning of my examination was spent in questioning me about errors in accounting
731 which had been admitted and which were embodied in the joint report, and in the individual reports of the accountants. They were specified items and with a few vouchers excepted, every voucher has been asked for has been carefully selected, in my opinion.

Q. Did I ask you for any vouchers by number prior to Tuesday morning of this week?

A. I do not recall. The records will show this. You at first asked me to please get out for you two vouchers for each month, for each of the nine years and after spending a large amount of time in doing this, you looked over a few of the vouchers for the first year and never asked for those for the other eight years numbering something near two hundred.

Q. Have I ever asked about or failed to ask about, rather any voucher for which I asked or which you have presented to me?

A. Yes.

Q. How many?

A. A number of pay rolls.

Q. How many would you say?

A. During the pay roll examination you have avoided some vouchers, but after that, you have asked for vouchers specifically.

Q. How many would you say I avoided, as you term it?

A. Half a dozen pay roll vouchers, I think.

732 Q. Don't you know, as a matter of fact, I have asked you questions about every voucher I have ever called for?

A. No.

Q. Don't you know I have asked you questions about every voucher you have presented to me, whether I called for them specifically by number or not?

A. No.

Q. I tried to get you to tell me awhile ago, whether the items going to make up the totals of expenditures for construction for the

Louisville exchange were the same character of items which have been gone into from vouchers, in regard to some of the years, and I should like to have a specific answer to that question?

A. My previous answer I consider a very clear one, and I will add to it, that I believe the vouchers which you have not gone into specifically, are clear and accurate in all particulars.

Q. Do they represent the same character of articles referred to in the vouchers in which we have gone into?

A. They represent some of the same.

Q. What in addition do they represent; what articles in addition?

A. The Louisville exchange, and all other telephone exchanges are built from thousands of articles which it would take a catalogue to enumerate. You have asked nothing in regard to the gen-
733 eral run of supplies. You have asked about some few specific items and charges.

Q. Are the accounts for the other years—the construction account for the other years, made up of items similar in character to the items represented by the vouchers which we have examined?

A. I repeat my answer.

Q. Are the total items for construction account, which you have detailed here for the various years, made up in part of articles similar in nature to the articles represented in the vouchers which we have examined?

A. Of course the Louisville construction account is made up of charges from vouchers for labor and sundry articles of material. Some of these charges have been enumerated but by no means the larger part of the construction account.

Q. How long do you think it would require to go through the construction for those nine years, voucher for voucher, as we have been going through them in the past few days?

A. The Mutual Audit Company did that, and I think two men spent about two or three weeks on it.

Q. Will you read him the question?

A. Basing my answer upon the work done by the Mutual Audit Company I would say that it would take a considerable time to do so, except for the fact that I believe so many questions as were asked about the vouchers which seemed to you not clear, would be eliminated.

734 Q. From what source was the money derived which was expended and charged to construction account of the Louisville exchange.

A. The money was all paid out of the treasury of the company. The larger part by far of all the construction which has been done throughout the whole of the company's system has been derived from the sale of its stock at par. There were no appropriations of money from specific sums for the construction of the Louisville exchange but think the money practically all came from its stock.

Q. Where was the money placed which was derived from the sale of the stock?

A. In the treasury of the company.

Q. Where were the earnings from the Louisville exchange placed?
A. In the treasury of the company, if there were any.
Q. And was this money which was expended for construction account in Louisville paid out of the same treasury into which the proceeds of the sale of stock and the earnings were put into.
A. Yes, but accounts were kept so that the earnings are known, if there were any.
Q. Have you ever sold any stock for more than par—has the company, I mean?
A. I do not recall any sales now of that kind.

Q. Do you know what is the market price of the stock of
735 the Cumberland Telephone and Telegraph Co., at the present time?

A. It is about a dollar forty-five.
Q. Did the Cumberland Telephone and Telegraph Company sell any stock in 1900?
A. There was stock issued in 1900 in payment of some shares of stock of the Ohio Valley Telephone Company. There was no other specific issue of stock during that year.
Q. How about 1901?
A. There was stock offered to stockholders twice in 1901.
Q. Was it sold?
A. It was.
Q. How much of it?
A. The first issue was $1,467,400; the second issue was $1,771,200.
Q. For what amount was it sold?
A. Par.
Q. Was any of it issued to the American Telephone and Telegraph Co. or the American Bell Telephone Co.?
A. Yes.
Q. How much of it?
A. My records would not show; That company is a stockholder of our company and they have always taken their pro rata of stock.
Q. How did they pay for that stock?

A. Their subscriptions to our stock have always been paid
736 for in cash at par.

Q. How much stock does that company own in the Cumberland Telephone and Telegraph Co.?
A. My records do not show.
Q. Did they pay for all of it at par?
A. They have paid par for their stock during my connection with the company.
Q. Do you know that of your own knowledge?
A. I do.
Q. Did they pay anything for the stock that was issued to them for exchange of stock of the Great Southern Telephone Co. or the Ohio Valley Telephone Co.?
A. They did not pay cash. The stock was exchanged.
Q. Was any stock issued by your company in 1902?
A. There were two issues made.
Q. Amounting to how much?

A. The first, $1,693,950; the second $2,339,050.
Q. Was that stock sold at par?
A. It was.
Q. Was any stock issued in 1903?
A. No.
Q. Any in 1904?
A. No.
Q. 1905?
A. Yes, $1,754,300.
Q. Was that paid for in cash?
A. It was.
737 Q. What about 1906?
A. Yes.
Q. How much?
A. There was offered $3,362,400.
Q. How much was issued?
A. That sum.
Q. Was it issued at par?
A. Yes.
Q. Did the company receive par for the sale of that stock?
A. Yes.
Q. How about 1907?
A. There was offered the same amount, $3,362,400.
Q. Was that stock issued and sold?
A. All of it was not issued and sold.
Q. How much of it was issued and sold?
A. $2,868,100.
Q. Was that stock sold at par?
A. It was.
Q. How about 1908?
A. No.
Q. None sold?
A. No.
Q How about 1909?
A. None sold.
Q. Don't you know as a matter of fact, Mr. Smith, that the American Telephone and Telegraph Company owns the
738 controlling interest in this company?
A. I do.
Q. You don't know specifically, though, how much stock it does own?
A. I do not.
Q. I show you what purports to be the twenty-sixth annual report of the Directors of the Cumberland Telephone and Telegraph Co. for 1908. I wish you would examine that and tell me how much stock was outstanding of the Cumberland Telephone and Telegraph Company at the end of the period covered by that report?
A. The amount is $19,680,150.
Q. What period does that report cover?
A. It covers two periods, the years ending December 31st, 1907, and December 31st, 1908.

Q. Was that for the period ending December 31st, 1908?

A. Yes, and the same for the period ending December 31st, 1907.

Q. Now is there any other stock not yet issued but which is authorized?

A. Authorized by whom.

Q. By the directors of the company.

A. I am not able to answer.

Q. What is the authorized capital stock of your company under the articles of your incorporation?

A. $20,200,000.

739 Q. You stated awhile ago that for the year 1907 a certain amount of stock was offered for sale, but not all sold. Has the difference between the amount offered for sale and the amount issued, been sold since that date?

A. It has not.

Q. Then would you say that the difference had been authorized by the Board of Directors?

A. What difference.

Q. The difference between the amount offered for sale and the amount sold?

A. It was offered by the directors to the stockholders at par, provided certain conditions were complied with. It seems those conditions were not complied with and the stock has not been issued.

Q. You mean not complied with as to all of it?

A. Yes.

Q. Now, if you will examine the report I have shown you, you will find under the head of resources an item purporting to show the amount invested in plant, as of December 31st, 1908. Will you please state what that amount is?

A. $24,381,297.64.

Q. And what is the total amount which seems to be invested in real estate and buildings?

A. $790,163.23.

Q. And what is the total amount represented by material on hand?

740 A. $640,861.40.

Q. And what is the total amount appearing under the heading of stock and bonds?

A. $435,599.04.

Q. And what is the total amount appearing opposite the word cash?

A. $457,546.49.

Q. And that makes the total of the resources how much for that period?

A. $26,705,467.80.

Q. Did you have any bonds outstanding at that time?

A. We did.

Q. What did they amount to?

A. One million dollars.

Q. What was the surplus as of December 31st, 1908?

A. $3,286,202.12.
Q. What was the reserve?
A. $1,198,586.30.
Q. What was the undivided profits?
A. $393,603.
Q. What were the total earnings for the year ending December 31st, 1908?
A. The total earnings from all sources, being gross earnings, was $6,141,817.95.
Q. Was that an increase over the year 1907?
A. Yes.

741 Q. What were the total expenses for the year ending December 31st, 1908?
A. The total expenses, including interest and taxes, were $4,148,387.87.
Q. What was the surplus as of December 31st, 1908?
A. $3,286,202.12.
Q. What was the surplus as of December 31st, 1907?
A. $2,768,783.28.
Q. I hand you also what purports to be the annual report for the year 1907, and will ask you what was the surplus as of December 31st, 1906?
A. $2,343,774.99.
Q. And what was the surplus as of January 1st, 1906?
A. $1,940,842.70.
Q. What were the earnings for the year ending December 31st, 1906?
A. The gross earnings for the year 1906, were $5,384,844.76.

At this hour, one o'clock P. M. a recess was taken until this afternoon at two o'clock.

742 Cross-examination of H. Blair Smith, Resumed, at 2 o'clock, p. m., Sept. 9th, 1909.

By Mr. Blakey, for the Defendant.

Q. What dividends were paid by the Cumberland Company in 1908?
A. Dividends at the rate of 7 per cent. in January, April and July, and at the rate of 8 per cent. in October.
Q. Were there any dividends paid in 1909?
A. Yes, dividends paid in January, April and July were at the rate of 8 per cent. per annum.
Q. Do you know what dividends were paid by the Ohio Valley Company during the year 1899?
A. There were two dividends, one in January, and one in April, which I think were at the rate of 7 per cent. Mr. Wilkinson in his report states so.
Q. Do you know what dividend was paid by the Ohio Valley in 1898?
A. I do not know myself, but Mr. Wilkinson goes into this on page 12 of his report to the Master.

Q. What does Mr. Wilkinson say was the rate of dividend paid from 1890 to 1898 by the Ohio Valley?

A. He says it paid to its shareholders regular quarterly dividends of $31,500 every year except in 1894, when the fourth quarterly dividend was passed, making only $23,625 paid for that year.

Q. Will you read him my question, please. (Question read.)

A. He states further. In all, from '90 to '99 inclusive the
743 shareholders received $291,375.00 in dividends, this being at the uniform rate of 7 per cent. per annum.

Q. Mr. Wilkinson had access to the books of the Ohio Valley, had he?

A. Yes.

Q. He was employed by your company to examine these books and report to the Master his findings, was he not?

A. I believe that is the case.

Q. Are the facts you have detailed as being a part of the report made by him contained in the report made by him to the Master?

A. That is the report I have read from.

Q. Now what is the life of a switchboard used such as the switchboard now installed in the main office Louisville exchange?

A. Part of the switchboard now in use in the main exchange at Louisville was, I believe, installed about 1897, and I think some of it, if not the main part of it, is still in use. Further than this I cannot testify.

Q. Now I hand you a transcript of the record in the case of the Railroad Commissioners of Louisiana vs. The Cumberland Telephone Co., No. 182, in the transcript of the record of the Supreme Court of the United States, and refer you to the following question and answer of your deposition, in which it seems that you were asked this question:

"Don't you maintain the property?"

To which question you answered:

"In part we do, but you might take the case of the switch-
744 boards, to make it plain, the life of that switchboard is estimated at near 15 years."

I will ask you if that question was asked in that case, and if you answered that question in that way?

A. The question I will grant was asked me, I don't remember it. You have asked me a very specific question about a new type of switchboard which I believe as far as I know has never been tried fully and none of which as a whole have yet been thrown aside as useless. There are as many different kinds of switchboards as there are books.

Q. I will ask you if that deposition was not given along about the month of May, 1907?

A. I gave a deposition at that time, and the printed copy from which you read I believe is a copy of the deposition.

Q. Now if the average life of a switchboard such as is installed in the Louisville exchange is 15 years, then it would depreciate at the rate of about 7% a year, would it not, in value?

A. A switchboard the size of that in Louisville is a very compli-

cated affair from the standpoint of depreciation. You start out with a small switchboard—at least smaller than you end with. When the switchboard becomes useless as a type, not only the old part is usually taken out, but the newer parts which have been
745 added from year to year also become useless. To determine the exact depreciation on these requires a specific study, but the generally accepted belief is that switchboards as a whole last from ten to fifteen years as an average.

Q. I will ask you if you did not further say, in answer to the question which I have just read to you from the transcript of the record mentioned in my former question the following:

"Each year it is worth a little less than it was when put in and its life is a little less, but you cannot do anything to that switchboard then during that year to make its life a year longer, therefore that switchboard has deteriorated a certain proportion of its value during that year. And that is applicable to all other property."

A. If you read it—I think that I said that.

Q. Then will you say now whether or not the switchboard installed in Louisville in 1897 as you say has depreciated each year to the extent of seven per cent?

A. I will say this, that the switchboard installed at Louisville which we are talking about, as far as the operation thereof is concerned is as valuable to the customers, or for service, as it was when it was installed, but it must be agreed by every one that its life now is less than its life was at the beginning.

746 Q. Have you set aside any sum during the life of that switchboard to replace it with when it has to be removed?

A. The earnings of the Louisville plant have been so meagre during the past seven or eight years that there could hardly have been set aside anything. There has not been enough to pay the dividends.

Q. Do you consider the paying of dividends or the providing a fund to take care of depreciation the more important item?

A. I consider it exceedingly important to earn a sufficient amount of net revenue to have a Depreciation fund. This we have not done.

Q. What have become of your earnings from the Louisville exchange?

A. Whatever net earnings there were—and there has been precious little—have been placed in the general treasury.

Q. Has any of it been set aside for a depreciation fund to take care of the Louisville plant when it ceases to be in operating condition?

A. Not specifically.

Q. Has any of it been used to pay dividends?

A. Not specifically.

Q. What has become of it?

A. It has been placed in the general treasury of the company.

Q. Are the earnings from the Louisville exchange sent direct to

Nashville, or are they kept in Louisville and vouchers and
747 pay rolls paid out of those earnings?

A. The gross earnings are remitted in toto to the Treasurer, at Nashville.

Q. Who is the Treasurer?

A. Mr. T. D. Webb.

Q. Does he have under his control and in his department the items going to make up the earnings from the various exchanges?

A. Not that I know of. Don't put that down.

Q. Yes, put it down.

A. Read the question.

Q. (The stenographer read the question to witness.)

A. He knows the gross earnings.

Q. Does he know anything about the expenditures for the Louisville exchanges and other exchanges?

A. Checks for all expenditures go through his hands.

Q. Does he know what the expenditure is for?

A. If he chooses to examine.

Q. If I understand you, then, Mr. Smith, all the earnings from the Louisville exchange are paid into the general treasury. That is correct, is it?

A. The gross earnings, yes, that is a fact, all over the territory.

Q. And no part of the earnings from the Louisville exchange have been set aside to take care of depreciation?

A. The earnings have been so scant at Louisville that we
748 have not been able to specifically set aside anything.

Q. Have the expenses of operating the Louisville exchange been paid out of the general treasury?

A. All expenditures for the benefit of the Louisville exchange have been paid out of the general treasury.

Q. Then the difference between the gross earnings and the expenditures of conducting the Louisville exchange have remained in the general treasury until they have been used for some other purpose, have they?

A. Yes.

Q. Now I asked for some books for examination concerning the earnings and operation of the Louisville exchange for the years 1900 to 1904, inclusive. Have you any of those books?

A. The books are here before you.

Q. I should also like to have the books containing the items going to make up the revenue for the years 1900 to 1905 inclusive?

A. Do you mind stating how long you and Mr. Warren will be engaged in auditing these four big books, in order that I may know how to dispose of my time?

Q. Neither Mr. Warren or I are engaged in auditing any books. I am not on the witness stand, and therefore am not required to answer your questions.

A. No, I do not ask it as a demand, but would like to know what use I can make of my time rather than sit here.

749 Q. You asked Mr. Beall, the stenographer, to take down your question, did you not?

A. Yes, it seems advisable for the proceedings to note that Mr. Warren is busily at work again upon the books.

Q. Have you any records from which you can furnish to me the amount of the earnings for the four years from 1900 to 1904 inclusive, and also the expenses in connection with operating the plant for that period?

A. Yes.

Q. Are these the books you are furnishing?

A. These are the books in detail.

Q. Have you it in any more succinct form?

A. I have statements which I have prepared myself.

Q. Will you let me have those statements?

A. Yes. (The witness here retired to look for records).

Q. What is this book you produce?

A. This book I produce shows earnings and expenses for the Louisville exchange, by months, for the year 1903.

Q. Why did it require almost an hour for you to produce this book, Mr. Smith?

A. I don't think it required that long, and I don't think I have been gone this long.

Q. It is now twenty minutes to four, we are in twenty minutes of adjourning time,—is it not?

A. Yes.

Q. Have you the books similar to this for the years 1900,
750 1901, and 1904?

A. I think we have. I have a man looking for them.

Q. You said, I believe, you had a statement prepared showing the earnings and the expenses for the Louisville Exchange for the period from 1900 to 1904?

A. This is the summary I referred to.

Q. Does this show the total for the year?

A. Yes.

Q. On what page?

A. The pages are unnumbered. The totals for the year are in pencil.

Q. This book shows the total revenue for the year 1903 does it?

A. I think so.

Q. What does the total revenue amount to?

A. The revenue from subscribers' rentals I think is $240,335.01.

Q. And from toll service amounting to how much?

A. The amount of tolls collected in the city of Louisville, part of which is of course not earned by Louisville, is $44,673.19.

Q. What were the operating expenses?

A. General?

A. I do not mean itemized, but I mean your total expenses for conducting the plant.

A. The expenditures charged to Louisville on this record are
751 $178,312.10. That is the actual expenditures, nothing being included for any depreciation which may have accrued and remained unexpended.

Q. What was expended that year for maintenance?

A. $51,630.75.

Q. Now at that time was the salary and wages of employees and officers whose duty extended over the district which Mr. Hall presided over charged to the expenses of conducting the Louisville plant?

A. I think a part of Mr. Hall's salary was so charged.

Q. Did you say in your direct examination that prior to 1908 the salaries of those officials and employees were charged to Louisville, and that the change was made in 1908?

A. I don't remember now, but at the time I made my deposition it was fresh in my mind.

Q. Is it not a fact that you made a change in so far as the charges for district employees and officials is concerned beginning with the year 1908?

A. Yes, we made some changes in the method of apportioning the supervision expenses.

Q. Was the result of that change to charge less or more to the Louisville exchange than had theretofore been charged in connection with those officials?

A. I don't know; I never made a study of it from that standpoint.

Q. Is it not a fact that you began in 1908 charging to Louisville only certain portions of salaries of officers and employees
752 whose entire salaries had theretofore been charged to Louisville?

A. I will have to go up stairs and see what we did do.

The witness here retired to look up the information called for, and pending his search the adjourning hour of 4 p. m., being reached, an adjournment was taken until 9:30 a. m. tomorrow.

753 FRIDAY MORNING, *September 10th*, 1909.

The further taking of the cross-examination of Mr. H. BLAIR SMITH was resumed this morning at 9:30 o'clock.

Mr. BLAKEY:

Q. Mr. Smith, it is now three minutes to ten o'clock, is it not?

A. Yes.

Q. Did you know that 9:30 was the time to begin taking these depositions?

A. I have just this minute been notified that you gentlemen had arrived and I came immediately.

Q. Mr. Granbery, your lawyer, is in the office, is he not?

A. Yes.

Q. This is his office, is it not?

A. It has been my custom, as long as this deposition has been taken with you and with other attorneys in taking other depositions, for him to notify me just as soon as I am wanted.

Mr. BLAKEY: Mr. Stenographer I wish you would note that we met here at 9:30 and indicate who was present at the time we met, including, of course, Mr. Granbery.

754 (There was present at the hour named, 9:30, Mr. Blakey, Mr. Warren and the Stenographer in the room where deposition was being taken on yesterday, and Mr. Granbery was in the adioining room, with folding doors open between.—STENOGRAPHER.)

Q. Mr. Smith, did you procure the information which I have asked for, asking for it at noon yesterday, relative to the books containing in a succinct form, the records of the earnings and operations of the company for the years 1900 to 1904 inclusive?

Mr. GRANBERY:

Q. Mr. Blakey, don't you think the order of reference limits the proof to the earnings and expenses for certain years. That is my recollection of it.

Mr. BLAKEY: I do not recall the order of reference specifically.

Q. Mr. Smith I have asked you the question you might answer it?

Mr. GRANBERY: I prefer that the question be referred to the Master Commissioner.

Mr. BLAKEY: The witness then declines to answer?

755 Mr. GRANBERY: Under my instructions, until the Master Commissioner rules upon it.

Mr. BLAKEY:

Q. Mr. Smith, yesterday you produced here two books showing the expenses of conducting the exchange system of the Louisville plant for the years 1900 and 1901. Will you please examine those books now and tell me what the amount is appearing on those books as charged up to maintenance for those two years.

Witness starts to figure from book.

Q. Before you proceed with answering this question, I should like to call your attention to the fact that the book from which you are taking these figures, shows the maintenance by months; that there are at least eight items of figures under each month for maintenance, and that each of these eight figures for each of the months will have to be placed on a sheet of paper and added up; and also call your attention to the fact that you stated yesterday you had this information in succinct form and that you produced for the year 1903 the book showing total of maintenance for the year, and will ask you if you will not, in the interest of saving time, produce a book similar to the second book produced yesterday for the year 1903, in order that we may get the total amounts in one sum?

A. You referred in your first question to the book which I
756 exhibited yesterday and I was doing just as you requested.

Q. I also requested you to produce the book which contained the total item in succinct form. Will you now produce that book?

(Witness does so.)

A. From the book which you are now requesting, I read the fol-

lowing: "Amount charged to maintenance for the year 1900 $50,-180.03." For the year 1901 I am unable to produce or find the book showing the tabulation like this book has it. I do find this book for 1902 and as presented yesterday, for 1903.

Q. Then, I will ask you to examine the book for 1901 which does show the maintenance for the year 1901, and let me know what the book shows?

A. You understand that the book I am now referring to shows the gross charges to maintenance from the vouchers.

Q. Are there any other charges to maintenance than such as appear in this book?

A. None that I know of.

Q. Will this book show more is charged to maintenance or less, than should be charged?

A. There were some corrections as I have heretofore explained in my depositions which were made on account of pay rolls.

Q. Were those corrections, corrections in which maintenance was credited and construction charged, or maintenance charged
757 and construction credited?

A. Maintenance credited and construction charged. I find the total is $85,265.50. If you would like to prove this total, the machine is at your service.

Q. Mr. Smith, I wish you would look on this book and answer me one or two questions. What was the amount of salaries and wages charged to maintenance for the month of April of that year?

A. The amount charged is below the normal, as pay rolls went into other months. The amount shown in the record for that month is $154.95 for salaries and wages.

Q. How much for May?

A. $3,630.64.

Q. How much for June?

A. $4,649.03.

Q. How much for July?

A. $6,033.48.

Q. How much for August?

A. $304.16.

Q. How much for September?

A. $12,973.34.

Q. How much for October?

A. $12,552.73.

Q. How much for November?

A. $2,338.97.

758 Q. How much for December?

A. $387.62.

Q. How do you account for the vast difference between the charges for salaries and wages for the various months you have read?

A. By the work done and by the months in which the different pay rolls were entered, some months showing two pay rolls, while some show only partial pay rolls. It is probable that the pay rolls were returned for correction, and failed to get into the office corrected in due time to go into the proper month.

Q. Now, what proportion of that eighty-five thousand and odd dollars would you say was readjusted and charged to construction account.

A. This matter was fully gone into before on this cross-examination. I can get my figures if you would like for me to state it again.

Q. I would like for you to examine this book further and state how much was charged to maintenance under the heading of incidental expenses for the month of September 1901?

A. For the month of September there is a charge of $2,115.89.

Q. What articles go to make up the incidentals as charged to maintenance?

A. At the present period we charge to maintenance—incidentals, those items which cannot be classified under the other heads of maintenance, the other heads being, salaries and wages, rent, light
759 and heat, material, traveling, conduit, pole and roof rent, insurance and damages and compensation.

Q. Now, how much was charged to incidental expenses for the month of August 1901 under the head of maintenance?

A. $292.23.

Q. How much in the month of July?

A. $343.63.

Q. How much in the month of June?

A. $399.76.

Q. How much for the month of October?

A. $542.76.

Q. Now, when we were going over the vouchers you produced a paper showing that the sum of sixteen thousand dollars or about that amount, had been credited to the maintenance account and charged to the construction account. Was that one of the items that should have been deducted from maintenance for that year?

A. The paper which you refer to is dated May 10th, 1909 and is a written explanation given to the Mutual Audit Co. while they were making their examination of the accounts, and it shows corrections made in the year 1901 involving the maintenance account.

Q. What was the amount of those corrections?

A. $16,848.

Q. So, at least that amount should be deducted from the
760 eighty five thousand and odd dollars which you have testified about, in order to ascertain what the maintenance charges were for the year 1901?

A. That amount should be deducted.

Q. Now, can you tell me what the maintenance charges were for the year 1904?

A. Shall I just get you the amount, or would you like to have the details.

Q. Is it in book form such as the 1903 account?

A. No.

Q. In what form is it?

A. At that time we made changes in the form of the book and I don't know just exactly the form.

Q. Then, suppose you ascertain the amount, for the present?
A. $66,456.72.
Q. Now, is that the correct amount which should be charged to maintenance or are there some deductions which should be taken from that?
A. That is the net amount.
Q. Now in the book which you showed me for the year 1903, the net earnings were shown on the book to be something like a hundred and six thousand dollars. Did that amount include earnings from toll department of your system at Louisville?
A. It included all tolls collected at Louisville.
761 Q. The net amount collected, or the gross amount collected?
A. It includes the gross amount of tolls sent from Louisville. We have always included in expense, the uncollectable.
Q. Do you mean by gross amount collected, the gross amount collected over your lines?
A. Yes.
Q. Now did you at that time include the collections from the toll department as a part of the earnings of the Louisville exchange?
A. We never considered them as such.
Q. Did you treat them in your account as a part of the earnings of the Louisville exchange?
A. We always charged up the Louisville office with the tolls it was responsible for, and in the book shown you it shows the gross amount of tolls originating at and for which Louisville was responsible as to collection, but we have never, in considering the earnings of an exchange either for ourselves or in giving statements to others, considered that the tolls earned at an exchange belonged to the exchange.
Q. Do you make an annual report to the American Telephone and Telegraph Co.?
A. Yes.
Q. Do you keep copies of those reports?
762 A. Yes.
Q. Will you produce those copies for inspection?
A. For what period, please.
Q. For the years 1900 to 1908 inclusive?

(Witness produces same.)

Q. Will you show me the report which you made for the year 1900 for the Louisville exchange?
A. We have never made any separate reports for any exchange, to the American Telephone and Telegraph Co. The reports which I referred to in my reply, are reports for the whole company.
Q. They do not show by exchanges, what each exchange earns, or what it costs to operate each exchange?
A. We have never done it during my term of office and not before that I know of.
Q. Now, coming to the earnings for the year 1905, how much did the company earn from operating the Louisville exchange in 1905?

A. My exhibit No. 1 shows $37,907.34, nothing for depreciation being deducted.

Q. I am asking now about the gross earnings?

A. My answer showed the net earnings. The same exhibit shows the gross earnings as $278,170.73.

Q. Does that include any earnings from the toll department?

A. It does.

Q. How much?

763 A. That exhibit shows $11,821.07.

Q. Now the joint report shows exchange earnings of $264,675.13. Can you tell me which is correct, the amount appearing on your exhibit No. 1 or the amount appearing in the joint report of the two accountants who examined the books?

A. I believed that my statement was correct when I presented it, and I see no reason to change.

Q. Now, the report of the joint accountants shows that fifteen per cent on all outgoing messages, which is the proportion of toll earnings credited to Louisville, amounts to $6,759, and your Exhibit No. 1 shows that they amount to $11,821.07. How do you account for that difference?

A. I have never analyzed the papers of the accountants, but I note this; the statement you made is not correct.

Q. What does the joint report show on that subject?

A. Shall I read it all.

Q. What does the joint report show the fifteen per cent amounts to?

A. The joint report, under item 2, page 4, gives the proportion of toll earnings for 1905 as $6,539.92, and from the American Telephone and Telegraph Co., $2,865.29. Both of these items are commissions, as well as the item of $983.88 from telegraph companies.

Q. What does the $983.88 represent?

764 A. It represents earnings from the handling of messages in and out, for telegraph companies.

Q. Is that for the use of telephones installed in telegraph offices and which are used by the telegraph companies to transmit messages which may be received over their wires?

A. Partly.

Q. Is any charge made to the telegraph company as rental for the telephones placed in their office and so used?

A. No.

Q. What does the total of the three items you have read, amount to?

A. $10,289.09.

Q. Do all three of those items which you have read from the joint report go to make up what you term in your exhibit proportion of tolls earned by the exchange?

A. They are included in that.

Q. Which is correct now, the $11,821.07, which your exhibit shows, or the amount you have just read as shown in the report of the two accountants?

A. I believe, as I stated before, that mine is correct.

Q. Now, taking up the year 1906, what were the gross earnings of the Louisville exchange for the year 1906?

A. Exhibit No. 1 to my deposition shows $296,120.52.

765 Q. How much does the joint report show to be the total receipts for that year?

A. $294,498.44.

Q. Which of those items is correct, the one that purports to be correct in your exhibit, or the one that appears in the joint report?

A. You will note that they are made up in one particular, along different lines.

Q. What is that particular?

A. They deduct bad debts from revenue, and I have included them in expense.

Q. What did the bad debts amount to for that year?

A. They are shown in my exhibit as $1,519.41.

Q. What are they shown in the joint report to be?

A. $4,230.58.

Q. Which is correct, your Exhibit or the joint report?

A. The joint report is correct in that instance, I believe. I have not analyzed it thoroughly, but I did see an omission made in making up my exhibit.

Q. Now for the year 1906, the exchange earnings are put down in your exhibit as $279,844.49, I believe. Is that correct?

A. Yes, exchange service.

Q. And in the joint report it is placed at $280,076.12. Which of those items is correct?

766 A. The difference is about $200; I don't know where it comes in. I take my figures from our books.

Q. Now the proportion of tolls earned by the exchange for the year 1906 is placed at $13,099.34 in your exhibit, I believe?

A. Yes.

Q. How much do the accountants, in their joint report say it amounted to?

A. In their second item, they say, $7,034.91.

Q. Is there any other sum represented in the joint report which should be added to that amount to make it include what you have included in your thirteen thousand and odd dollars?

A. Yes, three other items.

Q. What is the total of those three items?

A. Of the three items, the total is $5,257.61.

Q. And that added to the seven thousand and odd dollars makes a total of how much?

A. $12,322.52.

Q. Which is correct, the thirteen thousand dollars appearing in your exhibit or the twelve thousand dollars appearing in the report of the joint accountants?

A. I know of no reason to change my original figures.

Q. Now do you know what the fifteen per cent on the outgoing toll messages from the Louisville exchange amounted to for that year?

767 A. I do not.

Q. Would you say the report of the joint accountants is correct on that subject, or inaccurate?

A. I understand the joint accountants have apportioned fifteen per cent of the tolls earned by the Cumberland Company sent from Louisville and not on all tolls as you stated.

Q. I spoke of outgoing toll messages from the Louisville exchange. That is the only item on which you give Louisville credit for fifteen per cent, isn't it?

A. The statement I made up gives Louisville credit for commissioners from the American Telephone and Telegraph Co., which are less than fifteen per cent of the amount of their tolls, plus fifteen per cent of Cumberland Telephone & Telegraph Co. tolls and other items.

Q. Do you know what fifteen per cent of the Cumberland tolls for the year 1906 amounts to?

A. It is not separated on my report. The joint report of the accountant gives fifteen per cent of the Cumberland tolls as $7,064.91.

Q. Do you say that is, or is not, correct?

A. I don't know.

Q. Now, coming to 1907, what were the gross earnings from the Louisville exchange for the year 1907?

A. My exhibit No. 1 shows $316,981.61.

Q. How much does the joint report show were the gross
768 earnings from the Louisville exchange for that year?

A. $319,758.51.

Q. How much does the joint report show was deducted from the total earnings for that year on account of bad debts?

A. $2,050.77.

Q. Then, if the joint report was made up on the same basis as to earnings, that your exhibit shows, their report would show that the gross earnings were something like $321,895, would it not?

A. $321,809.28, exact.

Q. Now which is correct, the $321,000 shown by the joint report or the $316,000 shown by your report?

A. I would like to make a correction in my figures for each of the years, and say that I had overlooked to mention until just now, I wish to say that item eight, page 4 of the joint report shows a class of revenue which I did not include in my exhibit, but which I admit should have been included, it was not intentionally omitted at the time that I made up my exhibit.

Q. What does that item eight represent?

A. It represents a rental for telegraph drops.

Q. That amounts to $2,110.61 for the year 1907, does it?

A. Yes.

Q. And that, added to your report would make how much?

A. $319,092.12.

Q. Is that amount now, as corrected by you, the correct gross

earnings for that year, or is the amount represented by the
769 accountants' report, $321,000 the correct amount?

A. The difference between the two reports is $1,717. I don't know of any other corrections to be made in mine.

Q. You think yours is correct then?

A. I think so.

Q. For the year 1907, your exhibit No. 1 shows $13,258.03 as the proportion of tolls earned by the exchange. Is that correct?

A. I think so.

Q. What is the proportion of tolls earned by the exchange placed at in the report of the joint accountants?

A. Item No. 2, page 4, for 1907, shows $8,030.15.

Q. Is that what the accountants show is the proportion of toll earnings, being fifteen per cent on all outgoing messages?

A. All outgoing Cumberland messages.

Q. Now to include in a total all sums appearing in the joint report which would make it conform to your item on this subject, and other items in the joint report should be added to that amount?

A. Items 3, 4 and 9.

Q. What are those teams?

A. Item 3 is from telegraph companies; Item 4 is from American Telephone and Telegraph Co., and Item 9 is messenger fees.

770 Q. Adding those three items to the item you first gave from the accountants' report, makes a total of how much?

A. $13,602.95.

Q. Which do you say now is correct, the item appearing in your exhibit or the total of the items appearing in the joint report, which you have just indicated?

A. I know of no corrections which should be made in my exhibit. I think it is correct.

Q. I notice opposite the uncollectable in your exhibit No. 1, under the head of general expenses you have an item of $2,344.94 for the year 1907. What does the joint report say should be the amount representing the same item?

A. For that year the joint report shows $2,050.77, or about three hundred dollars less than my report. You will note that in the previous two years' accounts they show a much larger amount of bad debts than is shown in my exhibit.

Q. What do you say as to bad debts for the years 1905 and 1906?

A. For the year 1905 I show, $1,679.39; the accountants show $10,366.42. For the year 1906, I show $1,519.41 and the accountants show $4,230.58.

Q. Which statement is correct, the one contained in the joint report or the one contained in your exhibit?

A. As just stated a few minutes ago, I omitted the total of a column for 1905 and 1906 in making up my reports. The amount should be larger than I show. I don't know of any errors in the accountants' figures; I have not checked them over, but they
771 were given full access to all records.

Q. Now for the year 1908 what were the gross earnings of the Louisville exchange?

A. My Exhibit No. 1 shows $325,603.54.

Q. What do the accountants in their joint report show them to be?

A. On the same basis, $328,951.52. I should add to my figures the item No. 8, $2,130.55.

Q. What is that item?

A. The item was explained before, as telegraph drops.

Q. That would bring your total up to what amount?

A. $327,734.09 about twelve hundred dollars less than the accountants show.

Q. Which would you say is correct, the joint report of the accountants or the figures appearing on your exhibit No. 1?

A. I believe my figures are correct; I don't know of any errors, with the addition I have mentioned.

Q. Now your exhibit seems to show the proportion of tolls earned by the exchange at $7,728.08. Is that correct?

A. Yes. In the year 1908 we adopted a classification of earnings issued by the American Telephone and Telegraph Co. in order to make our system uniform with that of other companies. We changed the classification of some of the revenue, but the same items of revenue enter into the 1908 figures on my exhibit as in the other years.

772 Q. Now, was that the fifteen per cent earned on outgoing Cumberland messages?

A. Yes.

Q. What do the accountants show in their report was the amount earned from that fifteen per cent?

A. $7,632.11, about a hundred dollars less.

Q. Do they show in their joint report any sum which should be deducted from that fifteen per cent for bad debts?

A. I don't know.

Q. Do you know whether any sum was deducted from the total which they found to be the earnings from the fifteen per cent on account of bad debts?

A. In Mr. Wilkinson's report to the Master, page 41, Item 6 shows that he deducted $1185.61 for bad debts.

Q. From what?

A. From the total gross amount taken in for tolls at Louisville and at check stations.

Q. For what period?

A. For the period 1908.

Q. Does he indicate how much of that was deducted on account of toll earnings from the fifteen per cent from the Louisville exchange?

A. He arrives at his figures by first considering the gross amount taken in for tolls; then deducts four items from that total and figures his fifteen per cent on the balance.

773 Q. Is one of those items bad debts, $177.84?

A. No.

Q. Well now, do you say that the accountants' report as to the amount the fifteen per cent should be is correct or the amount which you show the fifteen per cent came to, is correct?

A. I think my exhibit is correct.

Q. How do you ascertain what amount should be credited to the Louisville exchange on account of toll earnings at the Louisville exchange?

A. I don't understand the question.

Q. You have stated and your exhibit shows you have credited certain amounts each year as earnings of the Louisville exchange on account of tolls—money received from toll calls. What is your method of determining the amount so credited?

A. We have determined that just as we determine it with any other company. We take fifteen per cent of the gross tolls reported as going over the Cumberland lines.

Q. You mean fifteen per cent of the gross collections made on account of toll calls which are outgoing calls from the Louisville exchange and which are collected at Louisville, Ky.?

A. We have never considered collections at all; we have always figured the commission on the amount reported.

Q. Well, if I amend my answer by saying the amount
774 charged for toll calls, can you then answer it?

A. That is our system; provided, of course, that those tolls so charged go over the Cumberland Company's lines and are not subject to other commissions.

Q. If they go over the American Telephone and Telegraph Company's lines, how do you receive any pay, on what basis do you receive pay for the services of your employés in connection with that message?

A. Our contract with that company is to get fifteen per cent on tolls originating at Louisville, not to exceed ten cents per message. There is a small allowance made for different classes of messages and deductions for free messages. Throughout the territory for several months a calculation was made showing just exactly on that basis what commissions were due us, and the commissions were divided by the number of messages sent, and a flat commission of 10.21 cents arrived at, which commission for some years figures as high as ten per cent of the outgoing tolls and in some it has been less.

Q. Does the American Telephone and Telegraph Co. then pay you 10.21 cents for all messages originating over their lines in Louisville, Ky., and sent over its lines?

A. All messages for which it is paid.

Q. Now if a man on Main street, who has one of your subscribers' lines, desired to telephone to New York and calls up your exchange
over his subscriber's telephone, what would be the process
775 whereby he would procure his connection with New York?

A. I cannot testify as to Louisville. I can testify as to Nashville, where I am familiar with it.

Q. Well, what would be the process at Nashville?

A. The process at Nashville is for the operator answering the call, upon being advised that long distance is called, to connect him with long distance recording operator, who takes the call and secures the party for him.

Q. Is the office of the American Telephone and Telegraph Company in Louisville in the same building with the exchange of the Cumberland Telephone and Telegraph Co., at Louisville?

A. It is not in the same building.

Q. Is it at Nashville?

A. It is not.

Q. Would your toll operator in Nashville notify the operator at the American Telephone and Telegraph Company's office what was wanted in a case such as I have asked you about?

A. Yes, this would be the system, I think, throughout the country whether there was an American Telephone Company office in the town or not.

Q. And the operator at the American Telephone Company office would procure the connection with the party desired, and then notify the subscriber, would he?

776 A. The operator at the American Company office would pass the call along and when the party was secured, would call back through the Cumberland Company's exchange for connection.

Q. Now, when a subscriber on Main Street in Louisville, Ky., desires to talk with someone in Nashville, Tenn., what would be the process of connecting the two telephones?

A. The Main Street party upon asking for long distance would be switched through to the recording operator, who would take his order; from the long distance room the call would be passed to the next operator who, upon completing her duty, would call back and have connection established.

Q. Then, operators of your company, in your employ in the last case mentioned, in Louisville, Ky., would cause the connection to be made if it was made, would they?

A. They would assist in causing it to be made.

Q. And the Nashville operator would also assist, would she?

A. Yes.

Q. Whereas, in the first case mentioned, of a call to New York City, the operators in the employ of the American Telephone and Telegraph Co. would cause the connection to be made, would they not?

A. Other operators would; I don't know whether the American Telephone and Telegraph Company would.

Q. Operators other than those in your employ would, you mean?

A. Yes, several others.

777 Q. Now, have you separate rooms in your exchange at Louisville, Ky., for the use of your long distance or toll operators?

A. I presume so.

Q. Have you operators and employés who devote their time to nothing else except long distance messages or toll business?

A. We have operators who do that.

Q. Are they employed for that specific purpose?

A. While they are in the service in the toll room, they are.

Q. Have you any employés who are engaged in maintaining the toll lines exclusively in the City of Louisville?

A. None that I know of.

Q. Do the employés of your company in Louisville who maintain lines of your company in Louisville, do their work indiscriminately on exchange lines and on toll lines?

A. The question is too technical for me to give a positive answer about it.

Q. Are the employés of your company who are engaged in work connected with operating and maintaining the toll department of your business in Louisville, Ky., charged to the maintenance account of the Louisville exchange—are their salaries charged to the maintenance account of the Louisville exchange?

A. We have no toll department in Louisville, Ky.; the
778 exchange is operated as a whole, and some of the employés who are engaged in maintaining the exchange lines are sometimes engaged in repairing toll lines.

Q. Are their wages charged to the Louisville exchange operations?

A. Yes.

Q. Is that true of the employés whose services are required in connection with transmitting long distance messages?

A. Yes, the salaries of all operators in Louisville are charged to Louisville.

Q. Now you have in several hotels in Louisville, employés whose services are made use of in conection with long distance messages, have you not?

A. Their services are made use of in connection with all messages from the stations where they are located.

Q. Do you know anything of the arrangement of your telephone apparatus in the Sealback Hotel in Louisville?

A. Not personally.

Q. Is it not a fact that on the main floor or main lobby of the hotel, there are three or four pay stations of your company installed in booths, which have connected with them a slot machine apparatus and isn't it true that these booths or pay stations are used by guests and others at the hotel for all local calls?

A. I don't know; I am not familiar with the facts you
779 mention.

Q. Mr. Smith, have you completed with the papers which Mr. Warren furnished you yesterday?

A. I have not had an opportunity to look at them, but if you wish them, I will send for them.

Q. I should like to have them sometime tomorrow. Can you complete with them by eleven o'clock tomorrow morning?

A. I will give them to you then.

Q. When we adjourned yesterday I had asked you to ascertain what change you made in Jan'y 1908 in regard to charges which you had theretofore been making against the Louisville exchange for operating that exchange. Can you furnish me with that information?

A. I have examined by comparison carefully, the pay rolls for the

month of November 1907 and January 1908, and I cannot see that any changes were made in the classification of the pay rolls which involved the total expenses charged to the Louisville exchange, except that formerly a part of the manager's salary was charged to construction, and this was discontinued in 1908 as new work at that time became very quiet.

Q. Mr. Smith, Mr. Granbery has asked for an adjournment until Monday morning. In the meantime I should like for you, if you will, to examine your books and records and ascertain whether during the years 1901, 1902 or 1903 or at any time, any
780 credit has been given to construction account for any switchboard or any panels or sections of switchboard, removed from the Louisville exchange, or from the main office of the Louisville exchange.

At this hour, 12 o'clock M., an adjournment was taken until next Monday Morning, September 13th, 1909, at 9:30 o'clock.

781 MONDAY MORNING, *September 13th*, 1909.

The further cross-examination of Mr. H. BLAIR SMITH was resumed this morning, September 13th, 1909, at 9:30 o'clock, pursuant to adjournment.

A. I wish to make a correction. Mr. Blakey, you asked me in regard to this matter, and I said the switchboard explains itself. In reading the deposition over, I see that on page 64, I was asked the question, "What does that language mean that you have just read"—referring to a switchboard, and I answered, "I don't know that I could express it any clearer than it is in this invoice." Then the question, "Does it mean that the items going to make up the seventeen thousand dollars was an expenditure to increase the capacity of the main switchboard by adding thereto sufficient equipment to take care of 4800 subscribers' lines, and 200 outgoing trunk lines, 180 incoming trunk lines and 160 toll lines. Ans. I take it to mean that, since it states it."

Now, I would like to add to that, that the original maximum capacity of the main switchboard from this invoice seems to have been 4800 subscribers' lines, and that in putting on another section, this section must accommodate a switchboard for that many lines, although the section enlarges the capacity of the board only to the extent of allowing to be added thereto 200 outgoing
782 trunk lines, 180 incoming trunk lines and 160 toll lines.

Mr. BLAKEY:

Q. What was the capacity of the original switchboard?

A. I don't know, and I must say, that in answering the question I am doubtful even now as to whether my answer is entirely accurate, but what I wished to correct was, that we had added capacity for 4800 more subscribers' lines, for it did not.

Q. Mr. Smith, when we adjourned Friday, I had requested you to examine your books and ascertain whether during the years

1901, 1902, 1903 or any time, any credit had been given to construction account for any switchboard or any panel or section of a switchboard removed from the main exchange of the Louisville office. Did you procure that information?

A. I am unable to find from my records that anything of the kind was done.

Q. Now just before we adjourned you were also testifying in regard to any change in your method of charging up the salaries and wages of men employed in the district. Is it not true that prior to 1908 the entire salary of Mr. Hall, the district superintendent, was charged to the expense of the Louisville exchange?

A. That is not true.

Q. What portion of it then?

A. In securing the information to answer your question, I
783 took out the November 1907 pay rolls and on his pay roll I found the whole of his salary charged to what we term general account, and no part of it directly charged to Louisville.

Q. Do you know whether the entire salary of Mr. Hall was at any time charged to the Louisville exchange—expenses of the Louisville exchange?

A. I think early during his connection with the exchange it was so charged, and I believe it was correctly charged.

Q. Mr. Smith, I should like to see Voucher No. 705 for May 1907, also No. 205, May 1906?

A. I hand you May Voucher 1906, No. 205, and May 1907 Voucher, No. 705.

Q. Voucher No. 205 has as a part of it, which seems to have an item of $575.00 charged up either to Louisville expense or the Louisville construction. Will you please examine that and state what salaries are included in that part of the voucher?

A. This sheet shows salaries paid to the superintendent and manager.

Q. Who was the superintendent at that time?

A. Mr. George G. Hall.

Q. To what account was his salary charged?

A. One-half to operating, salaries and wages; one-fourth to maintenance, reconstruction; and ¼ to maintenance, current repair

784 Q. Was Mr. Hall superintendent of the district at that time?

A. I think so.

Q. Was all of that charged to Louisville?

A. It was.

Q. How about the other name appearing on the pay roll?

A. Mr. Reed, the manager. His salary was charged, one-half to maintenance, current repair; one-fourth to maintenance, reconstruction; and one half to construction, aerial.

Q. Was his salary all charged to Louisville?

A. Yes.

Q. Has he any duties outside of Louisville?

A. Well, his duty was in charge of Louisville and the little ex-

changes to which Louisville got service without additional charge, those little exchanges in the Louisville group.

Q. Did he spend a part of his time in Jeffersonville and New Albany?

A. Probably so.

Q. Anchorage?

A. He had general supervision of all those little exchanges.

Q. Jeffersontown?

A. Probably.

Q. Corydon, Ind.?

785 A. Not that I know of.

Q. West Point?

A. I don't just remember when West Point was put under Louisville.

Q. Are all of the salaries of those two men charged to Louisville, or are they charged differently now?

A. At the present time the whole of the manager's salary is charged to Louisville and the superintendent's salary is charged to general expenses.

Q. I now show you voucher No. 705, for May 1907, which represents an expenditure of $625, and ask you if the facts you have testified to about Voucher No. 205 are substantially true in regard to voucher No. 705?

A. Yes.

Q. What names appear on that pay roll?

A. This is the pay roll for the superintendent and the Louisville manager.

Q. Have you before you a copy of the exhibit filed with the direct examination of this deposition, in which you show the expenses of operating and maintenance of the Louisville exchange for the years 1905, 1906, 1907 and 1908?

A. Yes.

Q. What does that exhibit show to be the total general expenses for the year 1905?

A. $44,645.31.

Q. And what does the joint report show to have been the

786 total of the general expense for that year?

A. The joint reports does not include any uncollectable, which was included in my general expenses and with that amount, shows $40,476.83.

Q. What do you show to be the uncollectable for that year?

A. $1679.38.

Q. Now, what does your exhibit show to be the total of the operating expense?

A. $92,333.95.

Q. And what does the joint report show it to be?

A. $84,264.54.

Q. Which one of those do you now say is correct?

A. For eleven months of 1905 we incorrectly and through error charged to Louisville $30.00 per month, being the salary of a clerk

kept at that office for other purpose than for Louisville, so that $330 is included in my operating total, in error.

Q. Otherwise than that would you say that your total of operating expense is correct, and not the joint report?

A. Mine is according to the books and I believe the books are correct.

Q. Now, under maintenance repairs, what does your exhibit show to be the expenses under that head for the year 1905, Mr. Smith?

A. $49,151.17.

Q. And what does the joint report show it to be?

787 A. $49,819.14.

Q. Which of those items do you now think is correct?

A. The joint report is about six or seven hundred dollars more than mine, but I know of no reason to change mine.

Q. Now maintenance reconstruction. What does your exhibit show?

A. Mine shows $41,243.92.

Q. And what does the joint report show?

A. $41,051.02.

Q. Which do you now think is correct?

A. There is a difference there of about two hundred dollars, and I don't know of any reason to change mine.

Q. When did you begin separating maintenance repairs from maintenance reconstruction?

A. I think it was August 1st, 1904.

Q. And when did you cease doing that, if you ever ceased doing it?

A. Well, we ceased keeping separate accounts, January 1st 1908.

Q. What does your exhibit show as the total expenses for that year?

A. My exhibit shows, including uncollectable, $240,263.39.

Q. And the joint report shows how much?

A. The joint report excluding uncollectable shows $227,171.29. Please note, however, there is a big difference reported by

788 me and the revenue reported by the joint report, so that the net difference is not much.

Q. Now your exhibit shows how much as the instrument expense?

A. My exhibit shows $12,889.04.

Q. Do you know what your books show to be the instrument expense?

A. The books do not show this. It must be calculated on revenue.

Q. What does the joint report show as the proper amount to be charged up as instrument expense?

A. The joint report, reporting less revenue than I report, shows a less instrument expense. The joint report shows $11,559.76 and my report shows $12,889.04. You will note that my report shows balance of revenue $37,900 and some odd dollars and the joint report $31,652, or, about $6,250 less than my report.

Q. How much did you pay the American Telephone and Telegraph Company on account of this item?

A. The contract is to pay four and one-half per cent. of the gross revenue derived from the use of instruments.

Q. Read him the question.

A. For the whole territory?

Q. For the Louisville exchange?

A. My apportionment shows $12,889.04.

789 Q. Now, taking up the year 1906 what does your report show as the total of the general expense?

A. Including uncollectable it shows $50,725.02.

Q. And what does the joint report show it to be?

A. Excluding uncollectable it shows $47,218.52.

Q. What amount is added in your exhibit as uncollectable?

A. $1519.41.

Q. What does your exhibit show as the total operating expenses?

A. $87,950.73.

Q. And what does the joint report show?

A. $80,738.06.

Q. And which of those items do you now say is correct?

A. I find that in this year also that same clerk for three months at $35.00 per month, or a total of $105 included in Louisville, through error.

Q. With this exception then your statement as contained in your exhibit, is correct is it?

A. It is according to the books and I think correct.

Q. Now, maintenance repairs, what does your exhibit show as the total under that head?

A. $54,621.59.

Q. And what does the joint report show?

A. $52,796.93.

Q. Which of those items is correct?

A. Mine is according to the books of the company and I

790 believe correct.

Q. Now, maintenance reconstruction, what does your exhibit show?

A. $40,650.22.

Q. And what does the joint report show?

A. $40,626.07.

Q. Which of those items is correct?

A. There is a difference there of only $24, and I know of no reason to change mine.

Q. What does your exhibit show as the total expense for the year 1906?

A. $247,130.03, including uncollectable.

Q. And what does the joint report show to have been the total expense?

A. $233,898.28.

Q. Which of those items do you say is correct?

A. I know of no reason to change mine.

Q. Now, taking the year 1907, is there any practical difference between the total of the operating expenses as shown on your exhibit and that as shown in the joint report, as to general expenses?

A. There is a difference of about five thousand dollars.

Q. And yours includes the uncollectable, amounting to $2,366.94, does it?

A. Yes.

791 Q. And with that exception, which would you say is correct, the figures in the joint report, or the figures in your exhibit?

A. My figures are according to the books, and I see no reason to change them.

Q. Now, the operating expenses for that year, what does your exhibit show to have been the charges under that heading?

A. $85,851.46.

Q. And what does the joint report show it to have been that year?

A. $79,661.04.

Q. And which of those items is correct?

A. Mine is according to the books of the company and I believe them to be correct.

Q. Now, maintenance, repairs, what does your exhibit show to have been the item charged under that head?

A. $64,732.89.

Q. And what does the joint report show to have been the expenditure under that head?

A. $65,616.31.

Q. And which item do you now say is correct?

A. I believe mine is correct. It is according to the books of the company.

Q. Maintenance reconstruction as appearing on your exhibit for the year 1907, what is that?

792 A. $44,388.37.

Q. And what does the joint report show the amount to be, Mr. Smith?

A. $41,895.10.

Q. I notice the joint report does not include any item for rent, light and heat under this heading and your exhibit shows $628.24, I believe, opposite that item. How do you explain that discrepancy in the two statements?

A. My exhibit does show $628.24 but I don't see that the joint report goes into detail to show what it does include in those expenses.

Q. Have you a copy of Mr. Farnham's report?

A. Yes.

Q. Will you look on Exhibit No. 8 and see what his total for maintenance reconstruction for 1907 amounts to?

A. Mr. Farnham shows two totals.

Q. The total under the head of expenses, as adjusted by accountants for analysis, amounts to how much.

A. $41,895.10.

Q. And is that the amount which the joint report shows?

A. It is, I would explain that in this way, that it is impossible, as the expenses are incurred to make an apportionment of the space

used by the maintenance force between maintenance current repair and maintenance reconstruction, and in making up my
793 exhibit, it is probable that this apportionment was then made on the basis of other charges made. You will note that Mr. Farnham reports maintenance repairs, rent, light and heat, as adjusted by the accountants, at $2,393.39, while I report it at $1,556.65.

Q. Would you say then that the item charged up to expense for rent, light and heat appears on your books as charged up to maintenance, repairs. In other words, that the item appearing in your exhibit under maintenance repairs of $1,556.65 opposite rent light and heat and the item appearing under reconstruction opposite rent, light and heat, amounting to $628.24 both appear on your books as charged up to maintenance repairs?

A. For that year, and it is the case with the rent, light and heat of the maintenance department is charged direct to maintenance, current repair, and then at the end of the year apportioned.

Q. And you, in making up your exhibit simply apportioned it between those two general headings?

A. Yes.

Q. Now what do you show in your exhibit as being the total of the expense for the year 1907?

A. $260,126.33.

Q. And what does the joint report show it to have been?

A. My exhibit shows uncollectable included in expense
794 and the joint report does not. The joint report shows $246,598.61.

Q. And what was the uncollectable for that year?

A. As shown in my exhibit, $2,344.94.

Q. Well, with the exception now of the uncollectable, which would you say is correct; the items appearing in the joint report or the items appearing in your exhibit?

A. I believe mine is correct; it is according to the books.

Q. Now, for the year 1908, what does your exhibit show as being the total charged to general expense for that year?

A. Including uncollectable, $47,128.19.

Q. And what did the uncollectable amount to?

A. $3707.34.

Q. And what does the joint report show it to have been?

A. The joint report, which does not include the uncollectable, shows $42,076.75.

Q. Which of those items do you now say is correct?

A. My report or exhibit is according to the books of the company, and I believe to be correct.

Q. Under the head of operating expenses, what does your exhibit show to be the total for that year?

A. $79,621.18.

Q. And what does the joint report show that item to have been?

795 A. $75,440.28.

Q. And which do you now say is correct?

A. I find that there were clerical errors made and the deduction

of $160.60 made by the accountants is correct. Aside from this, my exhibit is according to the books of the company and I believe to be correct.

Q. Now, under the head of maintenance repairs, what does your exhibit show to have been the amount expended that year under this head?

A. My exhibit shows $67,029.57.

Q. And what does the joint report show it?

A. $54,705.91.

Q. Which of those items do you now say is correct?

A. I think mine is correct.

Q. Now, what does your exhibit show to have been the total under the head of maintenance reconstruction for that year?

A. $19,515.72.

Q. And the joint report shows how much?

A. $31,450.07.

Q. And which of those items do you say is correct?

A. I think mine is correct.

Q. Did you keep a separate account for the year 1908 as between maintenance repairs and maintenance reconstruction?

A. We did not.

796 Q. How did you then arrive at the $19,535.72 as the maintenance reconstruction?

A. We studied the reports and pay rolls and made a division therefrom.

Q. Your original books then would show how much as the total of both maintenance reconstruction and maintenance construction?

A. You are getting your names confused I think.

Q. Maintenance, current repairs, and maintenance reconstruction?

A. The total shown by the books is $86,565.29.

Q. And what does the joint report show as the total of both of these items for that year.

A. $86,155.98.

Q. From what books do you derive the total of the amounts which appear in your exhibit as the expense for these years about which you have just testified. Please designate the books and the titles of the books?

A. The books are subsidiary to the general ledger of the company. They are called by us, exchange, revenue and expense books.

Q. Now, have these books ever been balanced for the years 1907 and 1908?

A. You asked me the question before. I think the 1908 books were balanced while the accountants were here. The 1907

797 books have recently been balanced. The 1907 books while out of balance with the general ledger, were, I think, found to be not at all badly out of balance.

Q. Now haven't these books been changed a great many times since the first entries were made on them?

A. If any changes whatever were made in the books, they were made from the original entries.

Q. Have they, or not, been changed a great many times since they were made up?

A. If any clerical errors were found in them, they were changed.

Q. Do you know who furnished the data from which the facts contained in the bill which was filed in the Federal Court at Louisville, Kentucky, for the Western District of Kentucky, as of date December 4th, 1907, February 6th, 1909, and March 6th, 1909?

A. I take it that the data came from the auditor.

Q. Now, you will notice from the data in the bill filed December 4th, 1907, that the expenses for the year ending January 1st, 1906, are placed at $240,729.52. Is that correct?

A. The expense shown in my exhibit was $240,263.39. The difference is $466.13. I don't know whether the figures are copied correctly on the original bill, and if they were, just where
798 the difference comes in.

Q. The figures I read into my question are the correct figures as they appear in that bill?

A. They are as they appear in the copy I now have before me.

Q. Now, I wish you would turn to Mr. Farnham's report and say what he shows were the expenses for that year?

A. Will you please state what exhibit of Mr. Farnham's you wish me to refer to?

Q. Exhibit No. 8?

A. For the year 1905.

Q. For the year 1905. I refer to the first item on that exhibit?

A. The first item or the first column in Mr. Farham's exhibit shows expense $240,729.52.

Q. Now, turning to the bill filed February 6th, 1909, what does that bill show to have been the total expense for the year 1908?

A. The figures shown in the bill were given to the general counsel as explained to him at the time, before the books for the year 1908 were closed and balanced, and it was necessary for us to apportion as best possible the December figures, but I stated to him that I believed the results were correct and the best we could give him at the time.

Q. And what did they show?

799 A. The total expenses show as $226,727.94.

Q. And what does the bill filed March 6th, 1909, show as the total expense for that year?

A. $239,710.48.

Q. And what does your exhibit show to have been the total expense for that year?

A. $227,495.66.

Q. And was a change to the expense you have indicated, made on the books between February 6th and March 6th, 1909?

A. No.

Q. How did you happen then, on February 6th to give out a statement which your president swore to, showing that the total expenses were one amount and give out another statement, which your president swore to one month later, whicch showed an entirely different amount?

A. The statement made up in March includes a small charge for reserve for deferred maintenance. I don't know whether the bill previously filed specified that nothing had been included for this, but my exhibit and deposition filed in this case do clearly specify and state that I have included nothing for depreciation.

Q. Eliminating the amount for deferred maintenance, or deferred depreciation, what would be the sum of the other items included in the bill of March 6th, 1909?

800 A. The exact amount shown in my exhibit, No. 1, namely, $227,495.66.

Q. Then, there would appear on your books then, a difference of something like eight hundred dollars between February and March, would there, if the items were taken from the books?

A. As stated previously, the February statement was the nearest possible estimate we could get at that time, and the difference between those statements showing the estimated expense and the actual expense as shown in my exhibit and eliminating any reserve whatever, is $767.72. I wish to say the bill which shows the estimate, is that much less than the actual shown in my exhibit No. 1.

Q. Now, coming to the items of the two dates, as I understand your statement on direct examination, the bad debts as I understand your statement, are charged up as a part of the operating expenses, of the exchange, are they?

A. No, they are charged as part of the general expense.

Q. Charged as a part of the expense, in other words?

A. Yes.

Q. Now, when you charge up say two thousand dollars one year, for bad debts, and during the year some of those bad debts are not collected and not permanently charged off, do they appear the next year in the item going to make up bad debts?

A. We do not include any amount in bad debts until it
801 has *has* been charged off as worthless and the cashier of the exchange has been authorized to claim credit therefor, and the entry is made on the books.

Q. Do you carry that entry into the next year's expenses if it still remains on your books as bad debts?

A. We do not.

Q. I call your attention to the transcript of the record in the case of the Railroad Commission of Louisiana vs. The Cumberland Telephone and Telegraph Co., No. 20,850, which I referred to a day or two ago, and ask you if these questions, which I read, were asked you and if the answer which appear after these questions were made by you to those questions:

"Q. Then, as I understand you, if bad debts of one year amount to ten thousand dollars, you carry that same item—you charge it to expense for that year?

A. We charge it to expense at the time we consider it worthless.

Q. And it is charged up to that year?

A. Yes.

Q. Then you carry it over and charge it to expense the next year?

A. In some instances, that is correct.

Q. When it is paid, you do not?

A. If paid or not, we credit it to the year in which it is
802 earned; that is, the moment we earn anything it is credited to the earnings, and when we find we cannot collect it, we charge it to bad debts.

Q. Then you carry it over to the next year?

A. Sometimes."

Q. Were those questions asked you and did you answer in that way?

A. You have read from the book; what I stated in that deposition, I state now. The examination in that deposition was for the purpose of determining whether we included in our expense account for each year as bad debts, the accounts which could not be collected but which were earned that year. At that time, I explained that we could not determine what were bad debts for probably ninety days, sometimes longer, after the revenue was earned. At the time we determined that accounts were worthless, we charged them off and they are included in the year in which they are charged off as uncollectable. If at any time we are so fortunate as to recover any part of the amount which has been so charged off, it is credited to bad debts in the year in which it is reported as collected. That was the case at that time and it is the case now.

Q. Can you tell me when the company abandoned the plan of charging $6.50 for unlimited business telephones in the city
803 of Louisville?

A. The $6.50 rate was for three year contracts, and was abandoned as of November 1st, 1904.

Q. Now, on what basis do you justify your charges of $8.00 for an unlimited business telephone; $5.00 for a party line business telephone; $4.00 I believe for an unlimited residence telephone, and $3.00 for a party line, residence telephone. I don't mean as to the necessity for making earnings, but on what basis are your classes of charges for various classes of telephones made. Why do you charge for one class of telephone $8.00 and for another class of telephone $3.00?

A. I don't make the rates.

Q. Do you know the theory of charging more for one class of telephones than for another class?

A. I have never been instrumental in making rates.

Q. Read him my question.

(Question read.)

A. All I can say is, I have nothing whatever to do with the making of rates.

Q. Do you know why the company charges one rate for one class of telephones and another rate for another class of telephones?

A. Because, considering all facts it is proper; further than that I don't know.

804 Q. Who does make the rates for the company?

A. I think the president.

Q. Do you know how many operators they have in the different exchanges at Louisville?

A. Today?

Q. Yes?

A. No, but I can determine if you wish.

Q. Now, on page 78 of your original examination, you stated that the more people a subscriber can reach, the more advantage it is to him. That is true, is it Mr. Smith?

A. I believe the more people a subscriber can reach by telephone, the more advantage it is to him.

Q. On that theory would you say that the telephone company is entitled to charge more for the service it gives, according to the number of subscribers it has to its telephone exchange?

A. Are you asking me to theorize?

Q. You have theorized, I suppose you have, you have either theorized or stated a fact and I should like for you to carry it out to its logical conclusion, if you can?

A. I didn't understand the question when I first answered it. Of course a telephone system with a great number of subscribers, is entitled to receive more than a telephone system with a smaller number, for more than one reason.

805 Q. Would you say it was worth more per subscriber to a telephone subscriber to talk to one thousand other subscribers, than it would be to talk to only five hundred subscribers?

A. I stated that in my direct examination.

Q. And, on the same theory, would you say it was worth more per subscriber to each subscriber to be able to talk to ten thousand subscribers, than it would be to talk to five thousand subscribers?

A. It is worth more.

Q. Now, on page 36 of your direct examination, you were asked by Mr. Granbery to file a statement giving the name of every person as of January 1st, 1908, paying for exchange service in the City of Louisville, or to the Louisville exchange, and a similar statement with reference to April 1st, 1908, to which you answered you would do so, marking those as of January 1st, 1908, as Exhibit No. 5 and those as of April 1st, 1909, Exhibit No. 6. That question and answer would seem to imply that your exhibits Nos. 6 and No. 5, contain only the names of subscribers paying for exchange service. Does that list include the names of all subscribers irrespective of whether they are paying for service?

A. That list was intended to be an exact copy of the rental books for that exchange. The rental books are intended to show

806 everyone subscribing to the Louisville service.

Q. Irrespective of whether they pay for it or not.

A. Every one.

Q. Does that mean everyone who has a telephone connected with the Louisville exchange?

A. It includes everyone who can be classified as a Louisville subscriber. I know of no one whose name is in the directory who is not

on the rental books and of no one whose name was omitted from the lists filed as exhibits.

Q. Now, on page 28 of your direct examination you stated that some of your subscribers, such as the Southern Railway paid their rentals direct to the Nashville office. Do the names of those subscribers and the amounts they pay, appear in these exhibits?

A. They should.

Q. Will you compare those exhibits with the subscribers' list as to the Southern Railway which paid direct to Nashville and if any of them do not appear on those exhibits, will you cause them to appear on those exhibits?

A. I find in Exhibit No. 5 the Southern Railway Co. does appear. I will make the examination you request and let you know later.

Q. Now, do you know the number of telephones—actual telephone instruments—which are installed in Louisville and suburbs
807 which are directly connected with and a part of the Louisville exchange system?

A. I think all of the instruments which I have reported in my Exhibit No. 3 are connected with the Louisville Exchange.

Q. Do you know the number of lines entering each of the exchanges?

A. No, I do not.

Q. Does each subscriber having a direct line—does such line enter one of the exchanges?

A. If he is a subscriber to the Louisville exchange, it does.

Q. And if he is a subscriber to a party line then does he have a direct line in one of the exchanges or does he, together with the others on the line, have one line entering the exchange?

A. Party line subscribers to one line have only one line entering the exchange.

Q. What connection have extension sets and stations connected with private branch exchanges with the different exchanges of the city. I mean by different exchanges, Main, South, East and West?

A. An extension set is practically a second telephone on a direct line, being able to get central direct, provided that it is an extension set to a direct line station. There are also extension sets to
808 private branch exchange stations, which enable the user to signal the private branch exchange operator, just as from the main set. The private branch exchanges are stations which, as the name implies, are connected to a private branch exchange switchboard. These switchboards are connected by trunks to the exchange switchboards.

Q. Subscribers desiring to use extension set and desiring to use a station connected with the private branch exchange switchboard, use the same process, substantially, then, to reach the main exchange, do they?

A. No. If the extension set is attached to a direct line instrument, they can signal the central exchange direct. If such extension set is attached to a private branch exchange instrument, they signal the private branch exchange operator direct.

Q. In the case of the extension set it simply goes over the direct

line to which the extension set is attached, and in case of the station on a private branch exchange, the subscriber desiring to use the instrument which constitutes the set goes over the trunk line leading into the private branch exchange, does he?

A. Yes. You see, Mr. Blakey, anyone wishing to communicate with a Louisville subscriber goes through the same process if he has a private branch exchange instrument, to get his connection,
809 with the main office, as a subscriber to the South office goes through to get the connection to the same number of the main office.

Q. What I want to ascertain Mr. Smith, is the method of a subscriber having a station connected with a private branch exchange and the subscriber having an extension set. As I understand your explanation, the subscriber having the extension set talks over a direct line just as the original subscriber does. Is that correct?

A. The extension set is nothing more nor less than a second instrument attached to the same line that the first instrument is attached to, no matter whether that first instrument or main instrument is attached direct to a switchboard of the company and operated by the company, or whether attached to a private branch exchange switchboard not operated by the company.

Q. In the case of the extension set, he makes his own connection, and in case of a private branch exchange, the private operator makes the connection?

A. Not necessarily. There are a number of extension sets to private branch exchanges stations. In my office, for instance, I have a connection with the private branch exchange or extension set.

My stenographer has an instrument on his desk connected with the same line, and when I am rung, he answers. The extension set can be put on an instrument connected direct with one of the company's exchanges, or can be attached to an instrument at-
810 tached to a private branch exchange.

Q. And when it is connected to a private branch exchange, it is called, in your exhibit, a station, is it?

A. Whenever an instrument is connected to a private branch exchange, it is classified as a station.

Q. I notice in the exhibit you have filed, especially for the month of April 1909, which I believe is Exhibit No. 6, there are several hundred extension sets and possibly two thousand or more stations. Do those station or extension sets and stations go to make up the total number of subscribers which one of your subscribers shows you to have had about that time?

A. My exhibit shows the number of stations which can get service, that is, can call any other Louisville station and be called by any other Louisville station without additional charge.

Q. And that includes extension sets and stations?

A. It includes all instruments connected with the Louisville exchange.

Q. I assume then that means extension sets and stations?

A. It means extension sets, and private branch exchange stations.

Q. I notice your Exhibit No. 6 also shows a number of names,

after which appears the word "list" What do you mean by the word "list"?

A. Strictly, a list subscriber is one who has contracted to
811 to have an additional insertion made in the telephone directories, being already a user of a telephone instrument.

Q. Is the small sum—I mean, is he simply someone whose name is put in the directory and who is authorized to use the instrument of some other subscriber?

A. We term such a one a joint user.

Q. Then if Smith & Jones were subscribers to your telephone system, and their names appeared in your directory as Smith & Jones and each of them wanted their respective names, for instance, John M. Smith and Jim Jones, placed in the directory would that be termed what you say is a list—their additional names?

A. Yes, if their names were to be listed with the telephone used by Smith & Jones.

Q. Would that list appear as one of the number going to make up the total of subscribers?

A. No, it would appear in the telephone directory, but would not be counted as a separate instrument.

Q. Now, a joint user, I believe, as you have just stated, is some individual who desires to make use, jointly with some other subscriber, of a telephone rented to such subscriber. Is that correct?

A. Yes, and his business is not connected with the subscriber. That is, they are not partners in the same business, nor either representing the other.

812 Q. Now do the joint users go to make up the total of the number of subscribers as appearing in your exhibit?

A. A joint user is not considered a subscriber.

Q. Then, I assume that extra buzzers and bells which sometimes appear in this exhibit No. 6 are not classified as subscribers?

A. They are not.

Q. What are your charges for what you term lists?

A. My Exhibit No. 10 on sheet showing rates in effect in Louisville, Ky. under date of October 1st, 1907, shows the rate to be twenty five cents per month, net.

Q. And what is the charge to a joint user?

A. This same exhibit shows this as one dollar per month, net.

Q. And what is the charge for an extension set?

A. This same exhibit shows the extension set as $1.25 per month, subject to a discount of fifty cents per month if the rental is paid quarterly in advance. This, of course, applies within the exchange radius.

Q. Now, one of your exhibits shows the number of subscribers for the various years since 1900. Would you say that the same proportion of extension sets and stations were installed and in force during the various years for which you have given the number of subscribers, that appear in Exhibit No. 6, as of April 1st, 1909?

A. I cannot answer that without making an analysis.

813 Q. What would be your judgment on the matter?

A. I cannot guess, Mr. Blakey. I have such a tremendous

number of figures in my office that it is an impossibility for me to make guesses.

Q. Were those items of extension sets and stations included as subscribers for all the years for which you have filed a statement showing the number of subscribers for those years?

A. Yes.

Q. One of your exhibits shows the rates charged by you in New Orleans. I show you a book which has on its cover, "Telephone Conditions in New Orleans, La., being report presented by Special Committee of the New Orleans Board of Trade, approved April 8th, 1908" which seems to contain among other things, on page 25 an agreement with the Cumberland Telephone and Telegraph Company, signed by that company as of the 9th day of April 1908, and also as signed by the New Orleans Board of Trade. Will you please examine that paper purporting to be such agreement and state whether that agreement was entered into at that time?

A. I believe so.

Q. Is that agreement still in force and are the rates specified in that agreement still in force in New Orleans?

A. As I remember, there have been one or two changes in
814 the rates.

Q. What does that agreement show as the flat rate, unlimited service, for business telephones?

A. $10.50 per month, gross.

Q. And what discount is that subject to?

A. Fifty cents per month, if paid quarterly in advance.

Q. And what does that agreement show as the flat rate, unlimited service, direct line, for residence telephones?

A. $4.50 per month, gross.

Q. And that is subject to the same discount, is it?

A. Yes.

Q. And what does that agreement show as the charge or as the rental for pay stations?

A. This agreement shows direct line, only, five cents for each call, monthly guarantee $6.50 gross.

Q. And what does that agreement show as to the charges for private branch exchange service?

A. It shows three different classes of private branch exchange service.

Q. For unlimited service, what does it show?

A. Unlimited service, switchboard equipped for twenty lines or less, $5.50 per month, gross. Switchboard equipped for 21 lines or more, per month, $10.50 per month, gross; unlimited trunk lines, each, per month, $15.50 gross; telephone instruments in the
815 same building with the switchboard, each, per month, $1.50, gross; telephone instruments located outside of the building in which the switchboard is installed, will be charged for as follows; within one mile, circuit mileage, of private branch exchange, of the switchboard, each instrument, per month, $6.50, gross.

Q. Are all of those items subject to a discount of fifty cents per month?

A. Yes, if paid quarterly in advance.

Q. What does that agreement show as to the charge for extension sets, on a direct line?

A. Extension sets to business, direct line telephones, $1.50 per month gross; same for residences.

Q. The other two switchboard classes, or rather, the other two private branch exchange classes, are limited service, and measure service, are they not?

A. Yes.

Q. I call your attention now to page 85 of this report under the caption as follows: "The following table shows the exact number of telephones and telephone subscribers in New Orleans, together with the monthly revenue therefrom, as of date December 22nd, 1907." I will ask you how many stations appear under that head connected with private branch exchanges?

A. Two Thousand, four hundred and sixty-four.

816 Q. Now, on page 42 of your direct examination, you were asked this question, and answered it as follows, as appears from your deposition:

"Q. During 1908 what service did the subscribers to the Louisville exchange receive; I mean, excluding pay stations and measured service patrons?

A. They received unlimited service to all exchange stations connected to the Louisville exchange, New Albany, Jeffersonville and to subscribers to other exchanges in Jefferson county who paid a rental for Louisville exchange service. Those exchanges are Anchorage 42 subscribers; Harrod's Creek, 42; Jeffersontown, 36; Pleasure Ridge Park, 41; St. Mathews, 63. There are also some at Pewee Valley and West Point, and these two exchanges are outside of Jefferson County, and Sheapardsville.

Q. Now, do those subscribers in Anchorage, Harrod's Creek and the other towns named, who pay a rental for Louisville exchange service—does the rental so paid by them, appear as the earnings of the Louisville exchange?

A. It does not.

Q. Now, can you tell me what were the rates for the year 1908 from pay stations operated in connection with the Louisville exchange. I should also like to know what part of the earnings

817 of any pay station was paid to the subscriber as a commission or a proportion of the amount taken in by the pay station?

A. Pay stations take in revenue for local service and for toll line service, revenue to other company's points. Please specify just what you do want?

Q. How can you tell that a pay station takes in revenue for toll station service?

A. Whenever a call for a toll point is made from a pay station, the pay station is charged therewith just as a subscriber.

Q. And the person making the call, drops the coin just the same as he would if making a local call, does he?

A. Yes.

Q. I desire only the receipts from pay stations for local calls, and not the part that is credited to toll line service?

At this hour, 12:30 o'clock, P. M., a recess was taken until this afternoon at two o'clock.

818 H BLAIR SMITH, cross-examination, resumed at 2 p. m. Sept. 13, 1909, by Mr. Blakey, for the Defendant.

A. The gross revenue from Louisville pay stations for the year 1908, for Louisville exchange service—that is, the same service that Louisville subscribers get—was $25,802.53.

Q. Well, that included telephones in hotels, drug stores, and other business houses, as well as in residences, did it?

A. That included all revenue from every station which is known as a nickel-in-the-slot or pay station.

Q. And did not include long distance tolls?

A. Did not include long distance tolls. And does also include money which really does not come into slots, but which is collected at the hotels by the operators.

Q. It does include that?

A. Yes, I say that, gross.

Q. Now can you tell me how much is collected at hotels and places of that kind which is not paid into the nickel-in-the-slot machines?

A. My records do not show that.

Q. Does that include receipts from tenants in the various rooms of hotels?

A. I think so.

819 Q. How long would it take you to ascertain how much of that sum is collected from what is known as business pay stations, and how much is collected from what is known as residence pay stations?

A. It would require the analysis of the receipts for the 12 months for each of the several thousand stations.

Q. Do your reports from Louisville for each month show how much is taken in from each station?

A. They did not for the year 1908.

Q. Will they for any year?

A. Not any previous year.

Q. Do they at the present time?

A. They do.

Q. How long has that been true?

A. I think it was begun some time this year, just exactly what month I cannot say, but it is only for the last three or four or five months.

Q. Will you produce some of those statements in which the revenue from each station is shown?

A. Yes.

Q. You have furnished me, Mr. Smith, with six sheets showing, I presume, the receipts from six pay station telephones for one month; is that correct?

A. Yes.

Q. Now will you produce all of the sheets of a similar nature showing the receipts from pay stations for that month?

820 A. I can produce all that were sent in for that month, and all that are included in that month's revenue. You see some of these show that the collection has been made once in 32 days, and another one in 30 days.

Q. Will the ones you produce show what period the amount appearing in the books covered? What period is covered by the amount in the books?

A. Each slip shows that.

Q. How often are collections made from the resident pay stations?

A. The intention is to make the collection monthly.

Q. Suppose then you produce all the sheets you have for this month.

A. I can produce all that came in for the month of August.

Counsel for complainant suggests that it is probably best not to go into matters of this character since the filing of the bill until passed upon by the Master Commissioner. If the Master Commissioner wishes to take up the financial matters since the filing of the bill down to the time the proof is closed, it may result in lengthening the proof considerably and may result in a long time before the proof can be closed, and for that reason, until the Master Commissioner rules on it, complainant's counsel thinks it best not to go into it.

821 By Mr. BLAKEY, resuming examination:

Q. As I understand it, Mr. Smith, prior to March 6th you have no report showing the receipts from the pay stations separately?

A. The records for those are in the Louisville office, in detail, and not in the Auditor's office.

Q. Who has charge of those records in the Louisville office?

A. The Manager of the Exchange.

Q. Who is the particular book keeper who would compile those receipts and have under his immediate charge or control the records showing such facts?

A. I don't know.

Q. Now this total sum of $25,000.00, as I understand, is the gross receipts from the pay stations?

A. That is the amount of money that we found in the pay stations which had been deposited, for Louisville Exchange service.

Q. And how much of that was paid out on account of commissions to the various subscribers in whose places of business or residences the pay station was installed?

A. I don't know.

Q. Have you any way of ascertaining that fact?

A. By an analysis of the receipts, for whatever was paid out, which would take three or four days, I could determine.

Q. Is the item of commission paid out on account of these

822 pay stations receipts deducted from the earnings on account of these pay stations, or is it charged up as an expense item of the exchange?

A. We had two classes of contracts in regard to the pay stations: one returns to the pay station contractor fifty per cent of the local receipts in excess of his monthly guarantee; that excess which is returned is charged against Revenue. We also have a class of pay stations where the business man in whose house the pay station is located makes no guarantee, but gets ten per cent of the gross receipts. This ten per cent. we consider an operating expense, and it is so charged.

Q. Now you have some telephone stations, pay stations, which are denominated "four dollar guarantee stations." If the receipts for that station amounted to more than four dollars, is any part of it paid to the person in whose house the station is installed?

A. If the receipts for local exchange service are in excess of four dollars per month, 50% of the excess is returned to the contractor.

Q. And would that fifty per cent. which is returned to the contractor appear as a part of the $25,000 which you have referred to here as for the year 1908?

A. It does.

Q. Is that 50% charged up against expenses for that year?

A. It is not, it is a charge against gross revenue.

Q. Now I notice another class of business pay stations
823 that you have indicated on those exhibits you have filed as ten per cent. What does that mean?

A. I think I have explained that. It means that the person in whose house or on whose premises the station is located, receives ten per cent. of the contents of the box.

Q. Is there any guarantee at all on those ten per cent. phones?

A. No.

Q. If there is five dollars for one month deposited at that pay station, as I understand it you would take out the $5.00 and retain $4.50 of it, and give 50 cents of it to the subscriber—is that correct?

A. If the five dollars was from local receipts that would be the case.

Q. And would that five dollars appear as a part of the $25,000 which you have testified about for the year 1908, or would only $4.50 of it so appear?

A. $5.00 would so appear.

Q. And would that fifty cents paid to the subscriber be charged as a part of the expenses for that year?

A. It would.

Q. Now I notice another class here, in the residence pay stations, Guaranteed, $1.00. What does that mean?

A. Those stations were put in under old contracts, and the resident subscriber guaranteed one dollar a month. He paid five cents a call for the use of the service: if there was an excess in the box the company got the full receipts.

824 Q. Now I notice also under the head of residence pay stations, figures zero opposite the name of some subscribers, which I suppose indicates that nothing is guaranteed, is that correct?

A. That was a contract that antedated the dollar guaranty.

Nothing was guaranteed, but the company got full contents of the box.

Q. Now on those pay stations where the 10% was allowed, to the subscriber, was that 10% of all the receipts including the toll receipts, or only ten per cent. of the receipts exclusive of toll receipts?

A. The three slips which I have before me for the 10% each shows that there was some toll receipts in the box, and that no part of this was allowed as a commission to the pay station subscriber. I think this is regular.

Q. As I understood you, you said that no part of the receipts taken from these pay stations which was deposited for toll calls or long distance calls was included in the $25,802.53 for the year 1908?

A. That is correct.

Q. Now how are these sums collected from the pay stations? Who collects them?

A. We have collectors in the City of Louisville who visit them, open them in the presence of the party who is interested in them, and make a written report of the contents thereof, which report is signed by the two parties.

825 Q. What method has that collector of telling whether any part of a sum found in those pay stations is for toll calls?

A. The collectors have routed for them the pay stations, and they take the routes in routine order, and on the morning that they start off with a new route which they are expected to complete that day, they take with them the itemized toll bills showing what should be in the boxes for tolls.

Q. And do they collect the amounts in these pay stations which are deposited there from toll calls as well as the other coins in the boxes?

A. Yes.

Q. And to what account is the salary of these collectors charged?

A. Charged to Operating Salaries and Wages, Louisville.

Q. In this exhibit you have filed giving the total number of subscribers in Louisville, are these pay stations classified in that exhibit as subscribers?

A. Yes.

Q. Now is there among your records any statement showing the amount of capital stock apportioned to the Louisville exchange?

A. No, not that I know of.

Q. Is there any part of your capital stock apportioned to Kentucky at all?

A. Not on the books of the company.

Q. Have you any other records showing any such fact?

826 A. I do not recall any. Sometimes public bodies ask us to apportion capital stock on some theoretical basis, and then we attempt to do it for them; but then I don't think it means anything.

Q. Who does that?

A. I don't know.

Q. Do you do it?

A. I know it has been done; oh I have made apportionments of that kind for them sometimes on the basis of construction, sometimes on the basis of earnings.

Q. Now will you show me Voucher No. 454, September, 1905, voucher No. 773, December, 1906; voucher No. 517, August, 1907, and voucher No. 539, August, 1908?

A. I here hand you the four vouchers requested.

Q. Mr. Smith, voucher No. 454, for September, 1905, contains a statement from the Auditor of Kentucky, in which it seems that the capital stock of your company to the extent of $763,671.00 was apportioned to Kentucky; is that correct?

A. The statement you hand me, which is made up by the Auditor of Kentucky, shows that.

Q. Did you furnish the Auditor of Kentucky any report on which to base that statement?

A. I did not.

Q. Did anybody connected with your company?

A. I don't know.

827 Q. That is the basis on which you were assessed for taxation for that year, is it?

A. I believe so; in fact, that is the assessment.

Q. There is a slip attached to that voucher on which appears a number of names of towns in Kentucky, among others, Louisville, Kentucky. Who made up that slip?

A. That was made in my office.

Q. What is that intended to represent?

A. The voucher that you have handed me covers the amount that we paid to the State Treasurer at Frankfort, Ky., for the franchise tax assessed against the Cumberland company for taxes of 1905. This franchise tax is considered as a tax levied on all the business in Kentucky. The slip which you refer to shows names of exchanges in Kentucky, and the amount of the tax that is apportioned to each exchange.

Q. How much is apportioned to Louisville, Kentucky?

A. $550.45.

Q. On the basis of the total amount paid in taxes, what proportion of the entire amount is represented by the amount apportioned to Louisville?

A. Almost half.

Q. So that if the capital stock of the company in Kentucky is fixed at $763,671.00, about one-half of that should properly be apportioned to Louisville, or not?

A. We made our apportionment of taxes on the basis of the subscribers. Louisville has about half of the subscribers in the State of Kentucky.

828 Q. The other vouchers you have handed me are vouchers of substantially the same character of this voucher, are they only different in amount?

A. I believe so. They cover taxes for other years. I have not examined them critically since they were paid.

Q. Now I forgot to ask you, Mr. Smith, when we were going

over the construction items for the Louisville exchange, from what source the money was derived which was used in construction work for the Louisville exchange. Will you please tell me from what source that was derived?

A. You asked me all about that. I stated that by far the larger part of it was derived from sales of capital stock.

Q. Was all of it paid out of the general treasury of the company?

A. Yes.

Q. And I believe you said that the earnings of the company in Louisville had been exceedingly small.

A. I said for the past seven or eight years they have been practically nothing—the net earnings.

Q. Now you have been maintaining your property all over the entire system and paying a seven and eight per cent. dividend, have you not, for many years?

A. Yes.

Q. And you have accumulated over $3,000,000.00 surplus, have you not?

A. The books show it.

Q. Now has that money out of which you have taken care
829 of the depreciation, paid dividends and established a surplus, been earned from exchanges, or from toll lines?

A. From both.

Q. Have you earned as much as fifteen per cent. on your toll line business?

A. I don't understand the question: 15% net, or gross?

Q. Net?

A. I have never made any statements along this line.

Q. I show you again the pamphlet which I showed you this morning, which is entitled "Telephone Conditions in New Orleans, La.," and call your attention to page 58 of this report, and call your special attention to the following language used by the compiler of this report, who seems to be Mr. Henry Noble Hall, which language is as follows:

"The financial year of the company ends on the 31st of December, and at my request Mr. H. Blair Smith, Auditor, furnished me with a statement showing the earnings, expenses and net revenue of the New Orleans Exchange for the year 1906, which at the time of my visit was the last completed financial year. This statement is as follows:"

Now I call your attention to this statement, and ask if you furnished it to either Mr. Hall or any one else?

A. I believe that is a statement which I furnished Mr. Hall.

830 Q. How much does that statement show to have been the gross earnings of the New Orleans Exchange?

A. $592,303.68.

Q. And how much does it show to have been the gross expenses?

A. Including depreciation of plant, $567,701.94.

Q. That leaves a net revenue of how much?

A. It leaves a net revenue, after deducting depreciation, of $24,801.74.

Q. What was at that time the Construction account for the New Orleans exchange, which appears right after that?

A. $2,482,792.80.

Q. What percentage appears on that statement as the net revenue on the investment?

A. Ninety-nine one-hundredths of one per cent (.99%).

Q. I call your attention to the following statement on page 72 and 73 of this report:

"It appeared unfair that New Orleans should be made to bear the entire amount of the salaries of the District Superintendent and the Assitant District Superintendent of the Louisiana District, and I have deducted one-half from the amount thus formerly charged to the operation, maintenance and construction accounts. Mr. H. Blair Smith explained to me that he had already made the
831 distinction I suggested in the 1907 accounts, and that in the future the salaries of the District Superintendent and the Assistant District Superintendent should be apportioned fairly between New Orleans and the rest of the Louisiana exchanges."

Did you make that explanation to Mr. Hall?

A. I don't remember it now, but that is his wording of it, that is the way he expresses it, and I think Mr. Hall intended to make a fair report.

Q. Did you at that time apportion the salaries of the District Superintendent and Assistant District Superintendents between New Orleans and the rest of the Louisiana exchanges?

A. We charged all the apportionments throughout the territory at the same period.

Q. I believe you stated, in your direct examination, that you did not discriminate against the patrons of the Louisville exchange, that you treated them all fairly and in the same way, is that correct?

A. I believe it to be.

Q. Is that true in New Orleans, and was it true at the time this report was made?

A. I believe we have always dealt fairly with our subscribers.

Q. Well, I will ask you if Mr. Hall, when he embodied this language in his report, on page 90 thereof,—

832 "Those in authority here never seem to have realized, even in the faintest degree, that as employees of a public service corporation they were first and foremost servants of the public; on the contrary, they have, throughout, assumed an arbitrary and dictatorial tone in their dealings with their patrons. They have at times been lacking alike in the commonest courtesy, as well as in the most ordinary business tact."

Was Mr. Hall correct about that?

A. Mr. Blakey, you are quoting small extracts from the report which in themselves do not express the report. It would be well, however, in that connection, to state that the Superintendent of the Company at the time lost his position through investigations which

were afterwards made in regard to the manner that he had conducted the business.

Q. Mr. Smith, I would like to see some of the credit vouchers, or items, whatever you may term them, which show credits to the Construction account. It is practically immaterial to me which vouchers you show me, but I should like to have them for some time between April and December, 1902, some time during the year 1903, for 1904, for 1905 and for 1906. I suggest that we adjourn to the part of the building where these credit vouchers are kept, and simply select them indiscriminately for examination, if it meets with your approval.

833 A. I will have to hunt the vouchers.

Q. How long will it take you to find them?

A. For showing you a sufficient number for each year will probably take me the balance of the afternoon.

Q. Have you not a report that shows the number of the vouchers which have been credited to the Construction Account for each of the years I have indicated?

A. It shows net.

Q. Does it show the number of the voucher?

A. The books that we keep our Construction account on shows all voucher numbers.

Q. Does it show the voucher number of the voucher which indicates the credit to the construction account?

A. The main credits to the Louisville Construction account come in the Supply vouchers for instruments taken out. These vouchers were always made up net.

Q. They do not appear on your Construction account as credits, do they?

A. If the net result for a month is a credit, they do.

Q. I believe you have already said that there does appear on your Construction account credits to the Construction account for items other than those which come through the supply department, have you not?

A. Vouchers of the Western Electric Company, as an instance, might show debit items to Louisville, and just as we have brought out in this deposition, credit items, but the net result would

834 be debit. I take it that it is such as these that you wish to see, but it would take a specific examination of the voucher and the items therein to exhibit them to you.

Q. During the examination made by Mr. Farnham, of the Mutual Audit Company, he prepared what are termed his Construction papers, and those Construction papers show the number of the vouchers for the various years wherein any credit appears to the Construction account, and my only object in asking the question in the manner I did was to avoid what seemed to be your criticism under former questions, namely: that I was selecting specific articles for criticism. It seems, however, that the deposition will be unnecessarily delayed unless we ask for specific vouchers, and out of the seven vouchers for 1902 which appear at the Construction account I will ask for voucher No. 6305.

A. I have no voucher like that.

Q. Well, then Auditor's bill No. 6305, for September, 1902; also Auditor's bill No. 8466, for December, 1902, Auditor's bill No. 9197, for January, 1903, Auditor's bill No. 10570, for April, 1903, Auditor's bill No. 13962, for Sept., 1903, Auditor's bill No. 17621, for March, 1904, Auditor's bill No. 20,633, for July, 1904, Auditor's bill No. 27391, for May, 1905, Auditor's bill No. 28324, for June, 1905, Auditor's bill No. 33269, for January, 1906, Auditor's
835 bill No. 36842, for May, 1906. I think that is all.

A. And Mr. Blakey, you will recall that you asked me whether you had asked for vouchers at random, or whether you had selected them, and I stated that there was no doubt in my mind but that you had selected specific vouchers. You are now putting it in the shape of a complaint from me. Again, in my previous answers I called your attention to the fact that the whole of the Reconstruction account represents replacements, that is, represents the value of plant removed and substituted with other plant, and that this for the three years is as follows:

1905	$41,243.92
1906	40,650.22
1907	44,388.37
1908	19,535.72

I will get the bills that you request.

An adjournment was here taken until nine thirty o'clock tomorrow morning.

836 TUESDAY MORNING, *September 14th*, 1909.

The further cross-examination of Mr. H. BLAIR SMITH was resumed this morning at 9:30 o'clock, pursuant to adjournment.

A. In regard to Mr. Blakey's question, referring to expenses shown in my Exhibit for the year 1906, I wish to make this correction: I have examined some of the corrections made by Mr. Farnham, shown on his work sheet under miscellaneous items, amounting to $2464.74, and I find that these corrections are proper, to correct clerical errors, and I wish to correct my maintenance account for 1906 accordingly, making that for current repairs, $52,156.85 instead of $54,621.59.

Q. Now Mr. Smith, as to the auditor's bills about which I asked you yesterday, have you those convenient?

A. They are now here before you.

Q. Will you show me No. 6365 for 1909.

A. (Witness does so.)

Q. Will you examine this voucher and state how much, according to that voucher or bill, is credited to the construction account of the Louisville exchange?

A. Construction account is credited with $375.97.

Q. What is the total amount of the bill?

A. $401.45.

837 Q. What are the character of items represented by the credits going to make up the $375.97?

A. They represent mainly sale of junk, consisting of copper, lead, cable and zinc.

Q. Do the items going to make up the $375.97 represent the price which the copper wire, cables and other articles were sold for?

A. Yes.

Q. Does the bill show to whom those articles were sold?

A. The statement attached to the bill shows that the junk was sold to J. Hyman.

Q. Do you know whether he is a junk dealer in Louisville?

A. I do not, but presume he is.

Q. Why was the $375.97 represented in this bill credited to construction account?

A. The credit and the bill both come from the supply department. My explanation is that there was reconstruction going on and this junk came from worthless cable, and that the adjustment in the construction account required that this be credited to construction, aerial.

Q. Were the articles represented here, which are credited to construction account, articles originally used for construction
838 and charged to construction account of the Louisville exchange?

A. I think so.

Q. Did they cost more or less than the amounts appearing in those bills?

A. The new cable cost more, of course, than the junk.

Q. Then, according to that bill, before you, was the original cost credited as appears by that bill to construction, or only the sale price as junk?

A. This bill deals with nothing whatever except the salvage value of the stuff taken out of construction.

Q. Now, No. 8466, was any part of the total of this bill credited to the construction account of the Louisville exchange?

A. The whole of it was so credited.

Q. Are the items represented in that bill and the facts you have testified to about the former bill, substantially true as to this bill?

A. Yes.

Q. I should like to see Voucher or Auditor's bill No. 9197 for the year 1903?

A. (Witness produces same.)

Q. Was any part of this bill credited to the construction account of the Louisville exchange?

A. It was, the whole of it.

Q. What does it amount to?

A. $150.

839 Q. What does it represent?

A. The sale of mules at Lebanon, Ky.

Q. Are the facts in regard to this bill substantially as those in regard to the bill about which you have just testified?

A. Well, they are salvage of what was some good live stock.

Q. Do you know what the mules cost?

A. The bill does not show.

Q. Was anything credited to construction account except the price for which they were sold?

A. The bill does not show.

Q. I notice a letter attached to the bill; you will please read that letter into your deposition?

A. The letter is as follows: "We herewith enclose bill against J. E. Settle, Cashier, covering the sale of one span of mules sold to R. W. Wathen & Son, Lebanon, Ky., amounting to $150. The last work that these mules were used for was on the reconstruction of the Lebanon and Greensburg line, and the Lebanon and Bradfordsville line. These mules were purchased we presume about three years ago and we think while Capt. H. Brown was acting as construction foreman. We do not recall at present to whose account they were charged when purchased. Please send auditor's bill and oblige, very truly yours, C. L. Monroe, Chief Clerk.

840 The bill is approved by the purchasing agent.

Q. Now, No. 10570 for 1903. This seems to be a bill representing the sale to J. Hyman of old cable, $235.23. Was any part of that item credited to construction account of the Louisville exchange?

A. The whole of it.

Q. Are the facts in regard to this bill substantially the same as those testified to as to the bill about which you testified this morning?

A. Yes. You understand, Mr. Blakey, that in the rebuilding of a telephone exchange and especially an exchange like Louisville, the plant is usually enlarged at the time of rebuilding and a part of the cost of the rebuilding and enlarging is chargeable to construction and a part to reconstruction, and not only do these bills for the sale of salvage enter into the account, but the pay rolls and the new material issued.

Q. The next one is Auditors' bill No. 13,962 for 1903. This bill seems to be for four articles sold to Jacob Hyman, for a total of $253.38. Was any part of that bill credited to Louisville construction?

A. The whole of it.

Q. And are the facts in regard to this bill substantially the same as those in regard to the first bill about which you have testified?

A. Yes, and in regard to the one just testified about, above.

841 Q. No. 17621 for the year 1904. This bill seems to be a bill for three articles sold to J. Hyman, including lead, copper and iron wire, amounting to $324.69. Was any part of that bill credited to the Louisville construction account?

A. All of it.

Q. And are the facts in regard to this bill substantially the same as those in regard to the first bill about which you have testified?

A. Yes and the two previous ones also.

Q. No. 20633 for the year 1904. This seems to be a bill for lead

and cable sold to Jacob Hyman for $280. Was any part of that bill credited to the construction account of the Louisville exchange?

A. All of it.

Q. And are the facts in regard to this bill substantially the same as those in regard to the first bill about which you testified?

A. Yes, and the three previous ones also.

Q. No. 27394, for 1905. This seems to be a bill, itemized, for the sale of eight articles to J. Hyman for $688.05. Was any part of that credited to construction account of the Louisville exchange?

A. Yes, $660.46.

Q. And are the facts in regard to that portion of the bill
842 the same as the facts in regard to the first bill about which you testified?

A. Yes in regard to that part of the bill credited to maintenance, material, and the part to directory account. The same explanation also attaches to this bill which attached to the four previous to this one.

Q. No. 28324, for 1905. This seems to be a bill for $667.68 for articles of copper, lead, zinc and iron, and iron wire, sold to S. Webber & Son. Was any part of that credited to the construction account of the Louisville exchange?

A. Yes $650.68 to construction and $17.00 to maintenance account.

Q. And are the facts in regard to the $650.68 item credited to construction, substantially the same as the facts you have stated in regard to the first bill?

A. Yes and in regard to the five previous ones.

Q. No. 32269, for the year 1906. This seems to be a bill for lead, copper and zinc, sold to Jacob Hyman, total of $789.44. Was any part of that credited to the construction account of the Louisville exchange?

A. Yes, $769.64 to construction, and $19.80 to maintenance.

Q. And are the facts in regard to the $769.64 credited to construction account, substantially the same as those testified to
843 about the first bill?

A. Yes and as testified to in regard to the previous six items.

Q. The last one I have on the memoranda is No. 36842 for 1906. This seems to be a bill for articles sold to S. Webber & Sons for articles itemized as copper, lead zinc and iron, representing a total sale of $1142.35. Was any part of that credited to the construction account of the Louisville exchange?

A. Yes, $1135.35 to construction account and $7.00 to maintenance account.

Q. And are the facts in regard to that bill substantially the same as the facts stated in regard to the first bill asked you about?

A. Yes, and in regard to the seven previous ones. In looking up these, Mr. Blakey, I noted that they were all the same and I had the book for 1905 and 1906 convenient, and I picked up some other

credits from other sources, represented in the four vouchers, which I now hand you.

Q. One of the vouchers you have just shown me seems to be No. 501 for February 1905. Will you please state the amount of that voucher and whether any part of it was credited to the construction account of the Louisville Exchange?

844 A. The amount of the voucher is No. 170.85 and represents a private branch exchange switchboard of the cordless type, which was destroyed by fire. The original installation was charged to the Louisville exchange, and this is a credit to the construction account of the Louisville exchange.

Q. Do you know what the original cost of it was?

A. That is the original cost.

Q. $170.85?

A. Yes.

Q. And that is the amount that is now credited to the construction account?

A. Yes.

Q. Was that switchboard insured?

A. It was not.

Q. Does the cordless switchboard cost less or more than the other varieties of switchboards?

A. I think it is a cheaper board.

Q. Are there any papers in this voucher to show the number of stations attached to the switchboard?

A. Yes, there were four stations.

Q. I hand you Voucher No. 684 for August 1905, and will ask you if any amount appears in that voucher as having been credited to the construction account of the Louisville exchange?

845 A. This voucher represents credits to various construction accounts, construction, equipment, on account of subscribers' station equipment being destroyed by fire. There are three items credited to the Louisville exchange, construction $6.79 for No. 68 set; $14.84 for No. 68 set and pay station; $96.89 for six sets of instruments, pay station and booth.

Q. What does that No. 68 mean?

A. It is a description of the set, a code number, I think.

Q. Do you know whether those items appearing in this voucher were the original cost prices of the articles mentioned therein?

A. That voucher was issued to cover the cost of the apparatus.

Q. Do you know that as a matter of fact, or just know your system?

A. That is the system.

Q. Here is Voucher No. 710, September 1906, which seems to represent a total of $208. Will you explain that voucher?

A. This voucher credits Louisville exchange, construction, equipment, and charges Louisville maintenance, material, $148.00 and the supply account, Nashville, with $60.00: The explanation in the voucher is.—returned to Nashville, two private branch exchange switchboards, same having been returned to Nashville without being charged to Louisville, Ky. supply. Received at Nashville July

6th, 1906. Estimated value of these switchboards at present is $30.00 each, which amount is charged to Nashville supply
846 and the balance to Louisville maintenance, reconstruction.

Q. Would that imply that no part of the articles mentioned in that voucher was ever charged to Louisville?

A. It would not.

Q. How do you explain the language under there, same having been returned to Nashville, without being charged to Louisville, Ky., supply. What does that mean?

A. It means this, that when the switchboards were removed at Louisville that they were immediately shipped to Nashville and that they were not handled through the supply account at Louisville.

Q. It means that they were directly charged to Louisville without being charged through the supply department?

A. It means those switchboards were formerly in use in Louisville; that when they were taken out they had no use for them in supply at Louisville for the reason that the switchboards were worthless in their present condition, therefore, instead of putting them into stock at Louisville they were immediately boxed and shipped to Nashville to be utilized to the fullest extent at the general shops of the company in Nashville.

Q. When those switchboards were installed in Louisville, were they charged to construction account?

A. Yes.

Q. Is any part of this voucher now credited to construction account?

A. The whole of it is credited to construction account.

847 Q. How do you explain this language at the foot of the voucher then—"the balance to Louisville re-construction account?"

A. The balance represents the amount of deterioration in the switchboards. It is a well known principle in bookkeeping that every debit must have its credit and vice versa. We have given the Louisville exchange credit for the original cost of the switchboard and we must charge that cost to something; we therefore charged Louisville, maintenance reconstruction with the deterioration in the switchboard, and charged supply account, Nashville, with the salvage value of those switchboards—the salvage value plus the deterioration being equal to the original cost of the switchboards.

Q. Now according to this voucher it seems that the estimated value of these switchboards at present is $30.00 each, which amount is charged to Nashville supply. The balance to Louisville reconstruction. Would not the balance mean the difference between the $60.00 and the $208?

A. Yes.

Q. And was the balance charged to Louisville maintenance, reconstruction?

A. Yes.

Q. Here seems to be Voucher No. 710 for June 1906. Please explain what bearing that voucher has on the present line of proof?

848 A. This voucher is another one issued to credit construction, equipment accounts of various exchanges on account of losses in subscribers' station equipment, destroyed by fire. It shows a credit of $29.79 to Louisville for the loss of one No. 68 set and booth.

Q. Amounting to how much.

A. $29.79.

Q. Was that the original cost of the No. 68 set and booth?

A. Yes.

Q. Do you know that as a fact or simply know that your system is such that would be the case if properly entered up?

A. I am testifying because I know the system is that.

Q. Here is also Voucher No. 710 for June 1906, which seems to represent a total of $163.55. Please explain that voucher?

A. This is credit given Louisville, construction equipment account for one private branch exchange switchboard from the Kentucky Wagon Works, that amount being the original cost of the switchboard installed. Estimated value of the switchboard at the time it was returned, was placed at $20.00. The total of the switchboard was originally charged to maintenance, reconstruction at Louisville in June 1906, but in July 1906 a correction was issued crediting Louisville maintenance, reconstruction with $20.00 and charging supply account with $20.00, as that was the amount
849 of salvage in the board.

Q. Did I understand you to say when this switchboard was charged up to the Louisville account, it was charged up against maintenance account, when originally installed there?

A. No.

Q. Against what account was it charged when originally installed?

A. Construction, equipment.

Q. Mr. Smitih, I should like to have Auditor's bills Nos. 5284, 4321 for 1902; 52613 and 53208 for 1908?

A. (Witness produces same.)

Q. Mr. Smith, will you explain to me this auditor's bill No. 5284 for 1902?

A. The bill shows that it is made for the estimated cost of installing new instruments during June 1902, actual cost of which was charged to expense instead of construction.

Q. Does any credit appear in that bill to Louisville construction account?

A. Yes, a credit of $520.

Q. What does that $520.00 represent?

A. The bill shows it as a credit to Louisville construction account. The Louisville exchange for that month is reported as having lost 52 stations, net.

850 Q. And does this paper from which you first read in regard to the estimated cost of installing instruments during June 1902 have any bearing on the credit given to Louisville construction account of $520.00 for that month?

A. Yes.

Q. In what way have they any relation?

A. The bill is rendered charging construction ten dollars for each instrument gained, net, for the whole system.

Q. The next bill called for is Auditor's bill No. 4321 for 1902, which seems to represent items aggregating $10,800. Will you please explain whether any part of that item was credited to the Louisville construction account for that year?

A. $560.00 is credited to Louisville construction account from that bill.

Q. That is the same class of bill as the one immediately preceding it?

A. Immediately mentioned heretofore. You do not ask for an explanation of either of those bills; I presume you believe they are not in accordance with the previous testimony I have given and I would like to therefore state that those bills are for two reasons; I have stated before that the installation of private branch exchange instruments was charged to construction and you will recall also that these bills were rendered at just about the time we took over the Ohio Valley Telephone Company plant and it is more
851 than likely these instruments lost were instruments of the Ohio Valley Telephone Co. which were probably charged to construction.

Q. I will ask you Mr. Smith if I did not ask you, when the bill was first produced, to explain it?

A. I understood your request to be to please let you know what the bill showed and not the reason for the bill.

Q. Mr. Smith, you have also furnished No. 52316 for 1908. Will you please state whether any part of that bill is credited to the construction account of the Louisville exchange?

A. $251.66 of this is credited to Louisville construction account; $19.80 Louisville maintenance, and $44.62 to directory.

Q. The part that is credited to construction is derived from what source?

A. From the sale of some junk. Lead, copper and iron wire.

Q. Are the facts you testified to a short time ago, in regard to sales of junk, applicable to this bill as explained by you in regard to those bills

A. Yes, I testified to seven or eight similar bills this morning.

Q. I show you also bill No. 53208 for 1908 and will ask you to state whether any part of that is credited to the construction account of the Louisville exchange for that year?

852 A. $482.75 of this bill is credited to Louisville construction, aerial.

Q. What articles are represented by that credit?

A. The sale of some chestnut poles to the L. & N. R. R. Co.

Q. Is the amount for which the poles were sold only, represented by the credit?

A. The credit from the poles sold is $482.75, yes. You will note from this bill that this sale of poles netted the company a profit of $54.25 and that was credited to Louisville revenue.

Q. How do you ascertain that fact?

A. From the bill.

Q. Now, I notice the price of these poles is placed at $2.75, $4.50, $5.50 and $6.00 respectively for different poles, all of which are itemized as chestnut poles. Do you know anything about the cost price of chestnut poles?

A. I pass vouchers for the purchase of them.

Q. What are the prices, generally speaking?

A. I would have to refer to my records to get them. They cost different prices in different parts of the country. The profit on this individual lot was calculated from the invoice.

Q. Do you know that to be a fact?

A. I do.

Q. Did you do it yourself?

853 A. No, but there are papers in here that show it.

Q. Please point out to me the papers which show it in there?

A. There are the individual poles, showing the cars on which they were shipped.

Q. Had those poles ever been used in the Louisville construction account?

A. I think not.

Q. They were new poles?

A. New poles.

Q. I notice you have a credit here of $482.75, construction, pole lines, and $54.25, revenue, miscellaneous. Does that $54.25 appear as a part of your revenue or earnings for that year?

A. Yes.

Q. Do you also credit construction account with that amount, $54.25?

A. No.

Q. Mr. Smith, you have testified that all of the stock of the Cumberland Telephone and Telegraph Company has been paid for in cash. Will you produce the stock ledger for examination?

A. It is not in my charge.

Q. Is there such a book kept by the company?

A. Yes.

854 Q. Will you, or will you not, produce it?

A. I have no authority whatever over the book.

Q. Read him my question, Mr. Duke?

(Question read to witness.)

A. As stated, I have no authority over the book and cannot do so.

Q. How do you know that the capital stock of the company has been sold for cash?

A. I have never stated, as I recall, that the capital stock of the company was all sold for cash.

Q. Do you now say whether or not the capital stock, since your connection with the company, has been sold for cash?

A. I know that it all has not been sold for cash.

Q. Since January 27th, 1900, has any of it been sold for any consideration other than cash money?

A. I recall the exchange of share for share for stock of the Ohio Valley Telephone Co.

Q. Subsequent to that exchange of stock?

A. I do not recall.

Q. You mean you do not recall that one way or the other, or do you recall it has been sold for other than cash, Mr. Smith?

A. I do not recall any details except sales for cash.

855 Q. Have you any records in your office showing for what the stock was sold?

A. Yes, all capital stock transactions are on the general ledger of the company.

Q. Will that record show whether the stock was sold for par or less than par?

A. It will not show any sales at less than par; it will show why the stock was issued.

Q. What do you mean by, why the stock was issued?

A. For what consideration.

Q. Will the books in your office show—the original entries indicating how much was received for all the stock issued by your company since you have been auditor?

A. Yes.

Q. Will they show whether the amount received was received in money or whether it was received in stocks or bonds of other companies?

A. Yes.

Q. Was any of it sold for any consideration other than money?

A. Yes.

Q. Has any of it ever been so sold for other considerations than money, since the exchange of stock with the Ohio Valley Company?

A. I do not recall offhand. I will have to examine the books. (Witness retires to do so.) The total capital outstanding January 1st, 1908 was $1,695,700; we have since that date issued for

856 cash, at par, $16,625,000 of stock; for the purchase of other companies, $1,319,450; for a $60,000.00 account due to the American Bell Telephone Co., $40,000,000 of stock. Total outstanding, $19,680,150.

Q. Who furnishes you those figures?

A. I compute them myself, compile them.

Q. From what source?

A. From the general ledgers of the company.

Q. Who makes up the general ledgers?

A. The general book-keeper.

Q. Is he in your department?

A. Yes.

Q. Does the treasurer furnish him any data with which to make up his items?

A. The treasurer necessarily turns over to him his cash account showing receipts for the sale of capital stock.

Q. So then, the data which the general bookkeeper makes up his accounts from, is received from the treasurer?

A. Those in regard to the sale of capital stock come from the regular cash book in the treasurer's office.

Q. You stated the other day what the company had paid in the way of dividends for the last few years, and also what the market stock was worth now, its price. I now show you an issue of the Nashville American of Friday, September 10th, 1909, and call your attention to the article appearing under local financial, and will ask you to read that into your deposition and state whether the facts contained in that article are substantially correct?

857 Mr. GRANBERY: While I was not present on a former day during the taking of this deposition, counsel for the defendant interrogated the witness in regard to the capital account of the company, the market value of its shares of stock and other similar questions. This matter was up during the progress of the examination of the books of the company by the accountants, Mr. Farnham of the Mutual Audit Company desiring to go into the capital of the account, thereupon the matter was submitted to the Master Commissioner at Louisville, and he ruled it was not competent or proper, and it is so stated in the report of Mr. Farnham, and I object to any further questions in regard to these matters until the Master Commissioner overrules his former holding, and certainly until this matter is submitted to the Master Commissioner for his ruling.

Mr. BLAKEY:

Q. Mr. Smith, the article in question states that the price of the Cumberland Telephone Company stock jumped from 146 bid with 148 and 150 asked, with offerings very scarce, referring to the market for Cumberland Telephone Company stock on
858 the 9th day of September 1909. Do you know whether that statement is correct?

A. I guess so.

Q. The article also states that the sudden advance in the stock was caused by the directors of the Cumberland Telephone Company today, that was, September 9th, 1909, authorizing a distribution of a large block of American Telephone and Telegraph Co. stock among the shareholders of the company on the basis of two per cent of their holdings. Can you state whether or not that is true?

A. I have seen it in the papers.

Q. Is it, or not, true?

A. I believe it is.

Q. Did the directors at the same meeting authorize the payment of the regular two per cent quarterly dividend in addition to the distribution of the American Telephone and Telegraph Co.?

A. I have heard that they did.

Q. The article in question also states that the distribution of the stock of the American Telephone and Telegraph Co. is equivalent to a cash dividend of 2.8 per cent. Can you say whether or not that is correct?

A. It is correct, I believe.

Q. What other dividend will in the ordinary course of affairs

be declared by the Cumberland Company during the year 1909 if any?

859 A. The directors of the company determine that.

Q. Are the dividends declared as of the first of January or as the 31st of December, or have dividends been declared heretofore as of the first day of January or the 31st day of December?

A. They have been declared sometime in December before the end of the month, payable January 1st.

Q. And have they been made payable quarterly heretofore?

A. Quarterly dividends have heretofore been paid.

Q. Now, I believe the distribution of the stock of the Cumberland Telephone and Telegraph Co., was derived by the Cumberland Telephone and Telegraph Co., from the East Tennessee Telephone Co., was it not?

A. I believe the newspapers say so.

Q. Do you know whether or not that is true?

A. I understand that it is.

Q. For what did the East Tennessee Telephone Company owe the Cumberland Co.?

A. For advances in cash mainly.

Q. Is the East Tennessee Telephone Company operated by the Cumberland Co.?

A. It has the same officers.

Q. Is the stock of the East Tennessee Telephone Company owned by the Cumberland Co.?

860 Mr. GRANBERY: I insist that no further questions along this line shall be answered by the witness until the Master Commissioner has ruled upon this matter.

Mr. BLAKEY:

Q. Mr. Smith, I hand you what purports to be a report of the Cumberland Telephone and Telegraph Co. for the month of June, and six months ending June 30th, as compared with former six months and will ask you if that statement correctly shows what it purports to show.

Mr. GRANBERY: That being for the entire system and not for the Louisville system, I shall have to ask that the matter be referred to the Master Commissioner.

Mr. BLAKEY: In order that the Master Commissioner may properly rule on it, I ask you to file it until such time as he directs it to be struck from the files.

Mr. GRANBERY: I suggest that you hold the paper until such time as the Master Commissioner rules upon it, and if he rules in your favor, I shall be very glad to put the witness back on

861 the stand in order that you may ask him that or any other questions the Master Commisisoner rules may be competent and proper.

Mr. BLAKEY: My only object in asking that it be at present tendered is in order that the Master Commissioner may intelligently

rule on the question. The question itself is of no consequence, unless it is accompanied by the paper exhibited.

Mr. GRANBERY: I object to it being put in the record and I am sure you agree with me that you do not want it in the record if it be incompetent matter; and for that reason I suggest that we let it stand aside until such time as we can appear before the Master Commissioner.

Mr. BLAKEY: All right, that is entirely agreeable.

Q. Now Mr. Smith, in connection with the two annual reports about which you testified a few days ago, I neglected to ask you what were the total earnings of the system for the year 1907.

Mr. GRANBERY: I desire to interpose the same objection to
862 that matter, not having been present when the questions referred to were asked the witness, and if I should have been present, I should then have interposed objection. I do it now, and ask that the matter be referred to the Master Commissioner in connection with other matters concerning which a difference of opinion has arisen between counsel as to the relevancy of it.

Mr. BLAKEY:

Q. Mr. Smith, I desire also to have you state what your twenty-sixth annual report shows to be the total expenses for the year 1907 and the total of the resources for the year 1907. The total of the earnings for the year 1906, total of the expenses for the year 1906, and the total of the resources for the year 1906, all of which I suppose may be certified, as the former question.

Mr. GRANBERY: Certainly.

Mr. BLAKEY:

Q. Now, earlier in the deposition Mr. Smith, you stated that the toll and exchange construction were kept separate in the City of Louisville; I should like to have you exhibit your record showing this fact?

A. I stated that we had not charged to the Louisville exchange the cost of constructing the toll lines; that we had kept a
863 separate toll construction account by routes. I will have to get the books. Will you please state for what years you want the books, as there are a number of them, or whether you want them all.

Q. You might first produce the books for the years 1901, 1902 and 1903?

(Witness produces books referred to.)

Q. The book you have presented here shows toll line construction. Is there any part of it which deals with toll lines going out of Louisville?

A. The book which I have presented, shows the accounts for the year 1901, charges and credits, to toll line construction. If any construction out of Louisville was done during that year, this book

shows it. This book shows the account for the Louisville-Carrolton toll line.

Q. Amounting to how much?

A. The construction added for the year is something over $4500.00.

Q. Is that one of the toll lines which you detailed during the progress of your cross-examination as one of the lines going out of Louisville?

A. I don't remember it specifically but in my cross-examination I gave you the names of all lines going out of Louisville from a record in the engineering department.

Q. If that is not one of the lines then, it would be con-
864 nected with one of the lines which you did give me, outside of Louisville?

A. The name itself may not correspond with the exact name of the line I gave you. The lines given you in the previous examination, were those which described the direction that the toll lines out of Louisville took.

Q. Have you any way of telling whether any part of that $4500 was expended inside of the corporate limits of Louisville?

A. An analysis of the vouchers might show it.

Q. Can it be determined from an examination of that record which you have before you?

A. It cannot.

Q. Now if a toll line going out of Louisville carries the wires of exchange subscribers also, is it all charged to toll line construction or is it divided?

A. If the toll route was built for the purpose of toll lines, it is charged to toll line. If afterwards, exchange subscribers are placed on the pole route, the cost of the wires would be charged to aerial construction of Louisville.

Q. And if the poll route was originally built for subscribers' lines, to what account would it then be charged?

A. If the pole line was originally built for subscribers' lines—
865 and it would be well to state that the development of the Louisville exchange was exceedingly limited at the time we began building toll lines out of Louisville—the pole line would be charged to exchange construction

Q. I call your attention to pages 202 and 203 of your deposition and ask you to examine the question there dealing with toll lines going out of Louisville and will ask you to state whether there seems to be such a line going out of Louisville as the Louisville and Carrolton toll line?

A. The line in my deposition is stated as a route from Louisville to Worthville, Ky.

Q. Is Worthville nearer Louisville or farther from Louisville than Carrolton?

A. Worthville seems to be a junction point. It is nearer Louisville.

Q. Then can you tell whether any part of that money was expended inside of the corporate limits of Louisville?

A. I can by an examination of the vouchers, probably.

Q. Will you see if any other item is charged up that year for construction of toll lines going out of Louisville?

A. There is a line called the Louisville and Edgefield Junction line, that is, a line down the L. & N. R. R. to Edgefield Junction, ten miles out of Nashville.

Q. What amount was charged to construction of that line for that year?

A. About $40,000.00.

866 Q. Are the same facts true, substantially, in regard to that item that there were in regard to the other item about which you have just testified?

A. Yes.

Q. Is there any other item charged up to a similar account?

A. Louisville and Jeffersonville, $205.42.

Q. Do you know where that item was expended?

A. Between Louisville and Jeffersonville, Ind.

Q. Are there any other items?

A. Louisville and Jeffersontown, about one thousand dollars.

Q. Where was that item of expenditure incurred, if you know?

A. The record before me does not show.

Q. Do you know whether any part of it was expended inside of the corporate limits of the City of Louisville?

A. The record does not show.

Q. Are the facts in regard to that item substantially the same as the facts in regard to the first item about which you testified?

A. Yes.

Q. Are there any others?

A. Louisville-Frankfort, something over fifteen hundred dollars.

867 Q. Are the facts in regard to that substantially the same as the facts in regard to the first item?

A. I think so.

Q. Are there any other items?

A. There is a circuit strung known as the Nashville, Henderson and Louisville line, going to Louisville via Henderson, Ky., and the items charged in the year amounted to about $1200.00.

Q. Any others?

A. Louisville-Taylorville, items amounting to about seven thousand dollars.

Q. And, are the facts in regard to that item substantially the same as those testified to in regard to the first item mentioned?

A. Yes.

Q. Are there any other items?

A. There is a small charge of $53.00 to the Louisville and Goshen line. Also, Louisville-Bardstown, $300; those seem to represent the charges for the year 1901.

Q. Now, have you any record showing what routes various toll lines take, what streets they follow going out of Louisville?

A. No, I have absolutely nothing in regard to that.

Q. Do you know whether any of these items showing construction of toll lines, was for re-construction work?

A. The items I have called you are all new construction.

868 Q. If the part of the construction work on toll lines in the corporate limits of the City for the last nine years had been in the way of replacing former lines of poles on which the toll lines were carried, would such cost be charged to construction of the toll lines?

A. No, it would not be charged to construction at all.

Q. Are the entries representing the other lines of toll line construction for the years other than 1901 in the books which you have produced, of substantially the same character as the ones you have testified about?

A. The entries are similar and these entries are similar to those which were examined by the Mutual Audit Co., going to show the construction account of the Louisville exchange itself.

Q. And is that true of all of the years, 1900 to 1908, inclusive?

A. I think so.

At this hour, 12:45 P. M., a recess was taken until this afternoon at two o'clock.

869 Cross-examination of H. BLAIR SMITH resumed Tuesday, Sept. 14, 1909, at 2 p. m.

By Mr. BLAKEY, for the defendant:

Q. Now Mr. Smith, taking up this item of four and a half per cent. paid the American Telephone Company for the transmitter and receiver, I notice that you quote from and make a part of your deposition some of the language contained in the report of Messrs. Dougal C. Jackson, Wm. H. Crum and Geo. W. Wilder, made in 1907 to the Chairman and Members of a Committee of the City Council of Chicago. Have you a copy of that report?

A. Yes.

Q. I show you a pamphlet, and ask you if that is a copy of that report?

A. I believe it is.

Q. I will ask you, in addition to what you have already read into your deposition, to read the paragraph beginning on page 45 at the words "The Chicago Telephone Company reports" down to the beginning of the next paragraph on page 46.

A. (Reading:) "The Chicago Telephone Company reports that it had in use and in stock during the year 1903 an average of nearly 195,000 telephone sets in its entire area, and we estimate that over 150,000 of these were on account of the Chicago business.

870 These telephone sets, each comprising a transmitter, receiver and induction coil are worth approximately, $3.00 per set, and are furnished and partially maintained free to the Chicago Telephone Company, by the American Bell Telephone Company, under its contract. The depreciation on these is large, and it is generally considered that their average life does not exceed

a period of between six and ten years, so that the depreciation allowed should be between ten and sixteen per cent. A maintenance figure of 3½ per cent. per year is small for the part of the American Bell Telephone Company. Interest, insurance and taxes will probably cost 8½ per cent. more. Taking an average of 12% for depreciation, making due allowance for the scrap value, and allowing 8½% for interest, insurance and taxes, of which 2½% allowed is for the latter two items, and 3½% for maintenance, makes a total annual item of cost to the American Bell Telephone Company for furnishing these pieces of apparatus to the Chicago Telephone Company that amounts to 24% of their first value of three dollars per set. As the Chicago Telephone Company in the Chicago business has now (Jan. 1, 1907) more than 131,000 telephones in actual use, we assume that our estimate of an average of 150,000
871 complete telephone sets in use and in stock during 1906 is approximately correct, though we have not had time to verify this figure. At three dollars per set the total value of these 150,000 sets is $450,000.00, and 24% of this amount is $108,000.00, which is a fair payment to the American Bell Telephone Company for furnishing these instruments. This leaves a balance of approximately $174,000.00 in the license account."

Q. Now what is the total of $108,000.00 and $174,000.00?

A. $282,000.00.

Q. I call your attention to page 62 of this report, and especially to the third line of the second paragraph on that page, and ask you to state what the Commission gives as the estimated earnings per year on 132,000 telephones in Chicago?

A. The report reads, in part, as follows:

"We estimate that the present telephones 132,000 will earn $6,336,000.00 per year."

Q. And how much would 4½% on that total earnings amount to for the year?

A. 4½% of that amount is $285,120.00.

Q. Now what per cent. does $108,000.00 bear to $6,336,000.00?

A. About 1.7% (One and seven tenths per cent).

Q. I show you the Report on the Telephone Conditions in New Orleans, La., which was shown you a few days ago, and
872 will ask you to read into your deposition the last paragraph on page 64 of this report.

A. This Report reads, in part, as follows:

"It may be stated as a general proposition that the rental charged for the instruments by the American T. & T. Co. is about twice the amount that would suffice to give a fair return. In 1906 the amount paid for instrument rental was $26,418.76 on a total average number of 12,339 instruments, or a little more than $2.14 per instrument. Admitting that the total annual item of cost to the American T. & T. Co. for furnishing these telephone sets, each containing a transmitter, receiver and induction coil, is 33½% of their original cost, which is stated to be $3.00, it will be seen that under this contract something in excess of $14,000.00 is paid by the Cumberland Company over and above what may be strictly considered as a fair

rental charge. But under this contract, in addition to the rental of the instruments as above set out, the company gets the expert advice and assistance of the parent company's engineers, etc. This includes working specifications for switch-board installations, line and conduit work, cable construction, building material, etc.
873 Bulletins are also supplied treating of engineering practice and operating methods, which summarize the experience and knowledge acquired by the various Bell companies. Special studies are continually carried on by the engineers of the American Bell Telephone Company, and that company maintains a well equipped laboratory in Boston, where tests and investigations are made for the benefit of the subsidiary companies. All of this service is rendered without extra expense to the Cumberland Company, and is paid for through this so-called Instrument Rental account."

Q. Does the American Telephone and Telegraph Company furnish any building material to the Cumberland Company, except such as the Cumberland pays for in other ways than through this 4½%?

A. It does not.

Q. To what extent does the Cumberland Company carry insurance on its Louisville plant?

A. Generally speaking, it carries insurance on its central office equipment, its buildings, its rents or income.

Q. If a fire occurs, for instance, at Callahan's Warehouse, where a private branch switchboard or exchange is located, and the company is unable to collect its rent for the use of the instruments and the swichboard for thirty days or fifteen days, does insurance cover that item?

A. We have never insured any private branch exchange
874 switchboard in Louisville, that I know of.

Q. How about the rentals for that which you fail to collect from your customers on account of fires?

A. The rental insurance which we carry I think is entirely on central office switchboards, or would be the loss which would be entailed through the destruction of a central office switchboard.

Q. Do you mean all the exchanges, East, South, West and Main, when you say Central?

A. Yes, sir.

Q. Then if one section of the city was destroyed by fire, putting out of commisison 500 telephones, and the central office not affected by the fire, and still you were to lose your rentals for thirty or sixty days, would your insurance cover that loss?

A. No.

Q. Do you have any insurance against destruction of wires or poles by cyclones or sleets?

A. No.

Q. Mr. Smith, you have been recently publishing a great many bulletins in the Louisville papers, which seem chiefly to be intended to counteract the effect of publications made in one of the Louisville papers wherein the Louisville paper in question seems to be attempting to show that your company are charging exorbitant rates; to what account are those bulletins charged up?

A. Any advertising which the company does is charged to
875 operating, advertising and canvassing.

Q. At the place where the advertising is done?

A. Yes.

Q. Will you state how much it has cost the company during the last six or seven months to have these bulletins published?

A. That has nothing to do with the period that we are in. I don't know; I will have to investigate.

Q. Will you ascertain, and tell the stenographer, before the deposition is closed?

A. Will you please specify exactly what bulletins you mean?

Q. I mean bulletins wherein copies of what the Committee from the Board of Trade reported to the Board of Trade, copies of letters from Mr. Caldwell, President of the company, to Mr. R. W. Knott, of Louisville, copies of replies to letters sent by Mr. Knott to Mr. Caldwell, copies of criticisms of Mr. Knott and his paper, over the signature of Mr. Caldwell, copies of extracts from statements made by Abraham Lincoln, and all such similar items which have appeared in the shape of bulletins or otherwise, in the various Louisville papers during the last 5 or 6 months.

A. Will you specify from what date to what date?

Q. I should say from February 1, 1909, to Sept. 14, 1909.

A. I think it will be at least thirty days before I can get that, because we will not get the September figures in for some time.

876 (Exhibit No. 22.)

Q. I should like to see voucher No. 478, for September, 1907, and voucher No. 751, for February, 1907?

A. I here produce said vouchers.

Q. I show you voucher No. 751, for February, 1907, which seems to represent a payment of $2,500.00. Will you please explain that voucher?

A. The voucher shows the payment of $2,500.00 to H. S. McCutcheon and Eli T. Brown, as retainer fee for legal services.

Q. To what account was that voucher charged?

A. That voucher was originally charged to the Legal general account, but later charged to Louisville exchange.

Q. When it was first charged to the Legal general account, was it so charged for the year 1907?

A. Yes, sir.

Q. And was the Louisville exchange charged up with a proportion of this $2,500, under the heading of general expenses?

A. That was the original method.

Q. Was that done in this instance?

A. It was.

Q. Now when was the correction made and the charge made to Louisville?

A. The correction was made in June, 1909, the president stating that the original charge was an error.

877 Q. Was it then charged to the Louisville account, Louisville expenses for operating the Louisville exchange, conducting the Louisville exchange?

A. It is charged on our books to Louisville general expense, in June, 1909.

Q. And does it appear now as one of the expenses for conducting the Louisville exchange for the year 1909?

A. It does, on our books.

Q. Has any credit been made on your books for the year 1907, for the portion of this voucher which was charged under the head of general expenses for the year 1907?

A. 1907 accounts will not be charged on our books one way or the other, but the full correction will appear in 1909.

Q. Then, as I understand it, no credit will be given on your books for the year 1907 on account of the fact that this voucher is taken out of the general expense and placed into the Louisville expense for the year 1909?

A. Our books show a less charge to Louisville in the year 1907 than it should properly have received.

Q. Where were those services performed, if you know?

A. I don't know.

Q. Do you know what they were for?

A. Nothing more than what the voucher shows.

Q. Do you know where Eli Brown and Harvey McCutcheon live?

A. I do not. The address on the voucher is Coker Flats,
878 Louisville.

Q. Do you know where those two men practice law?

A. I do not know them.

Q. Do you know, as a matter of fact, that neither of them practice law in Louisville?

A. I do not; I don't think it makes any difference.

Q. Now I show you voucher No. 478, for September, 1907, which seems to be for $323.35. I will ask you in whose favor that voucher is drawn, and to whom the money was paid, represented by that voucher, and to what account it was charged?

A. The voucher represents a payment which was made at Louisville, Kentucky, on a bill rendered against the Cumberland Telephone & Telegraph Company, by the Louisville Board of Trade. It is receipted by Mr. James Buckner, Superintendent, and is for the services of Mr. W. J. Munster.

Q. Was Mr. Munster the accountant who made the investigation of the books at the request of the Board of Trade at Louisville, as testified to in your direct examination?

A. Mr. Munster made an examination of our accounts for the Louisville Board of Trade.

Q. Is this bill representing the charges made by him for the investigation about which you have testified in your direct examination?

A. It seems to be a bill for his services and expenses, which was paid by the Board of Trade to Mr. Munster, and which we paid to the Louisville Board of Trade.

879 Q. Now to what account was that item charged?

A. This account was charged to Operating incidental, Louisville, Ky., Exchange.

Q. Have you a copy of the report made by Mr. Munster to the Board of Trade as the result of that investigation?

A. Not individually.

Q. Can you produce it for my inspection?

A. I will try to get it for you tomorrow.

Q. Now, Mr. Smith, can you produce any records showing over what streets in Louisville, Kentucky, your company has lines of poles and wires used in connection with the Louisville exchange?

A. I have absolutely nothing to do with that. I have never seen such a map, and would have no use for such records.

Q. Do you know whether any such records are kept?

A. I do not.

Q. Have you records showing the roads over which your toll lines are placed?

A. We have the general direction of the toll routes, as shown in my cross examination.

Q. Have you any maps showing these routes, showing where the poles are located, and over what section of country they extend?

A. I have a printed map which is gotten out with the financial statements each year, but nothing in further detail than that.

880 Q. That just shows the towns to which the toll routes extend, does it not?

A. Yes, I have no use for anything further.

Q. If there are any such records, who would have charge of them? Any such records as to Louisville, or any maps showing the lines of poles or wire?

A. They would be in the department of the General Manager.

Q. Now you have spoken in your direct examination about residence and business centers changing; do you know whether the residence or business centers of Louisville have changed in the last nine years?

A. I do not. It is an unusual city if such is not the fact.

Q. Where is the home office of your company?

A. Louisville, Kentucky.

Q. How long has it been in Louisville, Kentucky?

A. About two years.

(The witness here obtained the copy of the report of Mr. Munster, and tenders it to counsel.)

An adjournment was here taken until to-morrow morning at nine-thirty o'clock.

881 WEDNESDAY MORNING, *September 15th*, 1909.

The further cross examination of Mr. H. Blair Smith was resumed this morning, September 15th, at 9:30 o'clock, pursuant to adjournment.

Mr. BLAKEY:

Q. Mr. Smith, I call your attention to pages 69 and 70 of your deposition, wherein you spoke of this report of Mr. Munster, and will ask you to look over what you said there about Mr. Munster's report and state whether you intended to approve of Mr. Munster's re-

port as being a correct statement of the company's affairs, as found by him?

A. I reiterate what I said there.

Q. Did you intend to approve of this report when you made that statement contained in that part of your deposition?

A. The report as a whole is fairly accurate. Mr. Munster makes several errors in principle and application.

Q. Now on page 7 of the report Mr. Munster gives a number of items, the first of which is excess valuation of Great Southern, Ohio Valley and East Tennessee companies, $432,144.07. I will ask you whether that item is represented in the capitalization of your company?

A. The amounts which he shows on there, I think are represented in the capitalization, but they are not what he terms them.

882 Q. Does the amount of $432,144.07, which I have just mentioned, represent the excess appearing on your books of the purchase price of those three companies more than the Cumberland Telephone and Telegraph Company paid for those three companies?

A. There is no excess on the books.

Q. The item says, the excess valuation of these three items; does that mean in excess of what was paid for them?

A. I don't know what Mr. Munster intends for it to mean, but there is no excess.

Q. Now I notice another item a little lower down, on the same page, 1347 shares of East Tennessee bought for $49,568.12 taken on to books at $80,820, or an excess of $31,251.88. What does that item represent or what is your explanation of that item?

A. I don't know that I am familiar with it. I have never made a special investigation of that item, but I am satisfied that there is no excess on the books.

Q. Does that $80,820 referred to in that item, represent a part of the capitalization of the company?

A. I do not understand that that item has anything to do with the capitalization.

Q. Did you pay for those 1347 shares of East Tennessee Telephone Company stock with money or with the issue of

883 stock?

A. I do not recall the transaction.

Q. I notice another item on the same page, part of excess value of supplies as per inventory over book value, $75,000. Does that item of $75,000 represent a part of your capital stock?

A. It does not.

Q. I call your attention to page 12 of the report and especially to the third literary paragraph appearing on that page and will ask you to read that paragraph into your deposition if you will?

A. This paragraph, I believe, is in relation to the whole company and it states: "As it is claimed that the company's plants are now in prime condition and that all of the subscribers' stations are equipped with the highest type instruments, it may be difficult to see why from 5.74 to 7.5 per cent of the original cost of the property should annually be contributed out of the earnings to cover wear

and tear and decay as proclaimed by telephone people, not in their statements to their stockholders, or investors, but when the matter of franchise and rates for service is up for discussion."

Q. Now, I call your attention to page 16 of this report and especially to the statement on that page where Mr. Munster says that of the total subscribers to the Ohio Valley system when
884 sold or acquired by the Cumberland Telephone and Telegraph Co., 2221 were equipped with metallic circuits, and ask you whether that statement is correct, just at the bottom there?

A. From memory, I cannot answer, but I guess it is correct. I think they were all in Louisville.

Q. Now on the same page Mr. Munster states "In 1900 the amount of construction for Louisville only, out of the total of $1,114,582.81 acquired from the Ohio Valley Telephone Company's entire property was fixed at $845,293.72. Do you know where Mr. Munster got those figures?

A. Mr. Munster had full access to the books; I did not audit his report for him or assist him in compiling it.

Q. I call your attention further to page 17 of the report and especially to the paragraph in the middle of the page, beginning, "I endeavored to verify" etc., and will ask you to read that paragraph into your deposition?

A. It reads, "I endeavored to verify the construction charges from the original vouchers, but found that thoroughly impracticable as much of the charge being labor I could not distinguish labor for reconstruction from same for construction, except in so far as the superintendent in charge would designate on the pay roll or voucher. The same also applies to materials. Had reconstruction or repairs been erroneously charged to reconstruction, it would have increased the profit in Louisville. Had proper charge to construction
885 been diverted to reconstruction or repairs, it would have diminished the profit and also the investment on which the profit for the Louisville territory is computed. Such erroneous distribution would not therefore affect the question at issue to a very serious extent."

Q. I call your attention to page 20 of this report, in which the receipts from exchange service, together with the average number of telephones for the year 1906 for the cities of New Orleans, Louisville, Nashville and Memphis appear, and will ask you to state what the average number of telephones were for that year in those four cities and what the receipts were for exchange service for those four cities for that year?

A. New Orleans, average stations 12339, gross receipts from exchange service, $570,501.32; Louisville, average stations 9800, gross receipts from exchange service $279,844.49; Nashville, average telephones, 7551, gross receipts from exchange service, $286,290.03; Memphis, average telephones 7440, gross receipts from exchange service, $263,310.62.

Q. I call your attention to page 33 of the report in question and ask you to read into your deposition the last paragraph appearing on that page being the paragraph beginning, "In the statement of results", etc.?

A. It reads: "In the statement of results in Louisville, I have credited the full amount received from toll line service over
886 the Cumberland Company's lines originating in the City of Louisville to the latter city's revenues, and the distribution sheets also show such credit. My opinion is that it should be so credited. I asked the auditor of the company to give me a written explanation of the reasons why only a portion of such revenues should be credited as shown by the statements rendered to your committee, and herewith hand you his reply."

Q. Is that reply to that report or connected with that report in any way?

A. This reply is not attached to this report and was not attached to it when the copy was secured from Mr. Munster.

Q. I call your attention to page 34 of this report and especially to the paragraph near the bottom of the page which reads in part, "My opinion is", etc., and ask you to read that part of the report into your deposition?

A. "My opinion is that the most productive part of the company's business is the toll lines. The total cost of construction of these, to December 31st, 1906, is shown as $4,465,286.35 out of a total investment for construction on that date of $22,624,781.24."

Q. Now as I understand, Mr. Smith, no part of the capital stock of your company has been apportioned to Louisville.

A. No. In reply to your questions the other day, I find that the telephones connected to the Louisville exchange whose rentals
887 are paid at Nashville, or elsewhere than to the Louisville exchange, are, for the Southern Railway, one for the Nashville, Chattanooga & St. Louis Railway, and two for the American Telephone and Telegraph Co., all of which are shown in Exhibit No. 6, and the revenue derived from those telephones is included in the Louisville gross revenue shown on the books of the company and in my Exhibit No. 1.

Redirect examination.

By Mr. GRANBERY:

Q. Notwithstanding the fact that Mr. Munster credits the entire toll line receipts at Louisville as earnings of the Louisville exchange, what does he show the net earnings of the exchange to have been for 1906?

A. In calculating the ratio of net earnings to investment in Louisville for the year 1906, Mr. Munster considers the book cost of the exchange property only, and shows the ratio as $5.48 per cent.

Q. Does he show the net profit for any other year besides 1906?

A. Yes, for 1904 and 1905.

Q. What does he give it at for those years?

A. On the same basis, for 1904, 6.34 per cent; for 1905, 4.908 per cent.

888 Q. How much does he allow for depreciation?

A. He allows nothing except the reconstruction actually spent.

Q. I will ask you to state whether you have endeavored from day to day in auditing your vouchers and entering them upon your books, to correctly state the facts and classify the expense as it should be, on your books?

A. It has always been an earnest endeavor on my part to do so.

Q. Have you ever been dictated to or controlled by any officer or any part of the management of the company, Mr. Smith?

A. I have not in any particular.

Q. Have you, from time to time conferred with other officers and employés of the company with respect to items that were not clear as to how they should be charged or entered?

A. I have and have always done my best to impress this upon those under my supervision.

Q. You were asked about the tax reserve of four thousand dollars for taxes, and I believe you stated you would get the information. Have you done so?

A. I have.

Q. Will you attach it as an exhibit to your deposition?

A. I will file it as Exhibit No. 17.

Q. What is the amount of that tax, actually paid?

889 A. The amount is $9,791.24. The books of the Ohio Valley Telephone Company showed the reserve carried forward as only $4,000.00.

Q. Mr. Farnham in his report makes complaint that full access to the records of the company were not given him. What have you to say in regard to that?

A. I have this to say, that everything pertinent to the investigation was given him freely and without reservation.

Q. Do you recall any information that he asked that he did not obtain?

A. In two instances, he asked in writing for certain information and we replied to those inquiries in writing.

Q. Are those the only requests in writing, for information which he did not obtain?

A. They are the only requests which I received.

Q. Will you attach those as Exhibits No. 18 to your deposition?

A. Yes, all of them.

Q. Mr. Farnham states that certain books and accounts asked for were not kept and that the accounts and records had not been kept up to the standard of other public service corporations?

A. As to the books asked for and not kept, I will state that such as are shown in my replies, are the only ones asked for and

890 not kept, and I do not know of any possible use that could have been made of these. As to the standard of our accounts, I have this to say, that they are equal or superior to the accounts of any other telephone company operating a like property. My accounts are examined annually, critically, and I have never yet failed to be complimented upon the condition of the accounts and records.

Q. Mr. Farnham undertakes to set out what in his opinion would be the increased net revenue if the rates at Louisville were reduced.

I will ask you to state in what respect, if any, the expenses of the company would be reduced by the reduction of the rates?

A. The expenses would be reduced to the extent of four and one half per cent on the reduction in gross revenue, and that is the only reduction in expenses which I believe would be attained.

Q. Would there be any increase in expenses?

A. Yes, I am certain that the expense of collection would be greatly increased, for the reason that now a discount is given for payments in advance, at the office. The reduction in rates would force us to discontinue giving this discount.

Q. Defendant's counsel has read from the report of Mr. Hall, involving telephone conditions in New Orleans, La., with reference to the condition of the company's employés in that city, and
891 he quoted from page 90 a paragraph. I will ask you to read what is said by Mr. Hall in the second paragraph on page
93 in connection with this very same matter?

A. It reads, "That the necessity for an entire reorganization of the business in New Orleans is fully recognized by the general officers of the company, may be gathered from the fact that they have placed the best man in their employ in absolute control of the situation here, and that he has already started in to revamp the system from top to bottom. I look upon this as a very great step towards better service and towards the assumption of the cordial relations which should exist between a public service corporation and its patrons."

Q. To whom does he refer in that paragraph?

A. He refers to Mr. Ben S. Reed, who was for several years manager of the Louisville, Ky., exchange.

Q. When did Mr. Reed leave the Louisville, Ky., exchange to go to New Orleans?

A. I think it was the first part of 1908.

Q. Now various other questions have been asked you in regard to that report. I will ask you if you have a copy of it, and if so, please file it as exhibit to your deposition?

A. I will. I file it as Exhibit No. 19.

Q. Mr. Farnham undertakes to deal in his report with
892 the increases of the capital account of the company from time to time. From what source did he get that information?

A. I think he got his information from a copy of the company's charter, which was printed, and which was filed in this case as an exhibit.

Q. When the officers of the Cumberland Telephone and Telegraph Co. were made officers of the Ohio Valley Telephone Co. in June, 1899, what policy was pursued with respect to expenses and dividends.

Q. The general, or management, expenses of the company were very greatly reduced immediately.

Q. About how much?

A. About eight thousand dollars per year, and the payment of dividends was stopped.

Q. Now, was any dividend paid by the Ohio Valley Telephone Company after June 1899?

A. No.

Q. What policy if any did the company pursue with reference to developing that property?

A. The development began immediately by large sums of money being spent to increase the capacity of the plant, to widen its scope, and the rates for service were reduced and a number of new classes of service were offered the people.

Q. How many employés are there in the auditing department under you?

893 A. About seventy-five.

Q. You spoke of the manager's salary at Louisville being charged to the Louisville exchange, and other items, to which exceptions have been taken. I will ask you to state why in your opinion this is proper?

A. It has been our custom to charge labor where it was used, and this has been done in connection with Louisville, but the Louisville exchange has more expert supervisory officers and employés than the little exchanges have. The Louisville exchange has not at this time and at no other time, incurred any item of supervisory expense to give this supervision to the smaller exchanges in the Louisville district, but, on the other hand, the little exchanges in the Louisville district were built for the benefit of Louisville, and would not have been built except for the fact that the Louisville exchange was in existence and belongs to us. The Louisville public demands an up-to-date first class, and high class service, and in order that this service may be rendered to metropolitan Louisville, it has been necessary to make the management of Louisville and the exchanges in the suburbs of Louisville a unit, and for this reason, they were placed under the Louisville management. Each of the exchanges near Louisville has the same pay roll it would have if it were not under the supervision of Louisville.

894 Q. Then, it has been the purpose of the management to have co-operation and harmony between the Louisville exchange and the little exchanges immediately contiguous, by placing the entire property under the jurisdiction or control of the Louisville management?

A. That is the reason.

Q. How close to Louisville are these little exchanges located?

A. I think they are all within twenty-five or thirty miles, and those that are this distance from Louisville, I think, are very few.

Q. Leaving out Jeffersonville and New Albany, which are immediately across the river from Louisville, where are the bulk of the other little exchanges located?

A. In Jefferson county.

Q. Is that the same county in which the City of Louisville is located?

A. Yes.

Q. Do you know of any lines carrying toll lines exclusively between Louisville and any of these little exchanges?

A. I do not.

Q. What is the construction, with reference to toll lines and exchange lines, in this area?

A. The pole routes bear both toll circuits and exchange circuits.

Q. How many toll circuits radiate from the Louisville
895 exchange?

A. Eighty, and a number of these circuits are those which are used in giving services from the Louisville subscribers to subscribers at the surrounding exchanges who pay a rental to secure it, the service being given without additional charge to Louisville subscribers.

Q. You mean, used for exchange service for Louisville subscribers?

A. Yes.

Q. Mr. Farnham speaks in his report of an agreed appraisal of the physical properties of the Ohio Valley Telephone Company by the parties to the consolidation; is that true?

A. No, I never heard of any such thing before.

Q. Mr. Smith, I will ask you to state if you have made a memoranda of the inconsistencies or errors in the report of Mr. E. W. Farnham, and if so, I would be glad if you would point them out?

A. I note in Exhibit 1B that Mr. Farnham adds to the book value of the real estate secured from the Ohio Valley Telephone Company the sum of $21,233.25. But in all other statements in regard to the value of the Louisville real estate, he does not add this increase. As an instance, in Exhibit No. 11, he attempts to show the operation of the real estate, but pays no attention at all to his increased cost.

896 Again, in Exhibit 1B he adds $6850.37 to the book value of the supplies in stock. As a matter of fact the supplies were issued as bought, as near cost originally as possible. The company would not have paid more for the supplies than they stood in the accounts at.

Then Mr. Farnham in his Exhibits 1, 1A and 1B carries unearned rentals on the books as an asset. It is impossible for this account to be an asset.

In Exhibit 1B he considers franchise valuation of $100,000 as a current asset, and considers no part of it chargeable to Louisville in his attempted valuation of the Louisville plant.

In his Exhibit 1A he seems willing to allow the actual cost in cash of the Ohio Valley stock to the Cumberland Company to go in as a part of the cost of the plant, but is unwilling to consider—although Cumberland shares were swapped share for share for Ohio Valley shares—that the Cumberland stock was worth just as much as the Ohio Valley stock cost.

In Exhibit No. 7 for the four years, he makes clerical errors in regard to the gross toll revenue earned at the Louisville exchange. Under item one he includes the total of the revenue claimed as shown by the books of the company for Louisville and these totals include A. T. & T. originating commissions, C. T. & T. Co.
897 messenger fees and A. T. & T. Co. messenger fees shown on this exhibit as items 2, 3, and 4; the amounts in Item 1 also

contain for the years 1905 through 1907, the earnings from telegraph companies in Louisville, and he includes these also in his exchange earnings just as they are included in the joint report.

For the four years he makes errors in Exhibit No. 7 to the amount of $19,671.92. Inasmuch as Exhibit No. 20 and Exhibit No. 9 and 15 are prepared from this information as a basis, they necessarily are affected and are wrong.

Exhibit No. 15 for the years 1905 to 1908, as prepared by Mr. Farnham does not show gross earnings as shown in the joint report, page 4, but from the joint report totals for the different years, he has deducted what he terms toll revenue. Inasmuch as the instrument expense is calculated on the basis of gross revenue derived from telephone earnings, the instrument expense which he has used is not correct, as it is the same instrument expense which was calculated and shown in the joint report, page 5, on a basis of the gross earnings shown in the joint report on page 4.

Q. Now Mr. Smith, Mr. Farnham in getting the construction account for the years 1900 to 1904, deducted $38,755 per annum, or a total of $193,775, as appears on Exhibit No. 4. How does he arrive at this?

A. His figures are arrived at by adding together the amounts
898 shown as reconstruction, item 5 page 5 of the joint report, and dividing the total for the four years 1905 to 1908 by four. Then, through an amount of reasoning shown in his report, he says that as this amount of reconstruction was done during the last four years, that he thinks it is proper to consider that this amount was done also during the first five years. He does not consider the fact that reconstruction during those first five years was charged as a maintenance expense and is already shown in the expenses on the books.

Q. Now does he deduct anything from the construction account for the years 1905 to 1908 inclusive?

A. No similar deduction.

Q. For those five years, 1900 to 1905, regardless of whether reconstruction was included in the maintenance, or separated, would it be an expense of conducting the business?

A. It certainly would, and would be so charged.

Q. Ought it to be deducted from the construction account?

A. It should not.

Q. What is that reconstruction expense?

A. It is the expense incurred to replace the parts of the plant which have become worn out or antiquated and consequently, useless.

899 Q. Now, when you replace any part of the property that is worn out or antiquated, does that increase your capital account in any way?

A. It does not.

Q. Does Mr. Farnham consider any part of the supplies carried in stock at Louisville or the general ware-houses of the company as a part of the capital employed for the benefit of the Louisville exchange?

A. He does not.

Q. Does he include any cash?

A. He does not.

Q. How does he treat the cost of the real estate?

A. He treats the cost of real estate as something entirely foreign to Louisville, showing in his gross earnings, no rental charged therefore and omitting from the value of the property employed in conducting the Louisville business, the amount of its cost.

Q. On page 27 Mr. Farnham says the ordinary maintenance of the buildings is charged to operating expenses of the exchange. Is that so?

A. The ordinary maintenance of the building is charged to what we term real estate expense, and no part of it has been shown in the operating expenses shown on Mr. Farnham's report or the joint report.

Q. How does the company treat the real estate in its accounts?

900 A. In order that each department of the business, and each locality, may be charged up with the approximate cost of owning the real estate, we have heretofore charged to operating expenses a fair rental on the cost of the real estate and apportioned this rental to such departments or sections. The rental has been so fixed that the exchange would absorb the taxes and the insurance on the properties.

Q. What about depreciation of the buildings and the repairs?

A. The depreciation and repairs of the buildings have not been charged against the exchange or the properties, but have been considered as a part of the rental charged for the use of the buildings.

Q. How does Mr. Farnham apportion the toll expenses to the exchange expenses?

A. He charges what he considers the operating expenses for salaries and wages on an estimate made by him, and I think the balance of the general and operating expenses he apportions on a basis of gross toll collections to total gross exchange revenue and toll collections.

Q. Is this a correct basis?

A. It is only a theory and by no means plausible. I consider that the two classes of expense are so closely and minutely interwoven that there is an impossible separation either for the purpose of operation or maintenance.

901 Q. Mr. Farnham in his report deducts from operating expenses all reconstruction expense, explaining that this is chargeable to reserve. Does he create any reserve or provide any reserve to which this expense can be charged?

A. In his Exhibit No. 15 he shows a net revenue, for instance for the year 1908, of $151,612.74, and in his exhibit he makes no mention whatever of having included nothing in expense to cover the actual cash paid out for reconstruction during the year; nor does he include five cents even in these expenses to create a reserve to care for the reconstruction of the properties. On page 17 he states, in part, as follows: "Whereas a certain portion should have been

charged against earnings each year for reconstruction," and on page 27, under the heading of reserve account for reconstruction, he states "As this is an account which contemplates a reserve to be set aside each year from the net earnings for the reconstruction of the physical properties, as may be required, it should be treated only in connection with earnings account." He has failed in Exhibit No. 15 to so treat it.

Q. Mr. Smith, I will ask you to state what is the construction account for 1904, 1905, 1906, 1907 and 1908 on your basis, after revising your exhibits so as to take out the errors that you admit exist in your report?

902 A. My average construction for those years agrees then with the average shown by the joint report, page 3, and Mr. Wilkinson's, page 55; the amounts for each of the years are as follows: 1905, $1,536,010.38; 1906, $1,640,918.86; 1907, $1,695,866.65; 1908, $1,704,075.94.

Q. What does Mr. Farnham's report show for the same years?

A. Mr. Farnham's Exhibit No. 15 shows two items. One he terms book cost of plant, and the other, the value of the plant.

Q. What are those?

A. The book cost of plant corresponds very closely to the figures given by me for myself, for the joint report and for Mr. Wilkerson's report; but what he terms the value of plant is as follows: 1905, $1,212,127.46, or about $354,000 less than is shown by the others; for 1906, $1,301,252.61, or about $339,700 less than is shown by the others; for 1907, $1,322,023.03, or about $373,800 less than is shown by the others; for the year 1908 $1,317,671.20 as the value of the plant, or about $387,000 less than shown by the others. By the value of plant, Mr. Farnham means only the telephone exchange, excluding the real estate, supplies in stock and the cash on hand.

Q. What do the figures in your exhibit and in the joint report and Wilkinson's report include?

903 A. The figures which I have just given for my report, the joint report and Wilkinson's report, are made up in the same manner, excluding the real estate, supplies on hand and cash on hand.

Q. Now, taking the earnings for 1905, I will ask you to state what the gross earnings are on your exhibit, after having made the corrections that you admit to be proper, and those shown by the joint report, those shown by Wilkinson's report and those shown by Farnham's report?

A. In giving this I will exclude net rental for real estate.

Q. You mean, for all of the reports?

A. Yes.

Q. Now, in giving these figures are they all made up including the same items?

A. Yes.

Q. Go ahead then?

A. For 1905, Exhibit No. 1, revised, which is my statement, gross earnings $268,019.80; joint report, pages 4 and 5, $269,823.38; Wilkinsons, the same as the joint report; Farnham, $259,556.15.

Mr. Farnham, by the way, has excluded what he terms earnings of the toll department. If he includes these earnings, his figures will be the same as those for the joint report and for Wilkinson's report.

Q. Now, state in the same way the total expense for those
904 years?

A. In giving the total expense, I will explain that Mr. Farnham excludes any charge whatever as maintenance reconstruction, and neither his figures nor mine, nor the others, include anything for depreciation. Exhibit No. 1, my report, shows, total expenses $238,254; the joint report, and Wilkinson's report, show $227,171.29; Farnham shows, $158,545.35.

Q. Now, what is the balance of revenue on the same basis, for that year?

A. Exhibit No. 1, my report, with no deduction for depreciation, shows $29,765.80; the joint report and Wilkinson's report, with no deduction for depreciation, show, $42,652.09; Farnham, with no deduction for reconstruction or depreciation, shows $101,010.80.

Q. Now what per cent. of profit, on the same basis, is shown?

A. Exhibit No. 1, my report, shows 1.92 per cent.; the joint report and Wilkinson's report, show 2.72 per cent.; Farnham shows, using his value of plant and deducting nothing for depreciation or reconstruction, 8.333 per cent.

Q. Now, have you made up statements for the other years in the same manner as the one you have just testified about with respect to 1905?

A. I have similar statements for the years 1905, 1906 and 1907.

905 Q. Will you file such statement as an exhibit to your deposition?

A. I will file it as Exhibit No. 20.

Q. Now, taking up 1908, I will ask you if you have made up a statement showing the information on Exhibit No. 20, as well as other information?

A. I have.

Q. What does the net profit appear at on your report, the joint report, Wilkinson's report and your report for that year, 1908?

A. The per cent. of net profit to average plant employed, (shown on this statement as item one), with nothing deducted for depreciation, is as follows: Exhibit No. 1, my statement, 5.89 per cent.; the joint report and Wilkinson, 6.36 per cent.; Farnham, with nothing deducted for reconstruction or depreciation, and calculated on what he terms the value of plant, 11.5 per cent.

Q. Now Mr. Smith, on your basis, deducting seven and one half per cent. for depreciation, or rather, the difference between seven and one-half per cent. on the average cost of the plant for the year and the actual amount expended on reconstruction, it shows a profit of how much for the year 1908?

A. It shows a deficit.

Q. Now Mr. Wilkinson uses seven per cent. as a basis. What does the result of his figures show on that basis?

906 A. Shows a balance of $20,455.27.

Q. About what per cent. is that to the average cost of plant?

A. A little over one per cent.

Q. Now the joint report does not deal with the question of depreciation at all, does it?

A. It does not. It states that the accountants could not agree on this at all.

Q. Does Mr. Farnham deal with depreciation?

A. He suggests no basis.

Q. I believe that all of the reports and your exhibit, agree that the loss in revenue resulting from the rates proposed in the ordinance from those actually in force, amount for the year 1908 to $49,721.76. Is that correct, Mr. Smith?

A. Yes.

Q. Now, deducting the net savings in instrument rental would make the net reduction in revenue how much?

A. $47,484.28.

Q. Now, what would be the balance of revenue after deducting the net reduction under the rate ordinance on your basis and on the basis of the joint report, Wilkinson's report and Farnham's report?

A. On the basis of my report the deficit would be increased to the extent of $47,484.28; as the joint report does not deal with
907 depreciation, I can only say its net revenue would be reduced by the $47,484.28; on the basis of Wilkinson's report, there would be a deficit in revenue. If we deducted the net reduction in revenue caused by conforming to the schedule of rates in the City ordinance, from what Mr. FFarnham terms as balance of revenue, it would leave the amount $104,128.46, but, from this balance, nothing whatever has been deducted for reconstruction actually done, or depreciation accrued.

Q. Suppose you deducted from that amount of $104,128.46, the exact amount spent for reconstruction, what would that leave the apparent net earnings on the basis of Mr. Farnham's report?

A. The balance, $72,678.39.

Q. So that if Mr. Farnham had deducted from what he calls net profits, the actual amount he says was expended that year in reconstruction, it would leave as net profits for that year, $72,768.39?

A. Yes, if the reduction in rates was applied.

Q. Now, what is included as a net rental from the Louisville real estate by each of the reports and your exhibit?

A. I show net rental, $11,707.52; Wilkinson shows the same sum; to put it on the basis shown by Mr. Farnham, we must deduct from this, what he shows in Exhibit No. 9 as taxes and in-
908 surance chargeable to real estate, $3,023.77, leaving the net real estate rental for all real estate in Louisville, $8,683.75.

At this hour, 11:30 o'clock, A. M., at request of Mr. Blakey, a recess was taken until this afternoon at two o'clock.

909 Redirect examination of H. BLAIR SMITH, resumed Wednesday, Sept. 15, at 2 o'clock, p. m.

By Mr. GRANBERY, for the Plaintiff:

Q. Mr. Smith, have you prepared a statement for 1908, showing the Construction account, of earnings and expenses, the balance of revenue, and depreciation on average plant?

A. Yes.

Q. Will you attach it, as Exhibit No. 21?

A. I will.

Q. I wish you would point out the differences on that exhibit between the results of your exhibit No. 1, the joint report and the separate report of Mr. Wilkinson, and the report of Mr. Farnham, taking first the Construction account.

A. The average of the Construction account in my report, for the year 1908, is $1,704,075.94.

Q. Now is that your revised statement?

A. Yes.

Q. After allowing the credits that have been pointed out by the accountants, and to which you have agreed?

A. Yes.

Q. Does that include any real estate?

A. It does not.

Q. Now proceed.

A. Mr. Wilkinson's report shows the same amount, and these two reports agree with the joint report. Farnham's Report, Ex-
910 hibit #15, shows Average book cost of plant, $1,701,900.93.

Q. Do you know where the difference between Farnham's report and the others is?

A. I think it would probably be in the method of determining the average for the year, for the reason that in his joint report he agrees with Mr. Wilkinson as to the book value of plant; but in Farnham's Exhibit #15 he also shows what he terms "value of plant" as $1,317,671.20.

Q. Now how does he arrive at that valuation?

A. He arrives at that valuation by first following a method of his own in determining what the Louisville plant should be charged with at the time the Ohio Valley Telephone Company was taken over; he then deducts from the Construction account for five years, from 1900 to 1904, inclusive, something over $193,000.00, stating that this should be taken out of Construction and put into Expense.

Q. Does he anywhere allow this amount in Expense?

A. He does not figure the expenses for the years 1900 to 1904 inclusive, but in figuring his expenses for the years 1905 to 1908 inclusive, he does not show, in Exhibit #15, any reconstruction costs as expense, and yet he does state that the $38,755.00 per annum or $193,000 for five years should come out of Operating expenses.

Q. Yet when he comes to fix the value of the plant, he deducts those amounts from the Construction account?

A. Yes.

911 Q. What is the difference in gross revenue for the year 1908?

A. Using a similar basis, my statement shows $324,026.75; the joint report shows $325,838.30. Mr. Wilkinson, in his individual report, shows the same amount of gross revenue; Mr. Farnham, in exhibit #15, shows gross exchange revenue, from which he has deducted what he terms Revenue from Toll Department, as $314,275.52.

Q. So that the difference between the joint report of the accountants showing the gross revenue of the exchange and Farnham's report showing gross revenue of exchange consists in Farnham taking out of the gross revenue what he terms "toll revenue"?

A. Yes.

Q. That makes a difference between the joint report and Farnham's report, in gross revenue for 1908, of how much?

A. About $11,600.00.

Q. Now what are the gross expenses for 1908?

A. As shown by my report, $223,307.72. Joint report, $217,395.53. Wilkinson's report the same amount as the joint report; Farnham's report, in which he has deducted what he terms "toll expense," and also maintenance reconstruction expense, from the revenue expense in the joint report, shows $162,662.78.

Q. Or a difference of how much between Farnham and the joint report?

A. About $55,000.00.

912 Q. Of this amount how much is maintenance reconstruction?

A. $31,450.07.

Q. Mr. Smith, taking the Construction account as agreed to by yourself, Wilkinson and the joint report, and adding to it the real estate in Louisville, what is the total cost or value of the exchange property?

A. $1,864,917.36.

Q. Leaving out depreciation, please state what per cent. of profit was earned by the company in the year 1908, on the rates in existence during that year, including all expenses of real estate as expenses of the exchange, not allowing any earnings from the real estate in your earnings account

A. The figures on this statement are made on a little different basis. They show the ratio of the balance of revenue, nothing deducted for depreciation reserve, to the average plant, excluding real estate.

Q. What does it show?

A. My exhibit shows 5.89 per cent. Joint report, 6.36 per cent. Wilkinson, 6.36 per cent. Farnham, he having omitted any reconstruction expenses, and his plant also being considered at what he terms its value—which is considerably below the book cost, which was used for the other per cents—11.5 per cent.

Q. If you take Mr. Farnham's so-called real value of the plant, add to it his value of the real estate, the sum total is how much?

913 A. Using Mr. Farnham's so-called value of plant, and adding to it the book cost of land and buildings which I do not find at any point disputed, the total valuation of this property used at Louisville, is $1,478,512.62.

Q. Take the gross receipts, as allowed by Mr. Farnham, they are how much?

A. $314,275.52.

Q. His gross expenses are how much?

A. $162,662.78.

Q. And the difference is?

A. $151,612.74.

Q. He does not allow in his expenses the actual amount spent on reconstruction?

A. He does not.

Q. How much is that?

A. The joint report shows it $31,450.07.

Q. Then if that is a proper item to allow as an expense, it would reduce his net balance by that much, would it?

A. Yes.

Q. Then what would his net balance be?

A. $120,162.67.

Q. On that basis, what profit would he show, for 1908?

A. The item of $120,162.67 does not include in it any balance of revenue from the real estate.

Q. Well, what is the balance of revenue from the real estate?

914 A. That balance of revenue, after deducting the expenses and taxes shown in Farnham's exhibit No. 9, these expenses and taxes having been heretofore eliminated from the expenses of Louisville exchange, the net revenue from real estate rental is $8,683.75.

Q. Which should be added to the $120,162.67

A. Yes, making $128,846.42. This amount is 8.69 per cent. of what Mr. Farnham terms "value of telephone plant," shown in his Exhibit #15, plus book cost of Louisville land and buildings.

Q. If you add to Farnham's so-called real value of plant the exact amount actually spent on reconstruction which he deducts from the cost of the property, what per cent. of net earnings would he show for 1908?

A. 7.7 per cent.

Q. You include in that construction his so-called valuation of the exchange of $1,317,671.20, and real estate, $160,841.42?

A. Yes, and the deduction made in Farnham's Exhibit #4, of $193,775.00, making a grand total of $1,672,287.62.

Q. On that basis, taking out the net loss of revenue on the rentals as shown by the rate ordinance, what per cent. would the company have earned for 1908?

A. The net loss in revenue caused by putting into effect the rate ordinance would be $47,484.28. We arrive at this by taking

the gross loss shown in the joint report and deducting there-
915 from the reduced rental for the instruments. The result would be 4.86 per cent.

Q. In regard to this item of 15 per cent. allowed the exchanges for operating the toll lines, how many companies does the plaintiff company connect with under these terms?

A. By actual count, more than one hundred.

Q. And each of these companies handle the toll line business backward and forward for these companies for 15 per cent. of the tolls collected by these companies?

A. Yes, either that, or we handle the business for them on the same terms.

Q. So far as you know, is that the usual basis of connection between companies?

A. It is the basis that we have always followed, and the basis followed with us by the long distance company.

Q. Referring again to your Exhibit #21, in which you show that on Mr. Farnham's basis the profits of the exchange for 1909, issuming the ordinance rates to have been in effect, would be 5.502 per cent., upon what basis do you reach this conclusion?

A. By using, his value of plant, the amount which Mr. Farnham terms Value of Telephone plant, and adding to it only the cost of Louisville land and buildings.

916 Recross-examination.

By Mr. BLAKEY, for the Defendant:

Q. Does your company operate in Atlanta, Georgia?

A. No.

Q. Does it operate in Georgia at all?

A. No.

Q. If some one desired to telephone from here to Atlanta, Georgia, over whose line would the message go?

A. I think it would go over the line of the American Telephone & Telegraph Company the whole way.

Q. Where are these hundred companies you speak of?

A. Throughout the States of Indiana, Kentucky, Tennessee, Mississippi, and Louisiana.

Q. Is the East Tennessee Telephone Company one of them?

A. Yes.

Q. Are there any others which bear the same relation to the Cumberland that the East Tennessee Telephone Company does?

A. We all connect.

Q. Read the question to him. (Question read).

A. As I state, we all connect, and interchange toll service, one with the other. There are no other companies, however, included in the one hundred in which the officials of this company are the officials of the other company.

Q. Are there any others in which the Cumberland owns stock?

917 A. No.

Q. Are there any others which have toll lines?

A. Yes.

Q. Do all of them have toll lines?

A. No.

Q. How many of them have toll lines?

A. I can ascertain that for you, if you would like—probably one-third of them.

Q. The others simply operate in a particular community or town or village, do they?

A. Yes.

Q. And are all of these hundred companies about which you speak, companies the majority of whose stock is owned or controlled by the American Telephone & Telegraph Company?

A. None of them are so controlled, that I know of.

Q. Does the American Telephone & Telegraph Company have stock in all these hundred?

A. I think in none of them.

Q. Are they what is known as "independent" telephone companies, or Bell telephone companies?

A. They are independent telephone companies.

Q. Well, there is a Bell system of telephones, and an Independent system of telephones, are there not, in the United States?

A. I believe there are systems designated as that; the exchanges of the telephone companies to which I refer are those which
918 were built and are owned I think entirely locally.

Q. Do you receive messages and transmit messages over any telephone system known as the Independent System of Telephones, or affiliate with the Independent telephone systems?

A. The hundred or more companies that I have just mentioned are in themselves independent.

Q. I understand, they are independent from your company, but are they what is known as the "Independent," or "Home" telephone system, in contradistinction to the "Bell" system?

A. They are not competing companies, if that is what you mean.

Q. That is not what I mean; I mean are they affiliated with or associated with what is known as the Bell system of telephones as contradistinguished from the Independent or Home system of telephones?

A. These companies that I refer to are independent in their management, and I believe some of them have the word "home" in their titles.

Q. The Western Electric Company makes the apparatus largely that is used by the Bell system of telephones, does it not?

A. Yes; it is the largest telephone manufacturing establishment in the world.

Q. And there is another factory which makes apparatus
919 which is furnished to the Independent system of telephones, what is known as the Independent or Home system of telephones, is there not?

A. There are several.

Q. Do the hundred companies about which you have testified procure their apparatus or use the character of apparatus that is manufactured by the Bell, or by the other?

A. Both; it does not make a bit of difference, as far as we are concerned, which they use.

Q. What I want to know is, which do they use?

A. They use both. I really imagine that the majority of them use what is known as the Independent apparatus.

Q. Now how much did you say was the percentage of earnings on the amount invested in the plant according to your figures, as to the amount invested, and as to the expenses for the year 1908?

A. The percentage which I gave was this: from gross revenue I deducted gross expense, including maintenance reconstruction, leaving $100,719.03; the ratio which this sum bears to the average cost of plant as shown by me, is 5.89 per cent. (5.89%).

Q. Now how much do you say should be set aside for depreciation, to take care of the necessary decay in the plant?

A. Our company has always adhered to the 7½% basis, believing that that sum is required for reconstruction and depreciation.

920 Q. And you say that amount should be set aside each year, to take care of the decay in the Louisville plant?

A. I think that is entirely proper.

Q. And on what figure should that 7½% be calculated?

A. It should be calculated on the book cost of plant.

Q. And what is that?

A. $1,704,075.94, this being the average book cost for the year 1908.

Q. You do not figure that on the real estate and buildings at all then?

A. We have not done so.

Q. Do you think it ought to be done that way?

A. Real estate is a much debated matter. It should not be figured on the value of the land, and it is a question as to whether it should be on buildings; I know that many companies consider that it should.

Q. What do you say about it?

A. I think it would be safe to do it.

Q. Then 7½ per cent. on the $1,704,000 would amount to how much?

A. About $127,000.00.

Q. And what are the net earnings for 1908, according to your figures?

A. The net earnings, before this depreciation is deducted, are $100,719.03 on the plant, excluding real estate.

Q. How much was spent for that year, in the way of depre-

921 ciation?

A. My statement shows $19,535.72.

Q. And that deducted from the amount which should have been set aside for that year amounts to how much?

A. It leaves a balance unexpended of $108,269.97.

Q. And the difference between the net earnings, then, and the amount which should have been set aside in addition to what was used for depreciation, was how much?

A. A deficit of $7,550.94.

Q. So that for the year 1908, according to your figures, then, the company should have been made to earn $7,000.00 more than it did, and also a sufficient amount to pay a dividend, or reasonable return on the value of the amount invested in the plant, should it?

A. Yes.

Q. And how much, in your opinion, should the company be allowed to earn as a return for the amount invested in its plant?

A. About ten per cent.

Q. And how much was invested in the plant?

A. In the telephone plant, $1,704,075.94.

Q. Should it have been allowed to earn a return on the value of the real estate, also?

A. It should.

Q. And adding those two items together makes a total of how much?

922 A. Adding the average cost of the plant for the year, and cost of real estate, makes $1,864,917.36.

Q. Was that the total amount invested in the plant in Louisville on which you should be allowed to earn an income?

A. I think to that should be added the average value of supplies carried for the benefit of Louisville.

Q. How much did that amount to, for the year 1908?

A. About $44,000.00.

Q. That makes a total of how much, added to the last figures you gave?

A. A little over $1,900,000.00.

Q. And ten per cent, on that is how much?

A. $190,000.00.

Q. And adding the $7,000.00 figure which was the deficit in depreciation, would make how much?

A. Well, in order to get a proper comparison, you should consider the net real estate rental, which you have not yet considered.

Q. Well, just answer my question, will you?

A. I cannot answer it properly, because in the cost of property you have included real estate, but in the revenue you have not included the net rental from real estate.

Q. Well, you can tell me what $190,000 and $7,000 make, can you not?

A. Yes sir, $197,000.

923 Q. Now should the revenue from real estate be deducted from that amount or added to it, in order to ascertain what amount you should be allowed to earn?

A. It should be deducted from it.

Q. How much was the income from the real estate?

A. $11,707.52.

Q. And that deducted from the former figure leaves how much?

A. About $186,000.00.

Q. And that is the amount that you say the company should have earned in addition to what it did earn, in Louisville?

A. Yes.

Q. Now what were the total gross earnings for the year 1908, from revenue and miscellaneous items, credited to exchange earnings?

A. $324,026.75, as shown by me.

Q. What percentage of increase over that amount would the $186,000.00 make?

A. About 57 per cent.

Q. Then you say that your rates in Louisville should have been increased 57 per cent. in order to earn what you were entitled to earn for the year 1908?

A. I should say that the gross revenue should be greater.

Q. They would have to be increased 57 per cent. in order to earn that amount of money, would they not?

A. It would not be my problem to consider just how to increase that revenue.

924 Q. Now take the year 1907, according to your figures what was the net revenue for that year?

A. The net revenue, nothing being deducted for depreciation, was $58,965.79 and in that no net rental from real estate is included.

Q. Add to that amount, then, the revenue from rentals and real estate for that year, will you?

A. The total is $72,005.55.

Q. What will 7½ per cent of the value of plant amount to for that year?

A. 7½ per cent. of the average plant for that year, $127,189.95. But there was expended on reconstruction, $44,388.37, leaving a balance for reserve of $82,801.58.

Q. What amount did you take as the value of plant, for that year?

A. $1,695,866.65.

Q. What is the difference between the $72,000 and the item of $82,000 you have just given?

A. $10,800.00.

Q. That is a deficit?

A. Yes.

Q. Adding to the $1,695,000 which you have just named the value of the real estate and supplies for that year makes a total of how much?

A. I would have to approximate the real property and the supplies. I have not the figures before me. We will take the same as for 1908, if you have no objection. We have approximately

925 the same total, $1,900,000.

Q. And ten per cent of that amount is $190,000.00?

A. Yes.

Q. And adding the $10,800.00 which you mentioned awhile ago as the deficit, to that amount makes a total of how much?

A. About $200,000.00.

Q. What were the actual revenues for that year, 1907, from exchange earning and other items—incidental items?

A. $316,747.18, as shown by my statement, Exhibit #20.

Q. That includes toll charges, does it not?

A. Yes.

Q. Deducting the toll earnings from the gross earnings leaves a balance of how much?

A. Deducting the toll earnings earned by the exchange from the gross earnings for the exchange leaves about $303,500.00.

Q. And how much percentage increase would the $200,000 be over this amount of $303,500?

A. About 66 per cent. There are two ways, of course, to get net revenue; one is to increase the gross earnings; the other to reduce expenses. We have done our utmost to reduce expenses, as far as I know and believe.

Q. And what were the net balances of revenue for the years 1906 and 1905?

926 A. On the same basis the net revenue for 1906, arrived at by taking the difference between the gross revenue and gross expenditures, is $49,815.45, and for 1905, is $29,765.80.

Q. Mr. Smith, I am not a sufficiently good accountant to know whether I have asked the question I desire to ask. I therefore ask you if for the year 1907 the company would have to earn about 66 per cent. more than it did earn in order to increase its earnings $200,000.00?

A. Are you asking that in regard to the whole company, or in regard to the Louisville plant?

Q. In the Louisville exchange. You have said that $200,000 is about 66 per cent. increase over $300,000; I now ask if in other words that means that the company would have had to earn about 66 per cent. more than it did earn in Louisville in order to furnish $200,000 more?

A. In order to earn $200,000 more than it did earn, it is necessary to increase the gross revenue by that amount or to decrease by that amount the expenses, or by an increase in one and decrease in the other, to that extent.

Q. Now in the figures you made and the percentages you gave under your redirect examination, in so far as those figures and percentages pertain to the Farnham report, is it not true that no toll earnings were taken into consideration at all?

927 A. Mr. Farnham eliminated what he termed Revenue from Toll Department, and also what he termed Expenses of Toll Department.

Q. And did you, in giving your percentages based on his report, follow the eliminations he made in this respect?

A. Yes.

Q. Now as to the percentages which the various earnings would show, those percentages were based on what the joint report shows as the amount appearing on the books as having been expended for construction, were they not?

A. Not as regards Mr. Farnham's figures.

Q. But as regards the others?

A. Yes.

Q. Now as to the repairs on the buildings in Louisville, you have carpenters and repair men generally in the employ of your company in Louisville, have you not?

A. I think so.

Q. And when a door needs hanging or a window pane is broken out, or a bell cord on a window is broken, or a door-knob is broken, or a piece of floor needs repair, or what not items of that nature are required to be done, does some one of your men in your regular employ there do that character of work?

A. In a matter of that kind I imagine we would treat that exactly as a tenant would do if he were in the building of another, simply have it done and the expense would be so small that we would not recognize it; but when it comes to a matter that amounts to anything why it is done and charged up to real estate expense, as the
928 report of Wilkinson will show amounts from anywhere from $1,500.00 to something over $2,000.00 for each of those years.

Q. You mean by anything that amounts to anything, such as painting and overhauling?

A. I mean painting and overhauling of the building would be charged against the Real Estate Expense account.

Q. But the incidental repairs such as I have mentioned and those of a similar nature, would be done by the men and no separate account kept of it and no charge made against Real Estate Expense at all for that?

A. When purchases are made, or withdrawals of supplies are made, such are charged, for the purpose for which used, but if there were a pane of glass to cost 25 or 50 cents broken out, the glass would be bought and charged to Real Estate Expense and probably some employee at Louisville would put it in on his regular time and it would be charged to maintenance.

Q. Now you filed some exhibits showing rates which were charged in different cities over your system; were those rates as to Memphis, Tenn., and Nashville, Tenn., and New Orleans, La., in force in 1906 and 1907?

A. All of them were except the residence rate for Memphis. This rate, of $3.50 became effective January 1, 1907.

Q. What was it prior to that time, at Memphis?

A. Three dollars.

929 Q. Now this statement you have filed as your Exhibit No. 17 were the taxes represented in this statement all taxes assessed after the last day of August, 1899?

A. No.

Q. Please indicate which were assessed prior to that time?

A. I cannot indicate that without referring to the payments.

Q. I notice the caption says "Statement of Taxes of Ohio Valley Telephone Company, Kentucky Taxes, assessed on or before September 1st, 1899 and paid after January 1st; Indiana taxes for the year 1899, paid after January 1, 1900." Will you please file another exhibit with your deposition, or attach to this exhibit a paper showing what taxes represented in this Exhibit No. 17 were assessed prior to August 1, 1899?

A. You understand, of course, that the Government tax is assessed after that date.

Q. You may eliminate the Government tax.

A. I will do so.

Q. Mr. Smith, without causing you to go to the trouble of getting all of these items, I will ask you to state whether you know about the taxes assessed and appearing in this exhibit on the plant located in Louisville, or Jefferson County, whether any of that was assessed prior to the first day of August, 1899?

930 A. I think the four items of Jefferson County, $1,853.75, City of Louisville, Tangible, $2,115.76, Real Estate, $771.39, and City Franchise of $3,370.91, were assessed as of Sept. 1, 1899, and would have been paid, or must have been paid, whether or not within ten days o fthat date the property had been destroyed.

Q. The property was not destroyed was it?

A. It was not.

Q. And that was for the year ending August 31, 1900?

A. It is the assessment which was made as of Sept. 1, 1899.

Q. For the succeeding year?

A. I believe it is called taxes for the succeeding year but it must be paid.

Q. And is that all the items appearing on that exhibit as taxes paid on the plant and property of the Ohio Valley at Louisville, Kentucky?

A. If I understand your question correctly the items which I enumerated are all of the taxes on property located in the County of Jefferson.

Redirect examination.

By Mr. GRANBERY, for the Plaintiff:

Q. Mr. Smith, has Mr. Warren been present from the beginning of your cross examination, at every session, aiding and assisting counsel in the cross examination?

931 A. He has been present always, aiding and assisting the counsel.

Q. Has he examined the books and records referred to in the cross examination?

A. He has, every one.

Q. Is he the same Mr. Warren who was assistant to Mr. Farnham in making his investigation on behalf of the Mutual Audit Company?

A. Yes.

Further, this deponent saith not.

H. BLAIR SMITH.

Subscribed and sworn to before me this 29 day of September, 1909.

[SEAL.] BUFORD DUKE,
Notary Public.

932 *Exhibits to Deposition of H. Blair Smith, Auditor, in Case of C. T. & T. Co. vs. City of Louisville. Taken at Nashville, April* 14, 1909.

Exhibit 1. Louisville Earnings & Expenses, 1905 to 1908.
Exhibit 2. Construction Account.
Exhibit 3. Subscribers' Report.
Exhibit 4. Comparative capital per station at New Orleans, Nashville, Memphis, and Louisville.
Exhibits 5 and 6. Lists of subscribers and records as of January 1, 1908, and April 1, 1909.
Exhibit 7. Earnings Reports January, 1908, through March, 1909.
Exhibit 8. Toll reports, same period.
Exhibit 9. O. V. T. Co. Rates, 1895-1899.
Exhibit 10. Rate schedules.
Exhibit 11. Average rate per station, 1900 to 1908.
Exhibit 12. Maximum Business and Residence Rates at New Orleans, Louisville, Nashville, and Memphis.
Exhibit 13. Louisville Peg Counts, January 11, February 10, and March 10, 1909.
Exhibit 14. Copy of O. V. T. Co.'s Ind. Journal, page 170. P. 137.
Exhibit 15. Copy of C. T. & T. Co. voucher, July, 1900, #461. P. 208.
Exhibit 16. Copy of C. T. & T. Co. voucher, 9/01, #166. P. 221.
Exhibit 17. Statement of Taxes O. V. T. Co. accrued and unpaid, January 1, 1900.
Exhibit 18. Farnham's letter and my replies.
Exhibit 19. Pamphlet Telephone conditions at New Orleans, La., by H. N. Hall.
Exhibit 20. Exchange Earnings & Expenses compared, 1905 to 1907.
Exhibit 21. 1908 Exchange Earnings compared.
Exhibit 22. Original bills for the publication of articles referred to on page 517 of my deposition, with newspaper clippings attached.

(Here follows Exhibit 1, marked page 933.)

Louisville Ky

	1905 Amount	1905 Sub	1906 Amount	1906 Sub	Amoun		Amount	
Earnings								
Exchange Ser	billion 6 6 6		299 127984449		2856 297465056		2755 311112263	3091
Proportion of Tolls earned by Exchange	118 16 96 6		134 130434		134 132580 3		173 777808	77
Miscellaneous	995776 6		11 67943		07 327870		30 358168	36
Advertising	75 183846		08 249175		25 298427		28 318115	31
Total Receipts	2781707 3		31444796120 51		3022316981 51		2936 375603 54	3735
Expenses General	Operating 26 822 38		294 498 44		319 758		1325 838	
Exp Gen Off Exp	16 76 651		189 16717444		171 1757193		162 1870742	107
Stat Plg & Adv	36 7416		41 376938		38 401555		37 444382	44
Insurance	7 399 8		83 910219		93 799936		74 4 8476	47
Taxes	12 69829		155 1623682		166 1790082		166 1956385	191
Legal	1 60760		18 337978		34 133868		12 395100	39
Uncollectable	1679391		19 15 19411		16 2344944		22 3707344	37
Total General	44645 31		505 5072502		518 5117178		473 4112 8	468
Operating								
Salaries & Wages	677 4116		766 66 89831		683 64 17206		594 5807734	577
Rent of Equipment	12 60748		142 11 8813		121 12547 81		116 1327184	132
Adv & Canv	948796		107 6 81168		67 499475		46 5 7113	57
Superintendence	25 7435		29 2652 61		27 2 14734		39 2565 87	25
Total Operating	922 3395		1054 8795073		898 85 85 1146		796 7962418	791
Maintenance of Way	232 2273		2 4 5 9 72					

	Taxes	12 69829		155	1623682		166	1790082		166	1956385		194
	Legal	160760		18	337978		34	133868		12	395100		39
	Uncollectable	1679391		19	151941		16	234494		22	370734		37
Total	General	4464831		505	5092502		518	5117178		473	4112128		468
	Operating												
	Salaries & Wages	6771416		766	6689831		683	6417206		594	5807734		577
	Rent Lt & Heat	1260748		142	1181813		121	1254781		116	1327184		132
	Adv & Canv	942796		107	968168		67	499475		46	571113		57
	Incidental	257435		29	276261		27	414234		39	256587		25
Total	Operating	9233395		1044	8795073		848	8585146		795	7962118		791
	Maintenance & R	3302213		125	1208573		120	1193118					
	Salaries & Wages	2910097		329	3288771		346	4489253		416	4326373		430
	Rent Lt & Heat	133164		15	137541		14	155665		14	274830		23
	Material	683787		78	397554		40	286014		36	783635		78
	Traveling	337671		38	298126		40	589986		54	727136		72
	& Pole & Roof Rent	54775		06	21		01	82447		08	630 18		06
	Insurance	431204		49	457768		47	331432		31	358311		36
	Damage & Comp	295163		33	297020		61	22085		02	194581		19
	Incidental	69756		08	484 06		05	416407		39	75073		02
Total	Current Repairs	4915117		556	5462159		551	6473289		600	6702		666
	Equip	246									166 64		
		1315645									1686897		
	Maint Reconst												
	Salaries & Wages	3277244		370	4111220		337	4810270		168	1248436		124
	Rent Lt & Heat				79110			62814		06	71897		07
	Material	717581		80	1621165		166	2303159		213	5677024		56
	Traveling	139561		16	168043		17	107081		10	65812		07
	Incidental				2715			15503		14	2285		
Total	Reconstruction	4124392		466	4065072		418	4438837		411	1953572		194
										36	65129		
	Instrument Rental	1288904		145	1318247		134	1398233		131	1418100		141
933													
Total	of Expenses	24026339		2711	27113003		2522	26012633		241	2277495		2760
	operations (Credits omitted)	2171139			2338928			2765986			2173953		
	Balance of Revenue	3190734		428	4184990		500	5685518		526	9810788		975
		5116204			6060006			7315739			10874247		
	of Plant (cor)	15561038		1638	16476611		1693	6515		1702	2117		
	No of Sub for year	8848			9999			10797			10664		
	ing and for Rep.)	243			299			336			376		

Ex. 2.

End of period.	Aerial.	Equipment.	Underground.	Tools & team.	Office furniture and fixtures.	Total.
1899.....	$264,127.37	$189,245.37	$224,981.95	.....	.....	$678,354.69
1900.....	357,202.22	233,000.33	255,091.17	.....	.....	845,293.72
1901.....	456,793.38	309,247.39	258,104.34	.....	.....	1,024,145.11
1902.....	533,649.51	424,442.92	279,523.00	.....	.....	1,237,615.43
1903.....	607,950.95	509,134.79	284,016.53	.....	.....	1,401,102.27
1904.....	706,077.74	537,226.33	275,284.77	$5,069.06	.....	1,523,657.90
1905.....	744,396.69	556,425.28	285,304.13	7,497.81	.....	1,593,623.91
1906.....	814,955.89	569,650.56	287,626.19	10,672.77	.....	1,682,905.41
1907.....	827,031.95	579,659.52	287,903.28	9,802.34	.....	1,704,397.09
1908.....	832,364.43	568,228.80	287,918.71	9,573.90	$1,779.42	1,700,045.26

Amounts shown above are as of December 31st each year.

935 3.

Louisville, Ky., Subscribers.

Year.	At Beginning.	Put In.	Took Out.	Gain.	Loss.
1900.....	3,536	2,063	711	1,352	.....
1901.....	4,888	3,183	1,176	2,007	.....
1902.....	6,895	3,144	3,299	.....	155
1903.....	6,740	3,590	2,783	807	.....
	301 trial*				
1904.....	7,547	4,790	3,346	1,444	.....
1905.....	8,991	2,682	2,561	121	.....
1906.....	9,112	3,296	2,009	1,287	.....
1907.....	10,399	2,691	2,322	369	.....
1908.....	10,768	1,565	2,676	.....	1,111
1909.....	9,657	.....	.....	.....	.....
	.....	27,004	20,883	7,387	1,266

[*In pencil in copy.]

Free trial telephones not included.

PROCTER.

936–1065 *Comparative Statement of Construction Accounts, December 31, 1908, with Averages per Subscriber at Louisville, Ky., New Orleans, La., Memphis, Tenn., Nashville, T.*

Exchange.	Construction Acct. December 31, '08.	Subscribers. Dec 31, '08.	Ave. per.
New Orleans, La.....	$2,879,342.13	15,347	$188.79
Memphis, Tenn.....	$1,160,219.16	8,143	$142.48
Nashville, Tenn.	$1,497,535.16	8,772	$170.72
Louisville, Ky.	$1,700,045.26	9,657	$176.04

1066 9.

Ohio Valley Telephone Co.

(Incorporated.)

Louisville, Ky., Rates.

Business.	1st half 1895.	1896.	2d half 1896-97-98.	1899.
Private grounded	$6	$6	$6	....
2-station "	5.	5.	5.	Net rates.
Private metallic unlimited.....	...	9.25	8.	$7.50
" " 3 yr. contract.....	...	....	6.50	6.50
" " limited	...	....	....	4.50
2-Station metallic	...	....	....	6.00
4-Station metallic	...	....	....	3.50
Extension sets	...	2.50	2.50	1.00

Residence.	1895.	1st half 1896.	2d half 1896.	1897-8.	1899.
Private grounded	$4	$4.	$4.	$4.	....
2-Station "	..	...	...	3.	Net rates.
3-Station "	..	...	...	2.50	....
Private metallic, unlimited	..	...	6.	6.	4.50
" " 3 yr. contract	..	...	4.50	4.50	....
" " Limited	..	...	...	....	3.50
2-Station metallic	..	...	...	....	3.50
6-Station metallic	..	...	...	....	2.00
Extension sets	..	...	2.50	2.50	1.00

1067 Ohio Valley Telephone Company.

(Incorporated.)

Average Rental per Station.

Louisville, Ky.

December 31. Year.	Stations.	Average per Station. Yearly.	Monthly.
1895	2,550	$74.40	$6.20
1897	2,525	70.32	5.86

1068 10.

Rates in Effect at Louisville, Kentucky, April 1st, 1902.

Business or Professional.

Limited Service:	Per Month.
4-Station Circuit, subscriber hears one ring besides his own, 60 outward calls per month; additional outward calls 2 cents each	$3.00
Private Circuit, 60 outward calls per month; additional outward calls 2 cents each	5.00
Unlimited Service:	
4-Station circuit, subscriber hears one ring besides his own	4.00
2-Station Circuit, subscriber hears only his own ring	5.00
Private Circuit	8.00
Extension Set	1.50

Residence.

Limited Service:	
Private Circuit, 75 outward calls per month; additional outward calls 2 cents each	2.00
4-Station Circuit, selective signal, 120 outward calls; 2¢ each for additional outward calls	2.00
4-Station Circuit, selective Signal	2.50

Unlimited Service:

Private Circuit	3.50
Private Circuit, Churches, Clergymen, Charitable Institutions and Lodges	2.50
Extension Set	1.50

These rates apply within a radius of three miles from the Main or South Exchange; for each additional mile there is an extra charge of 50 cents per month.

A discount of 50 cents per month will be allowed on any of the above charges, Business or Residence, if paid quarterly in advance.

April 13th, 1909.

1069 *Rates in Effect at Louisville, Kentucky, November 1st,* 1904.

Unlimited.

Business:	Per Month.
Private Circuit	$8.00
2-Station Circuit	5.00
4-Station Circuit	4.00
Extension Set	1.50
Public Pay Station (Coin Device) Private Line	4.00

(Agents' service free out and in, and divide with him any cash deposits for local calls.)

Residence:

Unlimited.

Residence.	
Private—outside and within three miles of city limits	3.50
Private—within city limits	3.00
Private within one mile of Court House in Main district	2.50
4-Station Circuit—within three miles of city limits	2.50
Extension Set	1.50

The above rates subject to a discount of 50 cents per month, if paid quarterly in advance.

Joint user, Business, per month, net	1.00
List Subscriber, Business, per quarter, net	.50
List Subscriber, Residence, per quarter, net	.25
Extension Bell, per month, net	.15

April 13th, 1909.

1070 *Rates in Effect at Louisville, Kentucky, December 1st, 1906.*

Business—Within two miles radius of nearest exchange:

	Per Month.
Private Line	$8.00
2-Station	5.00
4-Station	4.00
Public Pay Station (Coin Device) private line	4.00.

(Agent's service free out and in and divide with him any cash deposits for local (city calls).

Extension Set	1.50
City and County telephones, within the city limits	4.00

Residence:

Private, within district bounded by Ohio River, Clay Street, Broadway and 14th Streets	2.50
Private, beyond district above outlined, and within the city limits	3.00
Private, beyond city limits and within three miles of nearest exchange	3.50
4-Station within three miles of nearest exchange	2.50
Extension Set	1.50

Country Rates:

Private Line, Business or Residence, add to the exchange radial rate 50c. per month, per mile or fraction thereof, if subscribers are located beyond exchange radius (Exchange radius for Business is 2 miles, for Residence 3 miles) from nearest Louisville exchange.

4-Party Line, Business or Residence, add to the exchange radial rate 25c. per month, per mile or fraction thereof, if subscriber is located beyond exchange radius. For exchange radius, see above.

Extension Set	1.50
Ministers and Charitable Institutions (Within City Limits)	2.50

A Discount of 50 cents per month is allowed on all rates above enumerated, if rental is paid quarterly in advance.

1071 Private Line Instruments (No exchange connection) $12.00 per year, per set, to which is added a mileage charge of $30.00 per mile, per annum.

Loud ringing extension gong (Business or Residence) per month	$0.25
Extension bells, (Business or Residence) per month	.15
Joint user (Business) per month	1.00
List (Business) per quarter	.50
List (Residence) per quarter	.25

April 13th, 1909.

1072 *Rates in Effect at Louisville, Kentucky, January 1st, 1907.*

Business—Within two miles radius of nearest exchange:

	Per Month.
Private Metallic	$8.00
2-Station Metallic	5.00
Public Pay Station (Coin Device) Private	4.00

(Agent's service free out and in, and divide with him any cash deposits for Local "City Calls".)

City and County telephones, within the city limits	4.00
Extension Set	1.50

Residence:

Private, within city limits	4.00
Private, beyond city limits and within three miles of nearest exchange	4.50
2-Station, within city limits	3.00
Extension Set	1.50

Country Rates.

Private Metallic:

Business or Residence—add to the exchange radial rate 50c. per month, per mile, or fraction thereof, if subscribers are located beyond exchange radius. Exchange radius for Business is two miles; for Residence three miles—from nearest Louisville exchange.

4-Party Metallic:

Business or Residence—add to the exchange radial rate 25 cents per month, per mile or fraction thereof, if subscriber is located beyond exchange radius. For exchange radius, see above.

Extension set	1.50

A Discount of 50 cents per month is allowed on all rates enumerated above, if rental is paid quarterly in advance.

Extension Bells (Business or Residence per month, net	.15
Joint user (Business) per quarter, net	1.00
List (Business) per quarter, net	.50
List (Residence) per quarter, net	.25
Loud Ringing Extension Gongs, per month, net	.25
Buzzers and Push Buttons, per month, net	.25

April 13th, 1909.

1073 *Rates in Effect at Louisville, Kentucky, October 1st, 1907.*

Business—Within two miles radius of nearest exchange:

	Per Month.
Private Metallic	8.00
2-Station Metallic	5.00
Public Pay Station (Coin Device) Private	4.00

(Agent's service free out and in, and divide with him any cash deposits for Local "City Calls".)

City and County telephones, within the city limits	4.00
Extension Set	1.25

Residence:

Private, within city limits	4.00
Private, beyond city limits and within three miles of nearest exchange	4.50
2-Station, within city limits	3.00
2-Station, outside city limits and within 3 miles of nearest Exchange	3.50
Extension Set	1.25

Country Rates.

Private Metallic.

Business or Residence—add to the exchange radial rate 50c per month, per mile, or fraction thereof, if subscribers are located beyond exchange radius. Exchange radius for Business is two miles; for Residence three miles—from nearest Louisville exchange.

4-Party Metallic.

Business or Residence—add to the exchange radial rate 25 cents per month, per mile or fracion thereof, if subscriber is located beyond exchange radius. For exchange radius, see above.

Extension set	1.25

A discount of 50 cents per month is allowed on all rates enumerated above, if rental is paid quarterly in advance.

Extension Bells (Business or Residence) per month, net	.15
Joint user (Business) per month, net	1.00
List (Business) per month, net	.25
List (Residence) per month, net	.25
Loud Ringing Extension Gongs, per month, net	.25
Buzzers and Push Buttons, per month, net	.25

April 13th, 1909.

1074 Cumberland Telephone & Telegraph Company.

—Incorporated—

Louisville, Ky.

Year.	Average Number of Subscribers.	Average Net Rate, per Subscriber.	
		Yearly.	Monthly.
1900	4,277	$57.06	$4.76
1901	5,820	49.32	4.11
1902	6,864	40.68	3.39
1903	7,291	32.83	2.73
1904	8,007	31.74	2.65
1905	8,848	29.91	2.49
1906	9,800	28.56	2.38
1907	10,797	27.55	2.30
1908	10,064	30.91	2.58

April 13th, 1909.
(Copy.)

1075–1120 *Statement Showing Maximum Direct Line Rates, and Number of Stations in Use at those Rates, and the Total Number of Stations in Use December* 31, 1908.

	RATES.		No. of Stations at these rates		Total Stations in Exchange
	Residence	Business	Residence	Business	
Louisville, Ky.	$4.00	$8.00	875	730	9,657
Memphis, Tenn.	3.50	7.50	1,156	1,363	8,143
Nashville, Tenn.	3.50	7.50	2,009	1,217	8,834
New Orleans, La.	4.50	10.50	1,705	1,066	15,347
			5,745	4,376	41,981

Rates subject to a discount of 50 cents per month, if paid quarterly in advance.

April 13th, 1909.
(Copy.)

Statement of Taxes of Ohio Valley Telephone Company.

Kentucky Taxes Assessed on or Before Sept. 1, 1899, and Paid After January 1, 1900; Indiana Taxes for Year 1899 Paid After January 1, 1900, and U. S. Government Tax Accrued Prior to and Paid After January 1, 1900.

Kentucky.

To whom paid.	Kind of tax.	Amount.	When paid.
Breckinridge County	State & County tangible	$113.25	November 1900.
City of Cloverport	City tangible	3.98	October 1901.
"	" franchise	3.02	October 1902.
Hardin County	State & County tangible	72.77	November 1900.
"	County franchise	4.02	May 1900.
City of Elizabethtown	City tangible	11.13	October 1900.
"	"	11.92	February 1900.
"	City franchise	7.60	April 1902.
City of West Point	" tangible	4.00	March 1901.
"	" "	2.50	February 1900.
School tax		6.00	August 1902.
"		7.50	April 1900.
Henry County	State & County tangible	30.37	October 1900.
"	County franchise	6.42	October 1902.
City of Eminence	City tangible	3.50	June 1900.
Jefferson County	State & County tangible	1,853.75	November 1900.
City of Louisville	City tangible	2,115.76	February 1900.
"	" real estate	771.39	February 1900.
"	City franchise	3,370.91	February 1900.

PASTE BOUND VERTICAL IN BOOK

School tax		11.00	July 1900.
"		11.00	July 1900.
Nelson County	State & County tangible	110.16	November 1900.
"	County franchise	22.58	August 1902.
"	"	51.82	February 1900.
City of Bardstown	City tangible	19.50	August 1900.
"	" franchise	3.92	December 1902.
Shelby County	State & County tangible	96.53	November 1900.
"	County franchise	75.50	April 1903.
"	"	20.35	March 1900.
"	" (R. R. tax)	30.85	April 1900.
City of Shelbyville	City tangible	14.00	October 1900.
"	" franchise	2.81	October 1902.
School		14.47	December 1900.

1122 Kentucky (Continued).

School, Shelby County		$11.57	June 1900.
Union County	No record State or county taxes	.....	
City of Sturgis	City tangible	1.00	January 1901.
City of Uniontown	"	10.50	March 1901.
School tax		.50	January 1900.

Indiana.

Clarke County	First installment	27.10	May 1900.
"	Second "	22.08	October 1900.
City of Jeffersonville	First installment	39.74	May 1900.
"	Second "	39.73	October 1900.

Floyd County	First installment	88.47	April 1900.
"	Second installment	85.21	October 1900.
City of New Albany	First and Second installment	179.99	April 1900.
Harrison County	First installment	39.83	April 1900.
"	Second installment	34.50	October 1900.
City of Corydon		.45	April 1900.
Washington County	First installment	36.19	May 1900.
"	Second installment	28.66	October 1900.
United States Government Tax on Telephone Messages for War Revenue Accrued Prior to, and Paid After January 1, 1900.			
		83.02	October 1900.
		91.42	November 1900.
		87.00	December 1900.
Total		$9,791.24	

1123 (Copy.)

Ex. 18.

Cumberland Telephone & Telegraph Co.
(Incorporated.)

JUNE 24, 1909.

The Mutual Audit Company, Mr. E. W. Farnham, General Manager, Nashville, Tenn.

DEAR SIR: Replying to your letter of June 21st asking me to give your representative, Mr. Warren, access to our "private journal and ledgers," I beg to advise that we have no books of this name or of this nature.

This matter was fully explained to your Mr. Warren this morning in the presence of Mr. Wilkinson.

Yours very truly, H. BLAIR SMITH, *Auditor.*

O.

1124 (Copy.)

The Mutual Audit Company,

E. W. Farnham, General Manager.

AT NASHVILLE, TENN., *June* 21, 1909.

Cumberland Telephone & Telegraph Company, Mr. H. Blair Smith, General Auditor, Nashville, Tenn.

DEAR SIR: We are now checking General Expense and General Account in the General Ledgers and as soon as through with that check, we wish to make an examination of your private journal and ledgers. At this time a joint check of the accounts above mentioned is being made. As soon as this is completed, please arrange for the examination of the private and individual books as above.

I am leaving this with Mr. Warren, my chief in charge, and I am obliged to go North for a few days.

Yours very truly, E. W. FARNHAM,
Representing the Defendants.

Memorandum.

Before noon June 23 1909 Mr. Caldwell and Mr. Hume were in the room used by Mr. Farnham and assistants. Mr. Farnham out of town. Mr. Warren, upon being questioned, stated they had executed Mr. Farnham's orders in full, that they had no further orders to carry out, and as far as he knew were through. This letter handed to me after this conversation.

H. B. S.

June 23, 1909.

1125 (Copy.)

Cumberland Telephone & Telegraph Company.

(Incorporated.)

NASHVILLE, TENN., *June 12th*, 1909.

Mr. E. W. Farnham:

Replying to yours of the 11th, asking for information together with records of the Engineer's Department, embracing the number of poles and other equipment of various kinds in the Louisville exchange, I desire to state that the Company does not keep any such record, and, therefore, it will be impossible for me to furnish you with this information. This inventory, if it should be made would be constantly changing from day to day and therefore, the Company has felt that the expense of making such inventories and keeping them corrected from day to day renders it wholly undesirable.

Yours very truly, H. BLAIR SMITH, *Auditor.*

K.

1126 (Copy.)

The Mutual Audit Company.

E. W. Farnham, General Manager.

AT NASHVILLE, TENN., *June* 11, 1909.

Mr. H. Blair Smith, General Auditor, Cumberland Telephone & Telegraph Co., Nashville, Tenn.

DEAR SIR: In line with our investigation now being made under the order of Court and the Special Master, we desire to be furnished with the detail information shown below, together with the records of the Engineer's Department covering same, to wit:

City of Louisville Exchange.

No. of poles in standard lengths.
Miles of Copper wire—different guage separate.
" " Iron wire " " "
" " Cable—noted by number of pairs.
No. of cross arms.
" " Insulators.
" " Brackets complete.
" " Braces.
" " Anchor rods.
" " Guys—Rods and wire.
" " Cable boxes.
" " Conning towers.
" " Roof jacks.

In giving the cable data, please state the Lin. Ft. each 25 pr. 50 pr. 100 pr. and 200 pr. cables.

No. Positions in local exchange, branch exchanges to be enumerated separately.

No. Positions in Toll department.

Lin. Ft. underground conduit, and class of cables therein, No. and pairs.

Yours truly,

E. W. FARNHAM,
Representing the Defendant.

1127–1158 BLAIR SMITH EXHIBIT #19.

New Orleans Board of Trade, Ltd.

Telephone Conditions in New Orleans, La.

Being a Report Presented by a Special Committee of the New Orleans Board of Trade, Approved April 8th, 1908.

New Orleans, 1908.

1159 *Mr. Hall's Report.*

NEW ORLEANS, *Jan. 14th,* 1908.

To Crawford H. Ellis, Esq., Chairman, and Members of the Telephone Committee of the New Orleans Board of Trade, Ltd.

GENTLEMEN: Pursuant to your instructions, I have diligently inquired into and made careful investigation of: First, telephone conditions in New Orleans as compared with other cities in the United States; Second, the rates charged and service given by the Cumberland Telephone & Telegraph Company to its patrons here; and, Third, the advisability of a dual system of telephones in New Orleans. I beg leave to hand you my report:

I deem it fair to all parties to state that when I entered upon this investigation I was firmly convinced, in my own mind, that at the present stage of political development in this country, it is to the best interest and advantage of large cities that public services, especially those involving the use and tearing up of the streets, be furnished by private enterprise controlled and regulated by municipal authority.

Throughout my inquiry, I have approached each and every problem in a spirit of absolute impartiality and fair play; I have striven to mete out even-handed justice to the various conflicting interests concerned. In gathering the facts, I have labored to get at the truth, and, to that end have employed whatsoever of ability I possess, and the experience gained in sixteen years of newspaper work. Starting without any expert knowledge of Telephony, hampered neither by traditions nor preconceived ideas, I endeavored to
1160 view every question with an unbiased mind, and believe that the conclusions at which I have arrived will stand the test of logic, and that the facts I am able to present will prove incontrovertible.

In order to equip myself for my task, I read all the latest works dealing with telephone questions, and made a careful study of the various reports of municipal and legislative bodies that, within the past few years, have investigated telephone conditions in other cities. Reports and Court Records bearing upon the telephone question in New Orleans have received my most careful attention, and I retraced the history of the telephone in this City ever since its introduction by Mr. W. H. Bofinger, in 1877.

I obtained a number of statements from officials, past and present, of the Telephone Company here, concerning the business in New Orleans, and, in order to satisfy myself as to how local conditions compare with those in other cities, I prepared a comprehensive list of queries, which I sent to all the principal telephone companies throughout the United States. I was thus successful in obtaining detailed information as to telephone conditions in Greater New York, Chicago, Philadelphia, St. Louis, Baltimore, Boston, Cleveland, San Francisco, Cincinnati, Detroit, Buffalo, Pittsburg, Milwaukee, Washington, Newark, Minneapolis and St. Paul, Los Angeles, Louisville, Kansas City, Indianapolis, Providence, Rochester, Toledo, Columbus, Denver, Memphis, Portland, Nashville, Omaha, Scranton, Syracuse, Dayton, Fall River, Grand Rapids, Albany, Reading, San Diego, and Trenton.

Furthermore, I wrote to the Mayors of the above cities asking their opinion on the advantages or disadvantages of a dual system of telephones, and requesting copies of ordinances and
1161–1162 reports dealing with the subject under consideration. I also invoked the aid of the Press, and asked the City Editors of the leading papers throughout the country to co-operate in getting information as to the quality of the service in other cities. A large number responded, thus placing me in possession of valuable information as to the number of calls per diem made by telephone users in other cities, and the number of connections completed by the companies.

More than five hundred letters have been written and received by me in the course of this inquiry, and I have sought the opinions of men connected both with the Bell and the Independent Companies. From some of the statements made, I am forced to the conclusion that it is dangerous to take as facts, the uncorroborated assertions of telephone experts. The antagonism existing between the rival telephone interests passes the bounds of ordinary commercial or industrial competition, and many statements made are not only conflicting but utterly irreconcilable.

When I had classified and examined the replies received to my queries from the various telephone companies, it became abundantly apparent that, in so far as the fixing of telephone rates is concerned, comparison with other cities is worse than useless—it is absolutely misleading. There are no two cities in the United States where conditions are sufficiently similar to warrant comparison. It is a fact beyond dispute that the question of telephone rates is purely and essentially a local one; and is controlled by four factors: First, the cost of the plant; Second, the cost of operation and maintenance;

Third, the amount of taxes and dues paid to the City; Fourth, the rapidity of depreciation, due to the climatic conditions.

* * * * * * *

1163 *The Telephone as a Public Utility.*

It would be more correct to say the Telephone as a public necessity. Imagine a community suddenly deprived of the power of speech; and try to realize the horror of their predicament. Recall that each individual was only capable of conversing with those in his immediate presence, and could be heard but a very short distance. Then you will understand the value of an invention which extends, almost without limit, the carrying power of the human voice, and enables man to speak with man from one end of a City to another, or over vast tracts of country, as privately and as clearly as if both were in the same room.

No other means of communication is as satisfactory as the Telephone. Although the art is still almost in its infancy, it has already superseded the telegraph for all distances under one hundred miles, and in larger cities, it is gradually taking the place of the mails, both for business and social communications. To the busi-
1164 ness man it is indispensable, it places him in direct touch with his customers and enables him to cater to their needs, without their having to come to his store. The telephone is scarce less valuable in the home, as it commands all the resources and conveniences of a great city, facilitates social relations, and in emergencies, when every second is of moment, raises the fire alarm or calls the doctor.

Without taking into consideration the enormous saving of time and worry, the telephone pays for itself in car-fares and postage alone; and the value of its services is so entirely out of proportion to the cost at which they can be profitably rendered, that the telephone has come to be looked upon as a natural convenience which every man is entitled to make use of as freely as of the mail and transportation services. In a word, the Telephone is a public utility, the service of which is of unquestioned and primordial necessity to the well-being of the community.

I am clearly of opinion that a corporation rendering a public service of such a nature should be subject to proper public control; that its acts and doings should be so regulated as to best subserve the public inconvenience; and that its rates should be fixed as low as is consistent with a fair return on the investment. By a fair return, I mean such as will attract the capital necessary to satisfactorily and fully develop the business.

It is true that great hardship is thus laid upon the men who were the first to see the value and appreciate the utility of the invention. These men had faith when others doubted and scoffed; they took the risk, invested their own money, and the money of their friends, in the telephone industry, and now that they have made it a public utility, and have rendered it indispensable to their fellow-men, they

are told that their profits must be strictly limited; that the
1165 control of the structure built up by their life work must ultimately pass into the hands of the public, and that they are to get nothing for the risk taken and the service rendered to the community at large. This is the plain English of it; but in these matters, the greatest good of the greatest number must be the ultimate aim, and seeing how absolutely indispensable the telephone is, I am unshaken in my belief that corporations rendering such public service (telephone and telegraph companies) should be regulated by duly constituted authority until such time as the Federal Government is prepared to take them over and run them in connection with the Post Office Department, of which they are a natural development.

But it is evident that this right of public control which is vested in the people, as the fountain head of all authority under a Republican system of Government, must be used to safe-guard and not to violate the rights of private individuals; especially is this so in the case of persons who undertook the hazardous task of developing an invention from an ingenious mechanical device or scientific toy into a service of public utility.

The Telephone as a Business.

Taken as a whole, the telephone business in this country has not been anything like a complete success. There have been innumerable failures, large and small. Competition has been very keen, and not always honest; in many instances, promoters have swindled the public in telephone ventures; distrust has been created; the financial interests of the country have lacked confidence in the business; and, notwithstanding the fact that the telephone is a public utility,
1166 savings banks, trust companies and other like institutions do not invest money or trust funds in telephone securities,—one of the reasons for this being that the assets could not be turned to any other use than that for which they were originally intended.

This brings home the fact that the appliances, plant and structures of a telephone company are of a very unstable nature. The property is essentially perishable, easily damaged, and deteriorates very rapidly. The industry has not yet reached a point of stability, and costly appliances are frequently being superseded by other inventions, and have to be discarded long before they are worn out; radical changes are continually being made in construction methods and in equipment, and all these things have contributed to make the telephone business, taken as a whole, an extremely hazardous one. If a telephone company should cease to do business, it would not be able to salvage more than about 20% of the original cost of construction.

In some respects, the telephone business is paradoxical and unlike any other. For instance, in ordinary business and in such public service corporations as gas, electric light, water, etc., the greater the number of patrons, the cheaper per unit can the service be furnished. With the telephone the exact reverse is the case, and the more tele-

phones are connected with an exchange, the more the cost per telephone increases. As the number of subscribers connected with an exchange increases the value of the service to each individual subscriber increases likewise. It is clearly of greater value to be able to talk with 5000 than with 500, and as the opportunity increases the use increases also. Each subscriber uses his telephone more often per day on an exchange of 5000 than he would on an exchange of 500, and it may be stated as a fact that the cost
1167 of operating for each telephone in any exchange increases as the value of the service to the individual subscriber augments.

This is susceptible of very clear demonstration. An operator can only answer a given number of calls a day, whether she be working in a large or small exchange. Five hundred connections per day is stated to be a fair average. Now in an exchange of 500 subscribers, where each man uses his telephone four times a day, there will be 2000 calls, and four girls will be able to do the work, or one to every 125 subscribers. If in an exchange ten times as large, with 5000 subscribers, each one uses his telephone, say, two and one-half times as often, the average number of connections per subscriber will be ten a day, or an aggregate of 50,000 a day. This will call for the services of 100 operators, or one for every 50 subscribers. This illustration is purposely exaggerated,—but it makes the point clear.

Furthermore, the cost of switch-boards increases per unit line, with the addition of subscribers. The unit equipment costs say about $5.00 per line for the 500th subscriber, and nearly ten times as much for the 5000th. In other words, the cost of a switch-board per unit increases greatly with the added capacity.

This peculiarity of the telephone does not seem to have been sufficiently apprehended by the pioneers in the business, and, throughout its development, new problems have continually arisen that have been solved, or are still being worked out by the aid of experience, which has been dearly paid for both by the telephone companies and the public.

Business Methods Experimental.

Even to-day, the telephone business is being conducted in a manner which, to a certain extent, is tentative and experimental.
1168 New methods are continually being tried out, and efforts are being made to rectify the many errors of the early days, when every consideration of business policy and commercial prudence was made subservient to the necessity of introducing the new invention and educating the public up to the use of the telephone. It is hardly credible to what lengths the telephone companies went in their anxiety to install telephones. In the first place, they voluntarily undertook to do the interior wiring of their subscribers' houses, and this has now become a well-established practice, and is looked upon as an expense inherent to the telephone business.

Then they put their business on a subscription basis, by the introduction of flat rates. They charged their patrons so much for the rental of the transmitter and receiver, and nothing for the actual communications made. This policy is responsible for the fact that

the greater part of the public looks upon the instrument hanging on the wall as constituting the sole expense to the company, because it is what they are actually asked to pay for; whereas, it is only the instrument indispensable to the sending and receipt of messages, each and every one of which entails a fixed and certain cost upon the company.

A strictly flat rate telephone charge to all patrons is every bit as unfair as a similar charge for gas or electric light would be. No one will deny that it would be absurd to charge a fixed rate per year for gas burners, regardless of the quantity of gas burned. Before electric meters were perfected, incandescent lamps were charged for at a fixed rate, which, as in the case of the telephone to-day, was lower for residences than for business places. It is pointed out in the report of the Chicago Special Telephone Commission that as long as this unfair and unbusinesslike method was in vogue
1169–1171 electric lighting remained a luxury. With the advent of charges for actual consumption (that is measured rates) electric light came within the reach of the great proportion of people who now use it.

To illustrate my meaning more forcefully. The flat rate for all patrons whereby a fixed sum is charged for the use of the telephone instrument irrespective of the number of messages sent, is like conducting a restaurant on the plan of hiring a knife and fork to each customer at a fixed rate which would be the same whether a man had the run of the entire kitchen, or only ordered ham and eggs.

Now that the Companies have come to see the injustice of charging a patron who uses the telephone five times a day the same price as one who uses it fifty, they are making great efforts to introduce limited service and measured rates, which go to the other extreme and charge only for the messages sent, and nothing for the hire of and convenience in having the instrument itself.

To my mind, the proper way to charge for telephone service is to fix a flat rate for the privilege of connection with the exchange, and for the hire of the instrument itself, and then to charge a given sum for each message sent. The charge for connection with the exchange should be sufficient to cover interest and sinking fund charges on the investment of fresh capital represented by each additional subscriber, and the charge per message should be governed by the traffic and expense of the exchange.

* * * * * * *

1172–1180 Extension sets are another draw-back to good service; they are but Party Lines under another name, the only difference being that the several telephones on the same line are situated in the same building and paid for by the same subscriber, instead of being situated in separate buildings and paid for by different subscribers in the same street or block.

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1181 *Cumberland Co.'s Earnings and Expenses.*

From my examination of the Cumberland Company's accounts, I was able to obtain exact information as to their earnings and ex-

penses in New Orleans. The financial year of the Com-
1182–1193 pany ends on the 31st of December, and, at my request, Mr. H. Blair Smith, Auditor, furnished me with a statement showing the earnings, expenses and net revenue of the New Orleans Exchange for the year 1906, which, at the time of my visit, was the last completed financial year. This statement is as follows:

Financial Statement.

New Orleans, Louisiana, Exchange, Year 1906.

Earnings:		
Rentals	$570,501.32	
Proportion Tolls earned by Exc	16,582.26	
Miscellaneous	5,220.10	
		$592,303.68
Expenses:		
General (including taxes)	$94,776.20	
Operating	129,402.51	
Maintenance	104,912.05	
Reconstruction	91,335.01	
Depreciation	115,544.39	
Instrument Rental	26,418.76	
Bad Debts	5,313.02	
		$567,701.91
Net Revenue		$24,801.74
Construction		$2,482,792.80
Per cent. of Net Revenue to Investment		.99

* * * * * * *

1194 To the above statement, I took the following exceptions:

First. That only fifteen per cent of the toll receipts in New Orleans were credited to the Exchange, notwithstanding the fact that in the bill of complaint filed in the United States Circuit Court, in the case of the Cumberland Telephone & Telegraph Company vs. The Railroad Commission of Louisiana, the Cumberland Co. averred that it was and is not possible to separate the expenses incurred in giving toll service from the expenses incurred in giving exchange service for the reason that the two are so interwoven that they cannot be separated. In this bill of complaint, it is stated that:

"The same poles carry exchange subscribers' wires and toll line wires; the local managers of the different exchanges care for and supervise the construction and maintenance of toll lines as well as of exchange lines; the same operators are engaged in giving connections for toll service and exchange service; the same accounting departments in each exchange are engaged in looking after the accounts of both classes of business; the same linemen, troublemen and other employees are engaged in caring for and repairing both

the exchange and toll lines; the rent, light, heat items are not capable of being separated between the two classes of business, and it results that while the receipts from the two classes of business can be accurately separated, the expenses of giving service cannot be separated, nor is it desirable that they should be separated, for the reason that it would entail a very great increase in the cost of maintaining each class of business."

1195–1200

This being the case, I think it right and fair that New Orleans should be credited with her full share of toll receipts, less coupon discounts, and charged with the resulting increase in instrument rental, and with depreciation on her pro-rata of toll line construction, which construction pro-rata should be added to the Construction account of the New Orleans Exchange.

* * * * * * *

1201 In the Telephone Report of the Merchants' Association of New York, special consideration is given to what constitutes a reasonable margin of profit for a telephone company, and I beg leave to quote their views on the subject. They say:

"The Telephone business demands a continuous accession of fresh capital to satisfactorily serve the public. Having in view the importance to the public of constant improvement and expansion and the greatest possible efficiency of telephonic service, as well as the necessity of offering an attractive investment to new capital to provide for such expansion, it is the opinion of this committee that to provide a fair return on capital actually and necessarily invested and a proper allowance for contingencies, 10% margin above operating outlays is a reasonable and proper margin in the telephone business. In the various movements hitherto made for the limitation by law of telephone profits, wherever the permissible percentage of profit has been dealt with, this margin has been accepted as a proper one. It has also been specified by law in the case of some other public service corporations."

1202–1219

This conclusion was acceded to by the New York Telephone Company, and I have no hesitancy whatever in endorsing it as just and equitable in the case of the Cumberland Telephone and Telegraph Company here.

* * * * * * *

1220–1254 Competition does undoubtedly improve the service; both companies strive to please their patrons and are courteous and attentive. Prices are reduced, often to wholly inadequate figures, and the rival companies try, by selling a public utility below cost, to force one another from the field. This far, the public appears to be getting the best of it; but from the start the utility of the telephone as a public service is impaired and after the first years, when it is clear that the business is not giving financial returns, fresh capital is impossible to obtain, the very maintenance charges cannot be met, extension is impossible, and "re-organization" ensues. As the struggle has progressed, the service has been getting worse and worse, and the public is made to feel the disadvantages of competition.

* * * * * * *

1255 *How Some Companies are Promoted.*

The whole history of the independent telephone movement demonstrates that the very great majority of independent companies have been furnishing service at rates much too low to make the business continuously profitable, and at the same time provide for future growth and replacement. Indeed, it can be positively stated that every attempt to cut telephone rates to a lower figure than that justified by the experience of companies having outlived the reconstruction period has ended or must end disastrously.

Not only have the rates been too low to pay fair returns on the actual money invested, but too often the companies have been financed in a manner that from the start precluded the possibility of profitable operation. Fortunes have been made in the building of competing telephone plants, and fortunes have been lost in operating them.

In considering the organization of a new telephone company, one must never lose sight of the fact that the construction, maintenance and operation are so linked together as to be inseparable, and an honest telephone company must be all these three things in one. The construction of a telephone plant is never complete. Every new subscriber entails fresh construction. The plant must be maintained and cared for out of the money received for services rendered by the operating department. The three departments are interwoven and interdependent, and must stand or fall together.

But one of the reasons which have brought about so many failures of independent telephone companies is that promoters have found that the best way to get quick returns, is to make a profit on the construction of the plant, and they certainly deserve great credit for the clever manner in which they secure their end.

1256 An application is made to the City Council for a franchise which the investing public generally regards as something of great value but which after all is merely the permission to do business. The rates proposed to be charged, always lower than the prevailing charges, are limited in the franchise and the promoters claim that under them they will be able to make liberal profits.

Canvassers are then sent out after subscribers to the new system—which is not yet built—and advantage is taken of the agitation to get people to sign iron-clad five-year contracts. Then the construction company is formed. It is directly or indirectly controlled by the promoters, and bonds far in excess of the cost of construction are issued, together with an equal amount of stock. These securities of the telephone company are turned over to the construction company and the plant is erected.

Sometimes the plant is good; sometimes bad. To the public it always looks good because it is new. Operators are keyed up to "top notch" and not infrequently the new concern gives extraordinarily fine service from the start. The public is called upon to witness that the promoters have made good and kept all their promises.

Up to this nothing has been done to interest "local" capital. The

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stock and bonds of the company, turned over to the construction company in consideration for the plant—the exact cost of which will never be known to the public—are now unloaded by the construction company people, who give out that they are only in the construction business and are seeking but a ten per cent profit. The bonds are offered at par, or less, with stock thrown in as a bonus. Civic pride and a public spirited desire to support home industries do the rest.

1257–1259 Local bankers, merchants and financiers generally fall over each other to buy the bonds, especially if the promoters have waited till the first operating year is completed and have published a statement of earnings and expenses showing that the interest on the bonds has been met and that profit is available for distribution as a dividend.

But as soon as the construction company has unloaded its securities and taken its profits, the service begins to fall off and the profits begin to dwindle. If the number of subscribers increases at all rapidly, rates have to be raised, but it is rarely that more than the operating expenses can be met. By the fifth year the reconstruction period has arrived and the holders of the securities realize that the so-called profits of preceding years were not profits at all, but should have been spent on maintenance or put aside for reconstruction. Besides, no depreciation fund has been formed, and one of three things is bound to happen. The property goes to the bond holders, or preferred stock is issued, or a receiver is appointed. Within ten years every cent invested by local capitalists has been lost, and the plant has either been lost also, or enough new capital has been invested to double the original cost.

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(Here follow Exhibit 20 and Exhibit 21, marked pages 1260 and 1261.)

1262 *First Deposition.*

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
VS.
CITY OF LOUISVILLE, KENTUCKY.

The further taking of depositions in this cause was resumed this morning, September 20th, 1909, at nine-thirty o'clock, pursuant to adjournment.

Present, Mr. Wm. L. Granbery, Solicitor for Complainant; Mr. C. B. Blakey, Solicitor for Defendants; and Buford Duke, Stenographer and Notary Public.

JAMES E. CALDWELL, called on behalf of the Complainant, being first duly sworn, deposed as follows;

Direct examination.

By Mr. GRANBERY, for Complainant:

Q. You are the president of the complainant company, are you Mr. Caldwell?

A. Yes sir.

1263 Q. When did you first become connected with the Cumberland Telephone and Telegraph Co., the present company?

A. In 1885.

Q. What was your position then?

A. Director and member of the executive committee.

Q. What was your next position?

A. President and general manager.

Q. How long did that continue?

A. I was president and general manager until about three or four years ago, and since that time I have been president.

Q. Have you devoted your time and attention to the telephone business since 1885?

A. Yes sir, I have given it my attention since 1885.

Q. At the time you first became connected with the company, it was a small affair, was it?

A. Yes sir, had something less than four thousand subscribers.

Q. Aside from the consideration with the Great Southern Telephone Company and the Ohio Valley Telephone Company, have all the properties of the complainant company been built up under your direction and supervision?

A. Yes sir.

Q. Have you made a study of the telephone business, the cost of construction, the best methods of construction, the economics to be practiced in operating and maintaining the properties, the

1264 question of rates and how the rates should be adjusted in the different exchanges and different communities, and the question of depreciation, and the amount necessary to rebuild the properties from time to time?

A. I have given all of those subjects the best thought I was capable of, for many years.

Q. The Ohio Valley Telephone Company was consolidated with the Cumberland Telephone Company in January 1900? Had that property been purchased at any time prior thereto?

A. A part of the capital stock was purchased in June of the year previous.

Q. How long had negotiations been pending for the purchase of that stock prior to its actual purchase?

A. I think it extended over a good part of a year. At any rate, negotiations were pending for quite a while before it was actually consummated.

Q. Who represented the complainant company in the negotiations and purchase of that stock?

A. I did.

Q. I believe it has been shown that the stock cost some of it a dollar forty, and other parts, a dollar forty one. Is that your recollection?

A. Yes, that is correct; that was the price paid for it.

Q. Did anybody connected with the complainant company,
1265 or any other person receive any commission or advantage in any shape, form or fashion in the purchase of that property or stock?

A. No sir, not a cent.

Q. You were elected president immediately upon the purchase of that stock of the Ohio Valley Telephone Company, were you?

A. Yes sir.

Q. What policy was pursued by you from the time you became president of that company, until its consolidation with the Cumberland Telephone and Telegraph Co., in January following?

A. We immediately cut down the expenses; the general office expenses, chief executive officers' salaries and we trimmed the expenses in very way we could; we modified the rates, all except one class of rates, is my recollection. There was a rate made for a three year contract, which we did not disturb, but all the others were modified and additional classes of service at attractive rates, were made, with the hope and expectation of stimulating the business and popularizing its use in the community of Louisville. I don't know that outside of Louisville there was much change made in the matter of rates, for, indeed the properties outside of Louisville—or you might say, indeed, Louisville comprised so wellnigh the whole of
1266 Ohio Valley Co. The City of Louisville showed a very small growth. In other words, the growth was abnormally small, and an effort was made to bring it up, develop the business there to something like the proportion that we thought it should be, and as had been done elsewhere.

Q. Was the necessity for this extension of the business in the City of Louisville apparent before, and at the time of this purchase of the property?

A. It was, quite so.

Q. Was it recognized by the owners of the property prior to its sale?

A. Yes, they stated that they recognized that the business should be considerably expanded, that that would call for a very considerable increase in the facilities and very much greater outlay of capital, and very much greater extension of facilities in every direction, not only of the Louisville exchange proper, but of the Louisville trade district, that is, the territory in and around Louisville should also be developed if Louisville itself was to show a proper growth in telephone development.

Q. Do you recall about how much the executive officers' salaries were reduced from June 1899?

A. I do not remember the figures, Mr. Granbery, except it was a very material reduction that was made.

Q. Were any dividends paid on the stock after June 1899?

1267 A. No sir, there were no dividends paid, the whole revenues were devoted to meeting the development and growth and extension of the business.

Q. Now in the development and extension of a telephone exchange or of a telephone property, does it require additional capital to meet this growth and expansion and extension?

A. Absolutely so, it is imperative.

Q. Was then the situation with respect to the Ohio Valley Telephone Company in Louisville in January 1900, different from that of June 1899, so far as the development of the telephone property was concerned?

Objected to by Defendant because leading and suggestive.

A. It was materially different.

Q. Now, a part of the capital stock of the Ohio Valley Telephone Company was not purchased in June 1899 by the complainant company. How was that handled?

A. There was a part still left in the hands of some individuals and a part in the hands of the American Bell Telephone Co. The stock held by those parties came into the consolidation and received stock in the consolidated company instead of taking cash therefor.

Q. Now it appears that the same premium on that stock was charged in the books of the company at the time of the consolidation that had been paid on the other stock purchased in

1268 June 1899. Was that correct and proper, Mr. Caldwell?

A. Yes, in order to equalize the holdings, it was the proper way to make the entry.

Q. Upon what basis were the properties of the Ohio Valley Telephone Co., taken over into the books of the consolidated company in January 1900?

A. They were taken over on a basis of their actual value, and that value was arrived at, as my memory serves me, in its cost, what it had originally cost. That is to say, its value, represented by the purchase for cash of a good part of its capital stock. The value, in other words, placed upon that stock was represented as the net value at that date, of the property. When the consolidation took place it was arrived at by adding the values that had accrued since

the date of original purchase, down to that time. The Ohio Valley Telephone Co. properties were therefore to be put in and were put in, at their value, on that date.

Q. What was the market price of the Cumberland Telephone and Telegraph Co. shares, as compared with the Ohio Valley Telephone Co., shares?

A. They were right together, right at a dollar forty.

Q. Was there any added market price, or anything added to the market price in order to purchase a controlling interest in the Ohio Valley Telephone Co. stock; or was the price paid for a controlling interest, the same as the market price of shares
1269 sold on the open market?

A. It was the same price, there was nothing added. That was considered the market price of the stock and it was bought on that basis. In other words, that stock was bought by me, representing this company, from Mr. Speed and Mr. Clark, representing the parties on the other side, and the parties stood in the proper relation to each other, that is, they were trading at arms length; there was no community of interest, they had no interest in my side of the bargain, and I had none in theirs, and we were endeavoring to arrive at what was the true, fair and actual value of the property.

Q. Now, between the purchase of this stock in June, 1899, when you became president of the company, until the consolidation in January, did you familiarize yourself with the properties of the Ohio Valley Telephone Co.?

A. I did, yes sir, I made a very close study of it and a very careful inspection of it, and gave it every possible attention.

Q. I will ask you to state whether or not the values placed upon the properties in the books of the consolidated company in January, 1900, was the fair value of the property of the Louisville exchange?

A. It was a fair and actual value.

Q. Now, at the time of the purchase of this stock of the Ohio Valley Telephone Company, did it own the buildings in
1270 which the central exchange was located?

A. No sir, the Ohio Valley Company did not own the buildings at the time this stock was purchased. That was owned by Messrs. Speed and Clark, I think as individuals. I know they had an interest in it. I am quite sure that Mr. Speed and Mr. Clark, one or both of them, owned that as private property.

Q. State whether or not it was desirable or advantageous or necessary in large exchanges of that character for the company to own the building in which is located the central office apparatus?

A. Yes sir, it is considered very necessary, for the reason that a very large amount of permanent property has to be attached and located therein, and the necessity for owning the building is therefore apparent, as the cost to move or transfer this property would be too great to hazard a chance on.

Q. Well, would it be practicable to move an exchange headquarters and central office apparatus in a city of the size of Louisville or an exchange the size of the Ohio Valley Telephone Co., exchange, having the underground system as that company had?

A. It would be impractical to literally take the interior equipment and transfer it to a new location and continue the service. The way it would have to be done would be to buy a new
1271 outfit, install it in the new location and when that was ready, to transfer the service thereto, taking down and dismantling the old property and dispose of it in such manner as would be possible.

Q. Did you realize the necessity of purchasing the land and buildings in which the central office equipment was located?

A. Yes sir.

Q. Did you buy that property for the Ohio Valley Telephone Company?

A. I did, and immediately, in connection with the trade for the stock.

Q. Something has been asked the auditor in this case in regard to a twenty-thousand dollar note that the Ohio Valley Telephone Company made payable to your order about that time. Do you have any recollection of this transaction?

A. Yes, my recollection of it is, that was the cash money payment. That represented the cash that was paid on the purchase of that property, for the terms were that so much would be paid in cash, one fifth, I think, and the balance be paid in four annual installments. In order to borrow the money to make that cash payment, I endorsed the note and got the money out of the bank. In other words, I incurred the *the* obligation of an accommodation endorser of the Ohio Valley Telephone Co. for twenty thousand dollars.

1272 Q. Did you at that time, or at any other time, get any benefit, directly or indirectly, from the execution of that note?

A. Not one cent.

Q. Did you ever profit in any way by any of the transactions had with the Ohio Valley Telephone Co.?

A. Not the slightest, except from the salary I drew as an executive officer after the trade was made, or as a stockholder in the Cumberland Telephone and Telegraph Co. in common with all the other stockholders. I never received one penny of personal profits out of the transaction.

Q. Did you at any other time endorse the paper of the Ohio Valley Telephone Co.?

A. I think I did.

Q. Why was this?

A. In order to support its credit, and to get money to help its business.

Q. Have you done the same thing for the Cumberland Co., in the past?

A. Yes sir, I was a steady endorser of it for years, for at one time my credit was better than theirs. It is different now, and it is unnecessary, as it can get all the money it needs, on their own paper, but I, for years, endorsed its paper and at one time I think

I was endorsed to the extent of five hundred thousand dollars, on their paper in various banks of the country.

1273 Q. Did you ever individually or personally profit by any of these endorsements?

A. Not one cent; not as much as a copper.

Q. Have you, other than your salary as an officer of the Cumberland Telephone and Telegraph Co., or of the Ohio Valley Telephone Co., ever received any benefit or any profit that any other stockholder did not receive in the company?

A. Not a cent.

Q. Now what was the reason, in a general way, why you, as the president of the Cumberland Telephone Co. and its other officers and directors, desired to purchase the Ohio Valley Telephone Company property and consolidate it with the Cumberland Co.?

A. A study of the business revealed very plainly and promptly the fact that for a company to be at all self-sustaining, that it would have to be correspondingly useful to the communities. To do that, it would have to be extensive, at any rate to the extent of supplying as near as possible the requirements within the trade districts of the cities that it served. Indeed it was seen that it would be highly desirable, if not necessary, to extend this solid, compact and comprehensively through the section of country that these cities did business with. Our effort was to solidify the trade districts

1274 of the Ohio and Mississippi Valleys, a section of the country that had traded and intercommunicated intimately with each other from their earliest history. That, I say, was plainly a desirable and a very necessary thing to do, in order that the company, as I say, might furnish facilities sufficiently comprehensive to meet the requirements of the largest and most important commercial operations or the commercial operations of these cities, in a thorough and reliable way.

Q. Had that same general idea prevailed in the consolidation of the Great Southern Telephone Co., with the Cumberland Co.?

A. Yes, that was in furtherance of that same policy.

Q. Now, with the Ohio Valley Company and the Great Southern Companies consolidated, the company stretched from Louisville straight through to the Gulf of Mexico, through the Ohio and Mississippi Valley territory?

A. Yes, it had a solid, unbroken territory of its own from the Ohio River through to the Gulf of Mexico, following the Ohio and Mississippi Rivers, and most of their tributaries.

Q. Now what policy was pursued in the control and management of the Ohio Valley Co., after June, 1899, and after the consolidation in January succeeding, with reference to developing the telephone business in and around the city of Louisville, and in the trade area of Louisville?

A. The most active and persistent efforts were made in that

1275 direction, steadily and continuously.

Q. Has that been kept up to the present time?

A. Yes sir it has.

Q. Have the various exchanges owned by the complainant com-

pany been connected together with toll lines throughout its territory?

A. Yes, that whole territory is connected, solid and substantial and in a saturated way, with toll line connections.

Q. All with lines and properties owned by the Cumberland Company?

A. Yes sir.

Q. Now then anyone using the toll lines in Louisville to reach any point in the territory in which the complainant company does business, whose toll lines would they use, Mr. Caldwell?

A. They would use the complainant company's toll lines.

Q. When do they use the toll lines of the American Telephone and Telegraph Co.?

A. When they have occasion to communicate with points beyond the territorial area of the Cumberland Co.

Q. Is that the only time they use the American Telephone Co. lines in Louisville?

A. Yes unless perhaps in times of storms and breakdowns, when they would be given the benefit of any connections that
1276 would reach the points desired.

Q. Has any of this development, either locally or throughout the trade area of Louisville, been done at the solicitation or request of the business interests of the City of Louisville?

A. It has, for we let it be understood among the business men of Louisville that such would be our policy and it would be our desire and pleasure to meet their requirements and that we would gladly receive any suggestions from them, and they accepted that invitation and almost continuously we receive suggestions and requests from them for extensions and developments in various directions, in order to meet their requirements and wishes.

Q. I will ask you to state what policy has been pursued with respect to the building of the exchange in Louisville and the additions thereto from June, 1899, to the present time?

A. They have been with a view to being, first, permanent and of the very best character; next, with reference to the growth of a city the size of Louisville and importance of Louisville, giving evidence of its future.

Q. What would you say with respect to the economics practiced in adding to this exchange from time to time, in the purchase of material and in the construction work?

A. We practice the very greatest economics in every way we are capable of.

1277 Q. What degree of skill and business judgment has been exercised in these additions and extensions of the Louisville exchange?

A. All that we possessed and had in our employ and that represented men who had been making a study of the business for years, indeed, making it a profession and were considered highly competent to conduct its affairs.

Q. In looking back over the period of time covered, I will ask you to state whether or not from the experience now had by you

in the business, whether this exchange could have been increased and extended and expanded in a more economical way, or with better judgment than it was developed and expanded?

A. I don't think it could have been done any better. I see no change that would be made in it, if we were to go over it again.

Q. Now with respect to the expense of operating and maintaining the properties, and reconstructing the Louisville properties, what has been the policy of the company with respect to economies?

A. We have practiced every economy that we were capable of, for the men who were developing its affairs were interested in the results as stockholders, and in addition to that, had their business reputations at stake and all of those forces were working
1278 freely and fully, so that every incentive was to practice economies and show the very best possible results.

Q. Has any effort been made by you or anyone else connected with the company, to your knowledge, to increase the construction account or decrease the earnings, or increase the expenses on the books of the company, other than to show the exact facts?

A. None whatever. The effort has been to show the facts as they are, and as they should be.

Q. What is the way in which an exchange in a city the size of Louisville grows and expands, practically?

A. It grows in proportion to the population, and you may say grows in every direction, providing the schedule of rates and the facilities are offered in a proper and normal way. That is to say, an exchange should grow or should accommodate the entire community in some way or other, and if it does this, then the growth would be well nigh universal, for it is possible for everyone to have need of telephone facilities except deaf mutes, and in some form or other, everyone who can talk, will at times have occasion for and actually use a telephone system.

Q. Can the plant ever be considered a completed property?

A. No sir, not as long as the communities grow.

Q. Is this an inherent condition in the telephone business different from other public service concerns?

1279 A. It is, and for the reason that every customer has to have special and you may say, private facilities provided therefor, with the possible exception of transient customers who use the public stations. In other words, every subscriber has to have some private equipment, and therefore a certain amount of capital, devoted to his service or use, in order that he may be in position to use the system.

Q. Would there be a difference between an exchange that had been built from time to time as the business necessities required, and an exchange that should be built say at the present time in the same city in which the exchange had been built through a period of years?

A. Yes, there would naturally be a difference.

Q. Now, I wish you would explain the difference between those two exchanges?

A. The exchange that would be built at the present time would

have the benefit of all the knowledge that had been gained by the predecessor and the study that had been made of the experience of the world in the art and might be able to practice some economies, but they, in part, might be offset by the economies that were taken advantage of by the first construction. Indeed, if an exchange were built today, it would have to have an eye to the future, it would have to consider the growing needs and requirements of the
1280 city, and so, there might not be so very much difference after all, between the one built that way, and one that had been built meeting the requirements from time to time as they presented themselves, for some economies could be served in that, that could not be in the other.

Q. Now if an exchange should be built in Louisville, say as of today, I presume it would take probably a year or more to complete that exchange before it could be used in giving service, is that correct?

A. Yes, that would be so.

Objected to by defendant, because leading and suggestive.

Q. Now is it, or not, possible or probably that by the time that exchange built upon plans matured today was ready for service, that the necessities of the business would require a re-arrangement of the plant by the time it was ready for operation?

A. Well, at any rate it would likely be found that immediately after it was put in operation that the demands upon its service would come from and lead it into directions and operations that it had not been able to forecast.

Q. I will ask you to state whether or not it is necessary or proper that future business be anticipated and facilities provided
1281 prior to the offering of the new business?

A. Yes, for the reason that it requires quite a length of time to provide additional facilities on an exchange and the customers could not be expected to wait so long a time for the service; hence, it is not only necessary but it is practiced in all companies which expect to meet the public requirements, to keep a certain surplus reserve of facilities always on hand, and as they are used up, to provide others, so that they will be able to meet the demands promptly, and any other method would leave the service open to very grave criticism and reflection, for the old customers have an interest in having new ones connected, have an interest quite as important as the new customer, for every new customer gives an additional value and opportunity to all the old subscribers.

Q. What would be the result, practically, if the company should not provide facilities for future growth before such new business was offered, but should wait until the new business was offered before undertaking to provide the facilities necessary to serve the new patrons?

A. Well, as it would often require a year in which to provide additional facilities, it is quite plain what a disappointment it would be and how far short a company would fall of meeting the public

requirements, for the customers usually desire the service at
1282 once, and certainly could not be expected to wait longer than a very few days. They rather expect to have the facilities supplied to them within twenty-four or thirty-six hours, and they have been accustomed to that so long, that it is now recognized as a fixed condition. If, therefore, conditions should arise that would make delay in providing service longer than this, the company would be considered as wholly inadequate, and indeed, open to the criticism of being a rather poor affair.

Q. Is there any appreciable difference in providing facilities and giving a reliable trustworthy service, over providing facilities and giving a service less reliable in the same place?

A. There is a very great difference. The test of service or when you are giving good service, the whole question of the character of the construction is involved, and in order to give good service, the matter starts with the construction, the character of the construction and the scope of it. These, indeed, are prerequisites to giving a good telephone service, reliability and extensiveness. The rapidity with which the operators answer the calls is really the last and least important consideration. As I said before, the first consideration is the reliability of the apparatus the party is going to use, whether it will stand up and be ready at all times to give the service; next, how far reaching and extensive are the facilities. These two are the main considerations in giving good service. After these are
1283 provided, then the rapidity with which the calls are answered by the operators comes into consideration. In other words, if you have not a reliable system and have not an extensive system, it matters not how fast the operators may be able to answer the calls if they cannot execute them after they are answered.

Q. Has the complainant company constructed its plant in Louisville with reference to offering a reliable and trustworthy service to its patrons?

A. It has done so, and also with reference to giving an extensive service.

Q. It has been testified in this case that the Louisville exchange has cost this company, excluding its real estate, about one million, seven hundred thousand dollars. I will ask you to state whether or not in your opinion that property is worth the amount that it has cost, at the present time?

A. I think it is worth every dollar there stated.

Q. I will ask you to state whether or not it could be reproduced or duplicated for a less amount of money?

A. I do not think it could. I am quite confident that it could not.

Q. Coming down to the question of rates or charges for service, upon what basis or theory are telephone rates for exchange service, based?

A. They are based upon the theory of offering facilities to the entire community, with reference to the cost to the
1284 company, and with reference to the use and value of the service to the customers; these, so far as my study and observations go, are the leading considerations.

Q. Now what policy was persued by you and your associates with reference to rates in the Louisville exchange from June, 1899, and in what respect if any did that policy differ from the policy pursued by the former owners and managers of that property?

A. The former owners had two rates. They had one business rate, that is to say, they had a rate for private or direct telephones, and a rate for private or direct residence purposes. We endeavored to make a variety of rates which would meet the requirements and wishes of every phase of the community. Our effort was to put the service within reach of everyone in the community. We adopted schedules of rates that were not only a modification of the direct or private business service and the private or direct residence service, but public stations, party-line stations, measured service, and, in the greatest variety, and extending this service not only to the suburbs but well out into the country around Louisville, extending toll line facilities in every direction out of Louisville, so as to offer that community the very greatest sort of value and expansiveness in the telephone service, we extended it to farmers, market
1285 gardeners, dairymen, summer residences, etc., and we endeavored to reach every class and kind of business and individual.

Q. Now just here, it has been stated that it is not practicable to separate the cost of the exchange inside and outside of the corporate limits of the City of Louisville. Is that in your opinion true or not?

A. It would be true.

Q. Now is it practicable to separate the expenses inside and outside of the city of Louisville?

A. Absolutely not.

Q. Now, if such a thing should be done, would the expense per subscriber or the net profit per subscriber inside of the corporate limits be greater than the net profit per subscriber outside of the corporate limits, taking into consideration the construction account inside and outside of the city limits?

A. Well, in all likelihood, the profit would be larger on the subscriber inside.

Q. Why is that?

A. The amount of wire that would be used to supply the service to the one inside would be shorter on an average.

Q. Now, what about the conditions of building on the inside and on the outside of the corporate limits?

A. The conditions of building would be heavier and greater inside, very much greater than outside.

1286 Q. In your opinion is it fair to take the total exchange and figure the construction account and expenses and receipts, disregarding the corporate limits, in making the statement of the exchange?

A. It is, I think that is the proper way to make it.

Q. Is that the only practical basis or method of doing it?

A. That is the only way I know of.

Q. Now it has been testified, or rather stated, by Mr. E. W. Farnham representing the Mutual Audit Co., that the complainant

company conducts its toll line business and exchange business as a separate and distinct business. Is this true or not?

A. No sir, it is not. It keeps a separate and distinct account of its income from each source, that is, the receipts that come directly from those two sources, as it does of its income from its various customers, showing that received from each subscriber.

Q. What about the construction account?

A. It cannot separate its expense, but the construction account of the two is kept separate.

Q. What bearing has the toll line service on the exchange service?

A. It has a very direct and beneficial effect on the exchange, by reason of the fact that the customer has right at his hand,
1287 facilities for putting him in contact with people at very remote distances. He can communicate with the least loss of time to himself. In other words it is a very great convenience which he has right at his elbow, and which adds very considerably to his estimate and opinion of his exchange service.

Q. Taking the city of Louisville, does each and every subscriber for exchange service in the City of Louisville have the right and privilege of sending and receiving toll line messages from other individual stations?

A. Yes, with the possible exception of some who decline to pay their messages or something of that sort, but the rule is that that facility is open alike to everybody.

Q. Now I will ask you to state whether or not that is included in the price that is charged the subscriber for exchange service?

A. Yes, that is taken into consideration when the rates for service are made up. In other words, an exchange with fine toll line connections would make a more valuable useful and extensive service to a customer, and therefore it would command a higher price than an exchange without such facilities.

Q. Now are the expenses of giving that kind of an exchange service greater than they would be without these additional facilities?

A. They are.

1288 Q. Do the exchange subscribers have the privilege of receiving and sending toll line messages from their individual stations at the same rate they would pay if they should go to the central office and send a toll message or receive a toll message?

A. Yes, just the same.

Q. Now the expenses, you say, of giving that kind of service is greater. Will you please explain in what respect, taking first the central office apparatus?

A. The central office apparatus has to be connected with the toll line facilities and employés to attend thereto, and operators in answering calls therefor, all of which adds to the expense of an exchange operated under those conditions.

Q. In figuring the proportion of the toll line earnings to be allowed the exchange for handling the toll line messages, it has

been stated that fifteen per cent of the gross tolls are allowed the exchange. Do you regard that as reasonable and fair?

A. I do, I think that is equitable and fair.

Q. I will ask you to state how extensively is that percentage recognized as being equitable and fair throughout the United States?

A. There are some exceptions to it; some places it is some-
1289 what higher, and some places it is lower, but that is the practice, wellnigh universally.

Q. Is that percentage the amount that is received and charged by the complainant company from its various connecting companies?

A. That is the rule it follows in dealing with its connections.

Q. How many companies would you say this compony connects with on such a basis at that, throughout its territory?

A. It must be a very large number, Mr. Granbery. I am guessing, of course, but it must be anywhere between eight hundred and a thousand, maybe something more than that.

Q. Would it be practicable or feasible to separate accurately the expense occasioned in Louisville by the toll lines and the expense occasioned by the exchange with respect to toll line business, receiving and sending toll line business?

A. No sir that could not be done, except by incurring such expense as would likely eat up the whole of the toll line business.

Q. However accurately this might be separated, state whether or not there would still be left any element of judgment and opinion as to where certain items of expense ought to be placed, whether on the toll line business or the exchange business?

1290 A. Yes, there would still be left an element of approximation and estimate. To say that it could be done accurately, it could not be done.

Q. Is this fifteen per cent basis the one arrived at through experience and study of the business throughout the country?

A. Yes, that is the general practice.

Q. Do you know whether or not experts have undertaken to separate these expenses so as to get the exact amount that should be awarded to the toll lines and to the exchanges?

A. I have heard that such efforts have been made without success and my own knowledge of the business causes me to believe it could not be done. I have studied on it a great deal and discussed it a great deal, and have never seen how it could be at all practicable.

Q. Coming now to the question of reconstruction. Is that an expense of conducting the business?

A. Most assuredly so.

Q. Is there any difference so far as the question of expense is concerned, between reconstruction and current repair?

A. No, they are both expense.

Q. In reconstructing the property, are you adding anything to the original cost of the property?

A. Not unless you actually improve the quality of the structure.

Q. Well, in replacing parts of the plant that have either become antiquated or decayed, and replacing that with a like structure, are you adding anything to the cost of the plant?

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A. No sir, you are simply maintaining it and keeping it up.

Q. How is this reconstruction of a telephone plant taken care of practically?

A. The current breaks, those that occur from day to day and from time to time, are taken care of and called maintenance.

Q. What do you call that?

A. I say, we call that maintenance. When it has to be taken down in quantities or sections, and renewed, we call that reconstruction. It might be said that maintenance represents retail repairs, and reconstruction represents wholesale repairs or renewals.

Q. Now it appears that parts of the Louisville exchange have been reconstructed year by year. Can all of the necessary reconstruction or rather all the actual decay and depreciation of the plant be taken care of year by year?

A. No sir.

Q. How is that done?

A. Not except by providing a reserve fund for future contingencies. That is to say, it would be folly to undertake to go out and actually do the work on the property every year, which would be latent and unnotic-able, but the proper way would be to retain out of the earnings a sufficient amount to take care of the future renewals in a large way, and in a wholesale manner, contingencies that would arise and occur over a series of years and what would not occur daily or even yearly.

1292

Q. What per cent of the original cost of a telephone exchange in the City of Louisville is necessary to be set aside out of the earnings, in order to provide for the renewal of the property from time to time as the same decays or becomes worn out or out of date?

A. It will not be found very far from ten per cent. It might be something under that and it might be something more, but between seven and a half per cent and ten per cent, is, in all likelihood, the amount that will be found necessary, and these estimates will necessarily vary, and will be varied, from time to time as experience is gained.

Q. That is your best judgment at the present time?

A. Yes sir.

Q. And as the result of twenty-five years' experience in the business?

A. Yes sir as the result of twenty-five years' experience and study, which I have made, that is my best judgment, somewhere between seven and a half per cent to ten per cent. It would not be safe to go under seven and a half per cent, and I don't think necessary to go over ten per cent.

Q. Now, does the character of construction vary the per cent necessary to be set aside for depreciation?

1293

A. Yes. I am basing that, though, on a first class construction.

Q. The more solid and permanent the construction is, the less would be the depreciation, is that correct?

Objected to by defendant, because leading and suggestive.

A. That would have some bearing, but in addition to that, the permanent condition of the city's growth in which an exchange is located has a very great bearing on it; the character of streets, their width and construction, all have a bearing on it. In other words if a city has to do a great deal of shifting of its public constructions, then the matter of maintaining a telephone plant in conformity therewith, becomes necessary.

Q. Is there any very great difference between the amount of depreciation necessary to maintain and care for the reconstruction of a first-class, well-constructed plant, as compared with its cost, and that of an inferiorly built plant, costing much less?

A. The inferior plant would, of course, cost more money to keep it up than a substantial one.

Q. The per cent of its capital account would be greater than the per cent of the capital account of the better constructed plant. Is that correct?

A. Yes sir.

1294 A. *Yes sir.*

Q. Am I to understand that this question of per cent of the actual cost of plant necessary for depreciation, depends upon the character of the construction, and the local conditions to be encountered?

A. Yes sir, that is true.

Q. It has been stated by the accountants in this case, that the net reduction in the gross exchange receipts in Louisville under the rates prescribed in the ordinance involved in the controversy, would amount to $49,000 per annum, and that the expenses would be reduced about three thousand dollars, in other words, four and one-half per cent paid for the use of the instruments and other things in connection with the contract with the American Telephone and Telegraph Co., would reduce the net loss by four and one half per cent on the receipts. I will ask you to state whether or not the expenses of conducting the exchange and giving that service would decrease correspondingly at all?

A. I don't think it would decrease any. I do not see where there would be any reduction in the total expenses.

Q. Now if the increase in subscribers should be had on the reduced rates, what would be the result to the complainant company?

A. Well, if you increase your subscribers you would be compelled to increase your facilities, and your capital account.

1295 You would be compelled to increase your operating force to take care of the greater number of calls that would go over the system; you would have to encounter certainly a shifting of customers from one class of rates to another, which expense you would be certain to meet but you do not know what it would be. The growth that would take place in that, you could not tell whether it would be on the maximum or the minimum, or in what direction

in the city it would be found; it would all be a matter of speculation, so that to forecast the future on that, is a matter of speculation and doubt.

Q. Has anyone without experience in the telephone business the right to hazard an opinion upon this subject?

A. I cannot for the life of me see that it would be one that would be entitled to consideration. A guessing match is one in which all can take part, but that is what it would be, if uninformed or inexperienced people were to pretend or attempt to forecast results of that nature.

Q. What experience have you as the chief executive of the company, had in the past ten years in the City of Louisville on reducing the rates?

A. We have tried and experimented with every conceivable class and kind of rates, and every theory of rating that those that were best qualified to talk on the subject, have suggested, we have tried,
and our experience there was that every one of them proved
1296 disastrous, disappointing and a failure. In other words, we
had poorer results—until this last series of rates which we inaugurated some two years ago—they show a betterment of conditions, the others all showed worse, so that it was not a matter of theory, but it has been a matter of actual experience with us in the City of Louisville.

Q. Now I will ask you to state what in your opinion will be the result if the rates prescribed in this ordinance shall be put into effect in Louisville, basing that opinion upon actual experience you have had in operating that particular plant for the past ten years?

A. My opinion is that we would have to provide a considerable additional capital outlay; that we would get little or no additional gross revenue, certainly we would not get more than would be offset by the additional expense. My deliberate opinion is, it would be a very losing and disastrous experiment.

Q. Would it be disastrous to the users of the service in Louisville, as well as the company?

A. Everything that affects the company's earnings has a bearing upon the customers. That is to say, it has a bearing upon the character of service it can give to the customers, and that, after all, is what I assume the people want; they are not out simply wanting telephone bargains, but they are looking for telephone service. They, quite naturally, want that service at the best bargain at which it can be had, but nevertheless as I say they are not out looking for
telephone bargains, but as a first consideration they are look-
1297 ing for telephone service, and the earnings bear an important
part on that. In other words, the ability of the company to keep up and maintain and provide service is of the very greatest importance to its customers and when its revenues are depleted, it necessarily would have an effect upon its ability to provide this service.

Q. How is a telephone property successfully financed?

A. By an increase, from time to time, of its capital stock, has been found the only practical way. Where bond issues have been resorted

to, one issue clouds and interferes with subsequent issues, but where additional shares of stock are made and they all stand on the same basis, as they do stand on the same basis, the one issue does not take precedence over or destroy the standing of the next issue, but on the contrary, they rather have a tendency to aid each other, and hence that has been found to be the most practicable and satisfactory, and I may say, the only practical way to finance a telephone system.

Q. Is it necessary that a telephone plant or system either, continually increase its capital account or increase its construction account?

A. Yes, for the reason that it is necessary to meet the growth. The growth is continued and continuing; it is no let up, but on the contrary continues to grow and unless the company meets this growth, its usefulness becomes impaired or lessened and it at once is on the down-grade instead of the upgrade. It must go
1298 forward continuously, it must meet the public requirements and to do this, it must have continuously additional capital.

Q. Now, what effect does the earnings of the company have upon its ability to increase its capital account from time to time, to get this necessary fund for increasing its construction?

A. The whole question comes right there. Unless the company is on a profitable basis and is doing a business that is profitable, it has no credit and it is necessary for it to have credit. Therefore, in order to attract new capital, it must present sufficiently attractive profits to cause people to put their investments in the telephone business rather than in some other line of business, and, of course, unless it can show a profit in its business it cannot possibly influence or attract capital to it. That is the key to the whole financial problem.

Q. What per cent. of net profit is a telephone property entitled to make, in your opinion?

A. It ought to return an actual cash return on its investment of ten per cent. When the hazard and uncertainty of the business are concerned, ten per cent. on the money is not at all unreasonable, and fair, but in other words, it should pay that actual dividend to the stockholders or that rate of interest on the money that is provided to make the development.

1299 Q. What profit do business men in theCity of Louisville and in that community expect to make upon their actual capital employed in their business year by year?

A. I am quite sure they expect a return around that amount and in certain classes of business they expect more.

Q. What per cent. of profit do public service companies in Louisville expect to make on the actual money invested in the business?

A. I think they expect to make something like that or hope to do so.

Q. Is anything less unfair and unjust to those who have invested their money in the business?

A. I think it is.

Q. Is that the opinion held by business men, and men of affairs in the City of Louisville.

A. I think it is.

Q. Mr. Caldwell, it is stated in the answer to the bill in this case that the company has been extremely arbitrary and that its conduct in this respect led to the formation of another telephone company in the City of Louisville. I will ask you to state whether or not that is true?

A. I don't think that there is one word of truth in that, or any foundation for such a statement.

Q. What policy has the company pursued with respect to conducting its business in the City of Louisville from the time
1300 it commenced doing business there until the present time?

A. Its very first act, in modifying its schedule of rates, showed the consideration and desire it had for the public's patronage. Its attitude towards all its customers is that of the greatest consideration and respect; it keeps standing in its directories continuously a notice to the public, exactly contrary. The following notice stands in the printed directories of the City of Louisville and has been there continuously for years and speaks for itself, to-wit:

"This company sincerely desires to give the best service possible, and to this end will spare no expense, and will thankfully receive any suggestion calculated to give any more satisfactory results. We employ great numbers of people to keep up the system, and are prepared to attend to any needed repairs on the shortest notice, and if any are unduly delayed or neglected, it is the fault of someone who is drawing pay to attend to such matters, and if reported promptly will be quickly remedied.

Uniform courtesy and politeness is an imperative rule of this Company, and any infraction thereof will receive prompt attention if reported by letter or telephone to the general offices.—James E. Caldwell, President."

1301 The company sincerely desires, and at all times has desired, all the business it could profitably procure. It has realized that its attitude towards the public could be no different from that of commercial people generally, which is a sincere desire to please its customers and have them in a friendly attitude, and if any one representing it has been arbitrary or pursued a course different from this, he has not reflected the policy of the company at all, but, on the contrary has violated its express rules and instructions. With reference to the building of the opposition exchange at Louisville it was a promoters' scheme pure and simple, with the hope and desire of making a profit in the building of it, in bringing out issues of securities to sell to uninformed people which they succeeded in a large measure in doing. That was the real basis and the reason for building the opposition exchange in that city.

Q. What do they say now with respect to the various rates which they themselves fixed on which to operate that plant?

A. The people who are now operating it state boldly that it was a mistake, that the rates are wholly insufficient and inadequate, and unless they can increase those rates that ruin is bound to follow.

Question and answer objected to by defendant, because hearsay.

A. Mr. Helm Bruce, as representing the Home Telephone Co. in Louisville, said in a public meeting in my presence that those were facts, in as emphatic and pronounced language as he
1302 could command, and stated that in his opinion anything less than an average rate of seven dollars per month would be insufficient to provide the class of service that was expected and desired in that city.

Same objection by defendant.

Q. I will ask you to state whether or not you adopt the allegations of the bill in this case as a whole, as a part of this your deposition?

A. I do.

Q. And I will ask you to state whether or not you especially adopt that part relating to a history of the controversy between this company and the Board of Trade of Louisville?

A. I do.

Q. I will ask you to state whether or not there was any effort whatever to mislead or deceive either the members of the Board of Trade or the Directors of the Board of Trade or the committee of business men appointed by the Board of Directors of the Board of trade to investigate this company's affairs in the City of Louisville.

A. There was not, absolutely, but on the contrary, every facility was affor-ed them, every question was answered truthfully and freely and every effort was made to familiarize and acquaint them with the true facts and to the very best of our ability, and in the very best of faith. We were dealing with men of the highest order and we dealt with them accordingly.

1303 Q. It has been developed in the auditor's deposition, on cross-examination, that this company paid the expense of the expert accountant employed by that Committee to make that investigation. Will you state the circumstances under which this bill was paid?

A. It was brought to my attention that the Board of Trade at Louisville—perhaps through its Secretary Mr. Buckner stating that that body was rather close pressed for funds, or rather, perhaps, had limited funds at its disposal, and that the payment of these expenses were somewhat of a hardship on it, and asked if we would not recognize that it would be a fair thing all around for us to reimburse them, which we did, and they rendered a bill in detail for their expenses and it was paid in the usual course of business.

Q. Was this before, or after, the report of the committee had been made?

A. This was some time afterwards.

Q. Was anything said about the payment of this bill or the expenses, prior to the report of the committee?

A. Not a word, it was not discussed or referred to.

Q. What was the character of the gentlemen composing this committee?

A. They were men of the very highest type in that community or any other. They were the foremost men of the city.

1304 Q. Did any of them have any interest in the complainant company?

A. Not the slightest.

Q. Have any of them to your knowledge, or so far as you have heard, ever complained that any fraud was practiced upon them or that they were misled in any way?

A. Not the slightest intimation have I heard from any of them of any such nature, but on the contrary in an investigation that was made by some of the same gentlemen and others of the Board of Trade perhaps a year and a half after that, reiterated and confirmed that report, or, rather, sustained it and gave it as their opinion that their findings were correct, and that certainly this company had lived up to the whole contract in good faith.

Q. I will ask you to state whether or not the company's affairs in the City of Louisville, since June 1899, have been honestly, prudently and skilfully and economically conducted?

A. They have, to the very best of our ability.

Q. Now, it is stated in the answer that the complainant company was not only not willing to have its affairs investigated by the city authorities prior to passing the rate ordinance, but that after consenting that the defendant might investigate its properties and examine is books and inspect its physical properties, that the

1305 company then declined to permit the city to do so. Is there any truth in that statement?

A. This company has at no time objected to impartial and competent people examining its affairs. It has never raised an objection thereto; it has never raised the slightest objection at any time to that class of examination, and has not offered any objection or impediment whatever to it.

Q. Did you authorize any representative of the company or any counsel of the company to offer full and free access to the records of the company for investigation, to any of the city authorities, prior to this rate ordinance being adopted?

A. Yes, they were instructed to allow them that at any time and there has never been the slightest objection to competent people and fair people making such examination at any time, by anyone that had any interest in it.

Q. Of what value is a comparison of telephone rates in different cities?

A. Merely as only one of the dozens of items that might be considered, is about all, an approximation.

Q. What are the differences of rates of the two companies giving service in Louisville?

A. On the same class of service, the one is very nearly double the other.

Q. What class of patrons would be affected by the reduc-

1306 tion in rates, to conform to the rates prescribed in the ordinance in controversy?

A. All of our patrons would be affected, but the large and heavy users would get the greatest benefit. That is to say, those who are now employing and use from us the highest and most expensive

class of service, and making the greatest use of that service, would get the greatest reduction. In other words, they would get a reduction of two dollars a month, whereas the small and unimportant user would get a reduction of fifty cents a month, or in other words, the biggest users gets four times the reduction of the other.

Q. Have any two rate ordinances passed by the City of Louisville in the past few years, had the same rates?

A. No, I think not; I think they have all differed.

Q. State whether or not it is true that the larger the number of subscribers to an exchange, the greater is the expense, per subscriber, of rendering the service?

A. That is true, and that it is true is abundantly attested by the fact that throughout the world, wherever telephone service is given, whether it be by the Bell interests in the United States or the opposition interests in the United States, or individuals in foreign countries or the Governments in foreign countries, they have one and all universally recognized the truth of that principle.

Q. I hand you a pamphlet which purports to answer the question why telephone companies charge more for service in large
1307 exchanges than in smaller exchanges, and I will ask you whether or not you have read that pamphlet and whether or not you agree with it?

A. I have read every word of it more than once and I do agree with every word printed in it. I think it sets forth the reasons very clearly and properly.

Q. Will you attach it as Exhibit No. 1 to your deposition?

A. I will, and do attach it as Exhibit No. 1 to my deposition.

Q. Do you recall how many rates ordinances the City of Louisville has adopted or proposed, in the last five years?

A. I do not recall the precise number but there have been a great many, and they have been numerous.

Q. What have been the reasons if you know, for these various ordinances?

A. I think that some of them, perhaps, were inspired by another telephone company there; I think that in the main however, they have grown out of the dissatisfaction which the community in Louisville has with regard to its telephone situation, for competition has never proved anything other than an irritating circumstance in the telephone business—I mean by that, it has proved irritating to the community for the popular or superficial opinion or idea is that you rent a telephone, that is merely the habit of thought, and is far from correct. What the individual and the community de-
1308 sires is telephone facilities and that is the facility to communicate with other individuals, and as far as possible, with every individual with whom he may have acquaintance or occasion to transact any business what-oever. Quite in the nature of things, that sort of a facility is blocked and impeded and hindered by two or more concerns attempting to do the same thing, for instead of promoting the growth of such a facility, they are really endeavoring to divide the communities into as many different camps or in as many different groups, so that to get a complete service, each indi-

vidual would have to equip himself with the facilities of each system, not only pay their respective rates, but be worried with the operations attending the use of more than one apparatus or machine, so to speak. Irrespective of the price, the irritation is great and continuous, by reason of the fact that a certain degree of friction is engen-ered when trying to get practical, daily results out of the telephone situation, but, when to this is added the necessary expense, which has to be in some form or other paid it produces great dissatisfaction, so that no telephone company or system is looked upon as agreeable and satisfying by people that are in such a situation and the various ordinances which have been passed and experimented with by the city authorities, have in a very large measure been the outgrowth of that state of affairs and an effort to try to cure the difficulty but the difficulty is inherent in the fact that there
1309 is competition in a business where competition is destructive of the service instead of beneficial.

Q. Are the expenses greater or less under competition in telephone service, than without competition?

A. The expenses are greater, for the business does not flow in a normal way. The community, telephonically speaking, does not act in a normal way.

Q. And this produces abnormal expenses?

A. Yes sir, it does produce abnormal expenses and abnormal conditions.

Q. Private branch exchange service is one kind of service that is given in Louisville, is it?

A. Yes sir.

Q. The private branch exchange rates in New Orleans were proven in the cross-examination of the auditor. How do those private branch exchange rates compare with rates for similar charges or rates in Louisville?

A. They are very much higher.

Q. You mean the rates in Louisville are lower than those — New Orleans?

A. Yes what I mean is that the rates in New Orleans are very much higher than those in Louisville for that same character of service.

Q. Mr. Caldwell, what effect would the adoption of the rates prescribed in this rate ordinance have upon the company's
1310 business in Louisville?

A. I think it would be very disastrous.

Q. Would it have any effect other than the mere reduction of the company's revenues at that point?

A. Yes, it would necessarily have an effect on its credit and therefore have an effect upon its ability to meet its requirements generally. It would certainly affect its ability to raise new money or new capital.

Q. What about the various little exchanges built in Jefferson County outside of the corporate limits of the City of Louisville. How did they come to be built?

A. They would never have been built but for the benefit and ad-

vantage it was thought would accrue to the Louisville exchange, they are satellites pure and simple, of Louisville.

Q. State whether or not it was in pursuance of the policy of extension and saturation with reference to the Louisville exchange, that these, or any of these, little exchanges were constructed?

A. It was entirely in pursuance of that policy.

Q. What about the free service to Jeffersonville and New Albany, from Louisville. Is that given to the Louisville subscribers without any charge?

A. Yes, they get free service to the Jeffersonville subscribers and New Albany exchange subscribers, for which they paid a toll charge at the time we purchased the Ohio Valley Company. In
1311 other words, our predecessor, the Ohio Valley Company made a toll charge for every message that went to those respective points, which service we give free to Louisville subscribers.

Q. What would you say as to the value of the service given to the Louisville patrons now as compared to the service given to them when this purchase was made in June 1899?

A. There is no reasonable comparison to make. At that time they were confined very largely to the corporate limits of the City of Louisville, they had access to certainly not more than three thousand subscribers, and as I say, they were practically inside of the corporation, where they could be reached otherwise with some convenience, whereas the exchange now, not only covers all of Louisville, but Jefferson County, and this free service extends into Indiana, and the toll facilities added, and the saturation added, so that they have facilities which were not in existence at that time at all, and it renders what they get more valuable. In other words, for their subscription now, they get far in excess of what they received at that time. It is no exaggeration to say it is equivalent to four times as valuable.

Q. Now, how do the prices they pay now compare with the prices they paid in June 1899 and prior thereto?

A. With the exception of one rate of $6.50 per month for three years' contract, everything else is less.

1312 Q. The toll lines radiating from Louisville, do they extend in any direction from Louisville beyond the exchange area before getting into the exchange radius of another exchange?

A. I do not know that any of them do. It is practically one exchange meeting the other; lines connecting the subscribers to the Louisville exchange, practically reach and lap over on the pole routes carrying the subscribers to the exchanges in the nearby towns; the whole section is literally interlaced.

Q. Mr. Caldwell, counsel for the City, in the cross-examination of the auditor has asked him to file a statement of the expenses of advertisements in the Louisville papers from some time early in the present year to September 14th, and asked to what account those expenses were charged. Do you know anything about those advertisements?

A. I do.

Q. At whose instance and direction were they inserted in the newspapers?

A. Mine.

Q. And for what reason?

A. In order to keep the public properly informed with regard to controversies and matters pertaining to the business, that they might have some knowledge of the facilities, and that they might have some explanation of statements and charges that were
1313 made against the company. In other words to keep its patrons and the public generally, properly informed so that the truth would be known, and that the company would not be put in a prejudiced and harmful attitude and that its customers would not be led to believe that they were improperly treated or ungenerously or unfairly treated, for, quite naturally if they had conceived such an opinion, it would have influenced their patronage and action towards us, very materially.

Q. Were there any peculiar conditions in Louisville which in your judgment necessitated these advertisements?

A. There were peculiar conditions which rendered it very necessary and very desirable.

Q. Please state them?

A. The city authorities in their declarations, made statements with regard to our rates and earnings, calculated to make it appear that they were unreasonable and unfair, and the further effort was made to make it appear that we had practiced a fraud and imposition upon the Board of Trade of Louisville, and that that body had repudiated us in a manner to indicate we had practiced a gross fraud and deception upon them. As none of these things were true, we thought it was advisable and necessary to counteract any such impression, and the only way we could do this was by means of advertisements through the newspapers as we had no newspapers of our own, so we adopted that means of putting the facts be-
1314 fore the public, and it was a necessary protection of the business and a necessary expense to incur and it should properly be charged to the expense of conducting the business.

Q. Is there anything further you desire to state in regard to any of the matters in controversy?

A. No sir there is nothing that occurs to me that I have not stated.

Cross-examination.

By Mr. BLAKEY, for Defendant:

Q. Mr. Caldwell, is the property on Jefferson Street in Louisville, occupied by your main exchange more valuable or less valuable now than it was when you purchased it?

A. Well, I do not know Mr. Blakey, I am sure. I suppose there has been no material change made in it.

Q. What was the inducement that led you to pay one hundred thousand dollars for that property?

A. Well, it was considered worth the money and that was as low a price as we could get on it.

Q. Was that one hundred thousand dollars which you agreed to pay and which you say you did pay for that building, in any

manner a part of the consideration for the stock which you purchased from Mr. Clark and Mr. Speed?

A. They were not put together at all; the prices were made separate and distinct, and in all likelihood the two hung
1315 together somewhat. The house was needed for the business, and how they regarded it, I do not know, but I felt that it was very necessary to have that property.

Q. Do you remember how much you paid for their stock?

A. I think I paid Mr. Clark and Mr. Speed a dollar forty one, and agreed to pay to any of the balance, a dollar forty.

Q. Do you remember how much stock they had?

A. No, I do not remember what it was exactly, but it was approximately a control in the company. If not an actual control, it was very close to it.

Q. Isn't it a fact that the one hundred thousand dollars paid them for this real estate and building was in excess of the value of the real estate and was paid to them in order to induce them to sell their stock at a dollar forty one?

A. No sir that was not the case, for the price on the stock was made before the price on the building.

Q. Was that considered at all between you and Mr. Speed and Mr. Clark?

A. How do you mean.

Q. Was it ever discussed between you that you would pay a price of one hundred thousand dollars for the building on the condition they would put the price on the stock at a dollar forty one?

A. No. They made the price, as I say on the stock, before the price on the building was mentioned, and after the price was made on the stock, we then took up the question of purchasing the building and the price was made on that.

1316 Q. How much did they first ask for their stocks?

A. I think the negotiations started at perhaps a dollar fifty or a dollar sixty.

Q. Now when you became president of the Ohio Valley Telephone Company, did you draw a salary as president of the Ohio Valley Company?

A. Yes sir, I did.

Q. Did you also draw a salary as president of the Cumberland Company?

A. Yes sir, I did.

Q. Was your salary as president of the Cumberland Telephone and Telegraph Company decreased after you became president of the Ohio Valley Company?

A. No sir, it was not.

Q. Now I believe you have said that you have never derived any profit or benefit that any other stockholder in the Cumberland Company has not derived on account of any endorsements or loaning your name to the Cumberland Company. Is that correct?

A. Yes sir, that is correct.

Q. Now in speaking of this trade district which you say is essential in order to round out your company, I will ask you if it is not true

that the City of St. Louis is more intimately connected with the district from St. Louis to New Orleans, than is Louisville?

A. No sir, that is not true.

1317 Q. Isn't it a fact that more wholesale houses and more business is done by merchants and manufacturers all throughout your territory, or throughout the territory wherein your company extends, with St. Louis than there is with Louisville?

A. No sir that is not true; nothing approaching it.

Q. Is there any business at all to speak of between Nashville and Louisville?

A. Yes, a great deal. Louisville and Middle Tennessee have always had quite a business with each other, and do today.

Q. Does your company enter St. Louis at all?

A. No sir.

Q. Does your company enter Atlanta, Ga.?

A. No sir, it does not.

Q. Is not Atlanta more intimately associated with this district you have mentioned, than Louisville?

A. No sir it is not.

Q. Now, coming to the question of the theory on which your rates are established, I want to ask you if you establish the rates which your company charges?

A. I have more to do with it than anybody else and have a very considerable control and latitude in that respect.

Q. Now will you explain the theory on which you establish a rate of eight dollars for a direct business telephone and four dollars, or four dollars and a half for direct residence telephone?

1318 A. The elements that enter into that condition, are use and value. The character of the message which are handled over the lines of the business man's telephone are of very much greater importance and there are a great many more of them than those over the residence line. The business man uses his line to sell goods to the residence subscriber, and thereby makes the residence customer, if not directly, indirectly, pay a part of his telephone expense, so that every element of justice and fair dealing requires that he pay a very much higher rate than the residence customer and the fact is that that practice is universal. There has never been a time that I recall, since 1885, when there was not a material difference made between the business and residence subscribers by everybody that had anything to do with the making of rates.

Q. How about the cost of operating the various classes of telephones. What part does that play, if any?

A. There is a larger cost in operating the business line than the residence line, but it is in all likelihood a larger cost of construction, to equip a residence telephone than that of a business house, by reason of the fact that it requires a longer line on an average to reach the residence than it does to reach the business house, which is usually there in the congested center of the city proximate to the exchange, but the daily use that is made of the system by the

1319 business man is far in excess of that made by the residence.

Q. Is the additional cost of operating a business line

affected in any manner except in so far as it requires more operators in the exchange to take care of the calls?

A. Yes, the battery cost would be involved and the wear and tear on the apparatus would be greater. In other words, it is, after all, the use of the system that a man pays for and desires to use, and that is what he does use and hence the use of it is not only the value, but is the expense occasioned.

Q. The apparatus installed in the exchange to which the subscriber's telephone is attached, and the apparatus in the subscriber's office are the only parts of the system that would be affected by this additional cost, are they not?

A. No sir.

Q. What else?

A. You mean the additional expense?

Q. Yes.

A. As I said when one uses his telephone he puts in motion the whole interior apparatus. You may say, he puts in motion the whole telephone machine; it is there subject to his use and he uses it. In the use of that, the initial start is at his own telephone, but in order to meet his wishes and requirements, as I say, the whole machine is more or less brought into requisition and hence the greater use that is made of the telephone, the greater use is made of the whole extensive apparatus.

1320 Q. Is the battery or electric expense connected with the Louisville exchange a matter of small cost, comparatively or a matter of considerable cost?

A. It is one of the items of expense. It is not an overshadowing one, but it is a substantial one.

Q. What would you say that battery expense amounted to per month in Louisville?

A. It would be a matter of impossibility for me to hazard an opinion on it, Mr. Blakey.

Q. Is there anybody connected with your company that knows this fact?

A. I don't know whether there is or not, anybody that has worked that out. I have never seen any such figures. I do know that the battery outfit is a substantial and expensive arrangement and it requires constant supplying and that it enters into the expense as a material and substantial item.

Q. Now, you say in establishing rates, one of the considerations is also the use to the customer. Do you mean by that, that the customer should pay more according to the number of subscribers with whom he is connected?

A. Yes, I mean to say he ought to do it as a matter of justice, and I mean to say further, it is the only thing that influences him, that he is influenced entirely by the use and value to him; the cost to us does not influence him. The use and value only influence him and it should influence him and it should influence us, for it is just and right.

1321 Q. Is there any more cost connected with maintaining the pole line and the wire to a business house than to a residence?

A. I expect there is more the other way, by reason of the fact that it is, on the average, longer. That is to say, I expect there is more expense of that nature connected with the residence telephone than to the business house, for, on an average, the lines to the residences are longer than the lines to the business houses.

Q. How much would you say it costs in the City of Louisville per year to operate a direct business line and how much to operate a direct residence line?

A. Well, sir, I do not know.

Q. What would be your idea about the difference of the two?

A. The operation?

Q. The entire expense?

A. I should think in the matter of expense there would be a difference—I am just guessing at this as an offhand opinion,—I suppose it would be anywhere from ten to twenty per cent, maybe more.

Q. Ten to twenty per cent for business than for residence?

A. Yes, but that might be altogether too high when you get to the actual expenses of it, but I think that is perhaps correct. I feel that it is so.

Q. Then, the class of service and not the cost of operating or furnishing the service is the material point in determining
1322 rates?

A. It is one of the material points and a very material point.

Q. Is it the most material point?

A. I expect it is the most material point for the reason forces have played, and do play on this rate making that are entirely outside of the law making authorities, for, as I have said before, the customer only considers the use and value to him, and that cannot be overloked when it comes to supplying it.

Q. Then, would you say that the $3.00 party line rate which you furnish in Louisville for residences was a rate less than the cost of furnishing the service?

A. I don't know that we are putting out any rate that is less than cost of the service; it is not our intention to do so. We are not able to state that definitely, but it is not our intention, and we do not think we are doing so.

Q. If it costs only twenty per cent more to operate a business telephone than it does to operate a residence telephone and the three dollar rate is a profitable rate, then, the operating expense of the business rate would be at a profit of about five dollars per month, would it not?

A. Well, perhaps some of them might be, but I have not made any such calculation and I do not know. I am simply taking it as a hypothetical matter, but even if it were so, the parties that are using the service are still getting such a phenomenal bar-
1323 gain out of it, that it is no sort of injustice as respects the various customers, for, as I have shown before, that is, by applying actual results, they charge it on to their goods as a part of their cost, and thereby charge it up to these residence customers

when they sell them goods; so, these residence customers actually pay for part of their service. The business man does not stand that expense, for as I say, he charges it up to his customer as an expense of doing business, and requires the consumer to pay it, whereas the residence customer would not do such a thing, he not only does not do it, but has no power or opportunity to do it.

Q. Now, what class of service did you install when you took charge of the Ohio Valley Company which the Ohio Valley Company did not have?

A. We installed party-line service of various kinds and measured service, public stations, private branch exchanges, and a great variety of services which they did not have.

Q. Didn't the Ohio Valley Telephone Company have private branch exchanges?

A. I do not recall that they did, or if they had any, it was so insignificant that it did not leave any impression on my mind.

Q. Didn't they have party lines.

A. No sir they did not.

Q. No party lines?

A. None that I recall, none in the city.

1324 Q. How long did you maintain the measured service?

A. We maintained the measured service down to the time competition sprang up.

Q. That was in 1901, wasn't it?

A. Whenever it was, but you cannot maintain a measured service against an unlimited service, where a competitor is furnishing unlimited service at a flat rate, it is impossible to maintain and put out and make practical, what is known as a measured service. That is to say, a measured service is where they pay for each message that is sent. In other words, the flat rate competition drives out and destroys a per message rate.

Q. Do you know for what capacity your exchange is now installed or equipped in Louisville?

A. No sir I do not, but I should say that it ought to be somewhere between twenty five and thirty per cent more than its present subscribers.

Q. Do you think it is that much?

A. I think so. I think it ought to be. I should hope to find it that way.

Q. You say it costs more per subscriber to operate a telephone with ten thousand subscribers than it does with five thousand subscribers. How much per subscriber?

A. I cannot tell you that accurately. It is a matter of approximation. Those fine points are too fine to be worked out but

1325 there is a material and a substantial difference between them.

Q. You have exchanges in your system which have grown from five thousand to ten thousand subscribers, haven't you?

A. Yes.

Q. Have you investigated the question to ascertain how much additional cost there was when the growth had reached ten thousand?

A. No sir, because there have been so many different conditions

that have set up in the interum, that it would make such a calculation a mere matter of entertainment.

Q. Who wrote the article which you filed and made a part of your deposition on this subject?

A. I have not the slightest idea sir. I simply ran across it as a printed article, and I have not the slightest idea from whom it emanated.

Q. Did you write it yourself?

A. I did not.

Q. Did anybody connected with your company?

A. No one connected with my company and no one of my acquaintance or know.

Q. You don't know whether any one of your company or connected with your company, wrote it or not?

A. I know they did not.

Q. How do you know that?

A. Because if they had, I should have been certain to have
1326 known of it.

Q. Would you have been certain to have known it if Mr. Granbery wrote it?

A. I most certainly would have known it?

Q. What if he didn't tell you?

A. I would have in any event have recognized his style in it, for I am familiar with his manner of writing, and the information he had on that subject.

Q. At any rate you don't know who wrote it?

A. I do not, but I know it is an ably written document and covers the facts splendidly. I should have liked to have been the author of it; I should have taken some pride in being able to get out such an article or to have known we had someone in our employ who could have written it.

Q. Now, where does the increase in the cost of operating a telephone begin, with reference to the increase in subscribers?

A. Well, sir, it begins right at the instrument, the minute he takes it off the hook. In other words, the first time he puts his hand on the thing, it starts right there and never ends.

Q. You mean if your exchange is equipped with five thousand subscribers, and it costs two dollars and a half per subscriber to operate that telephone and system, that if you got five thousand and one, it would cost more than two dollars and a half?

1327 A. As I say, it starts from that time and starts right at the time the man puts his hand on the telephone, for the reason, apparent and directly and easily observable, that the use which the subscribers make of the exchange increases as the exchange grows, and it is the use that is made of this great machine that makes the expense, the using it, the wearing of it and the service that is rendered in every way.

Q. Now, if you had one hundred operators, an exchange equipped for five thousand subscribers and they could operate for one more?

A. Yes, they might couple one more, but it is like loading an elephant or a wagon, there is a time when it can not take any more,

and something else has to be provided, and just where that point is, it is judgment and arithmetic that determines it, for this matter of operating is a matter of mathematics now and is not a hazard or guess.

Q. Can you tell when it begins?

A. It begins when an operator gets more calls before her than her capacity. In other words an operator is gauged by the number of calls she can answer per hour, and when those calls increase beyond that that necessitates an increase of help and facilities, increase in operators and increase in apparatus necessary for the operator to perform the service.

Q. Well, if each operator could handle a hundred lines, and every time you added another hundred lines you had to add
1328 another operator, there would be no additional cost per subscriber in that respect?

A. If that were the case, but it is not operated that way. An operator handling a hundred lines, a certain number of messages coming over them, when you add a hundred more lines instead of there coming say a thousand messages over those lines, there come twelve hundred messages or fifteen hundred messages, then the number of lines before that operator has to be cut down, and she has to be relieved, because those respective lines are used so much more heavily than before, and their use is rendered heavier by reason of the fact that other lines have come in and are operating and using these lines, and they have access to, and do use these added lines.

Q. Do you know how many operators you had when you took over the Ohio Valley Company?

A. No sir, I do not.

Q. Can you make an approximate estimate of it?

A. It would be a guess and I do not carry those things in my mind; they are matters of record and I do not pretend to burden myself with matters that are of record.

Q. Can you have that ascertained?

A. Yes, I can give it to you correctly and will do so with pleasure.

Q. Will you also ascertain how many operators there were at the beginning of the year 1904.

1329 A. Yes, I will do so with pleasure.

Q. Will you also ascertain how many operators there were on the first of January, 1909?

A. Yes sir.

Q. And the first of January, 1907?

A. Yes sir.

Q. And the first of January, 1908?

A. Yes sir.

Q. Now in the business say of an electric light company, I believe it is conceded that the more business that is done at the same rate, the more net profit there is. Do you know whether that is true?

A. I think it is so considered. I think the usual rule of wholesale principle applies in electric lighting, but it does not apply in telephony.

Q. Will that wholesale principle which applies in electric lighting, apply to the item of maintaining the property of a telephone company?

A. I don't know just how that might be; it might and it might not. The difference in the use of the service is quite different, and the carrying of a current along a wire does not seem to produce any wear and tear on it, whereas the manipulation of the apparatus, as in the telephone company, does produce additional expense and additional wear, so that in the case of telephones, it would be different and greater.

1330 Q. So far as the employés who are engaged in keeping the property in a workable condition, would you say the wholesale proposition about which we have been talking, would apply?

A. In so far as those engaged in maintaining the property outside, that is, the poles and wires and cables, the individual lines, that is to say the number of messages carried over an individual wire outside, that wire would not be affected by the number of messages going over it, whether it was few or many, but the apparatus at each end of that wire and all the interior connections at both of the termini of it would be affected, and they constitute a very large part of the value.

Q. Now as to the officers and general employés around the office, such as general manager and cashier and clerks?

A. There would be a great many of those overhead charges that would not be affected necessarily and apparently.

Q. And I believe you said you had no way of telling how much it costs to operate a telephone in the City of Louisville?

A. I intended to say, that I do not know what it would cost to operate the respective classes of service offered to patrons in the City of Louisville, but we do know what it costs us to operate the exchange as a whole.

Q. You say it costs from ten to twenty per cent more to operate business than residence telephones——

A. I gave that as my opinion, that I thought it would cost something like that more, to operate a business telephone than

1331 a residence telephone. I stated that as an offhand opinion, and so reiterate it.

Q. But you don't know how much it costs to operate a residence telephone?

A. As an actual fact, I do not know what it actually costs to operate the various classes we give in the City of Louisville or any other city where we do business.

Q. Is there any way to determine how much are the expenses for operating a residence telephone in the City of Louisville including not only operating expenses, but general expenses and maintenance?

A. I don't think there is any practical way to tell the expense of operating any class of residence service or any class of business service in the City of Louisville. They are all hung together in one mass and we can only tell what it costs as a whole.

Q. Is there any distinction between operating a party line residence telephone and a direct residence telephone?

A. Yes, I think there is.

Q. What distinction is there and what causes it?

A. The party line is where two or more parties are using the same apparatus or a part of the same apparatus, and their calls are, on an average, less or fewer than those who operate a private line, so that there is some difference there.

Q. Is there any difference in so far as the direct cost of
1332 operating, eliminating the question of maintenance?

A. The two customers would necessarily, as they are using a greater portion of the same wire, would contribute to its maintenance, whereas the one holding the private wire would have to provide the maintenance.

Q. I say, eliminating the question of maintenance and dealing solely with the expense which you place under the head of operating expense, would there be any material distinction between the cost of operating the direct residence telephone and the party line residence telephone?

A. Yes, I think there is a difference in that.

Q. Where would that come in?

A. Because the subscriber having the party line does not use it on an average as much as the one having the private or direct line.

Q. That would be the only distinction?

A. That would be the main distinction.

Q. What other distinction would there be?

A. As I said before as in the case of the business telephone and the residence telephone, the same principle would apply there, that is to say, the expense runs right on through, by reason of the greater use made of the one than of the other.

Q. Well, what would you say about the percentage of increased cost in so far as party line residence telephone and direct line business telephone is concerned?

1333 A. Oh, along about in the same increased proportion that the other is. That is to say if it was something like twenty per cent on the other, there would be an additional increase as between the party line and the direct business line.

Q. Now, you spoke of the subscribers in Louisville having exchange service to the New Albany exchange, free of charge. Have the New Albany subscribers access to the Louisville exchange free of charge?

A. Not unless they pay the Louisville rates. Those who do not pay the Louisville rates do not have that service free.

Q. When they do pay the Louisville rate, is any part of the receipts from that exchange credited to the Louisville exchange?

A. No, sir.

Q. Then the same is true about Jeffersonville?

A. Yes, that is true.

Q. Do you know how many subscribers in Jeffersonville and New Albany pay the Louisville rate?

A. I suppose there is a sum total of half a dozen or a dozen, perhaps.

Q. Will you ascertain that fact and place it in your deposition?

A. Yes, I will do so. (Ex. No. 3).

Q. Now you say all the exchanges in the neighborhood of Louisville were built up in order to help Louisville?

A. I do sir.

1334 Q. How about the exchanges out in the States, such as Shepardsville, Taylorsville, Winchester, Shelbyville, Carrollton, Eminence and places of that kind? Why were they installed?

A. Some of them would have been built and installed on their own business. That is to say, with the hypothesis that they would have paid of themselves. Shepardsville, however, was not one of those.

Q. Now, New Albany and Jeffersonville exchanges were built at the time you purchased the Louisville exchange?

A. Yes, they were in existence at that time; we did not build them, but simply enlarged and extended them.

Q. Does the company earn any money on these exchanges around Louisville, about which you have spoken?

A. On those little, small exchanges, it may earn a little something, but nothing to speak of.

Q. Where does the Cumberland Telephone and Telegraph Co. earn its money?

A. Well sir, it earns it out of something like a hundred and eighty or a hundred and ninety thousand subscribers and hundreds of toll customers scattered over a territory from the Ohio River to the Gulf of Mexico about a thousand miles in one direction and four hundred in another.

Q. Does it earn it primarily from the larger cities or from the little towns?

1335 A. It hopes it earns some from every one of those customers. If its service in serving any of them is at less than direct cost, it is because of some direct benefit it would contribute towards the balance of them that would make it undesirable to discontinue it, but the effort has been to try to make every tub stand on its own bottom, but quite in the nature of things we feel that the larger cities do, and ought, to provide a larger profit on the layout than the smaller ones, for the reason that the facilities are so much more valuable in every way to such communities than it can possibly be to the smaller ones, and for the further reason that these larger communities draw their prosperity and sustenance from these small communities, as I say, makes it in every reason and justice why they should pay a larger per cent than the smaller ones, and we make the effort to have it that way.

Q. Now what large places do you operate in outside of Louisville, Nashville, Memphis and New Orleans?

A. Evansville is another considerable city that comes in there, but they constitute the large cities we do business in.

Q. What is the rate you charge at Evansville for direct business line?

A. Five dollars a month.

Q. Do you know how many subscribers you have there?

A. Between five and six thousand.

1336 Q. Do you earn as much as eleven per cent on your Evansville exchange?

A. I do not know sir how that would be: I should hope we did.

Q. Do you earn as much as eleven per cent on your Nashville exchange?

A. I hope we do.

Q. Do you know whether you do or not?

A. No sir I don't know that as a fact.

Q. Do you earn as much as eleven per cent on your Memphis exchange?

A. The same thing, I hope we do but I do not know it to be a fact. I do not think we are earning as much at any of these places as we are entitled to earn.

Q. Now as a business proposition which is the more important; to set aside a fund to take care of depreciation or to pay dividends to the stockholders?

A. Well sir, in the importance of it, you may say they are equal. If you do not pay dividends to your stockholders, you are coming to a speedy end; and if you do not take care of your maintenance, you will come to the same end. So, I do not know that one is more important than the other. They have both got to be done if the business is to be perpetuated.

Q. If you do not take care of your maintenance your property ceases to exist?

1337 A. Yes, if you don't take care of your maintenance your property will go to ruin, and if you don't take care of your stockholders, they will go to ruin.

Q. Is it more important then to have your stockholders in a good humor or to have your property in good condition and intact?

A. One is just as important as the other; I consider both absolutely necessary.

Q. Is it more important to have the property intact and the stockholders dissatisfied than to have the stockholders satisfied and the property ruined?

A. As I said before, I think they are both important and absolutely necessary, one as necessary as the other.

Q. If you don't keep your property intact you cannot pay dividends?

A. No sir, and if you don't pay dividends you cannot meet your growth, and if you do not meet your growth, you will come to an end. So that from any view you want to take of it, from the viewpoint of the public necessity or interest or the viewpoint of the administration, one is just as necessary as the other and they are both indispensible.

Q. Well, if the company earns sufficient to take care of depreciation and the necessary new capital to put into new construction, but did not earn enough to do that, and also pay dividends, which

would you say would be the best policy to pursue, to take
1338 care of your depreciation and the new construction or pay dividends and take care of the new construction?

A. I would say in that sort of a condition, it would be necessary to set right about to do both or quit and do it speedily.

Q. Do you know what dividends the Louisville Street Railway Company earns on its stock?

A. No sir, I have not the slightest idea.

Q. I believe you said public service corporations usually earned ten per cent?

A. I thought I said they hoped to do it, and desired to do it. I intended to put it that way.

Q. Do you know that the Louisville Street Railway Company does not earn but four and one half per cent a year and its stock sells for more than a hundred dollars a share or more than par?

A. No sir.

Q. Do you know what the Louisville Gas Co. earns on its investment?

A. No sir I do not.

Q. On what basis do you make your statement then that these companies expected to earn or should earn ten per cent?

A. Because of the expressed opinion of individuals and the well nigh universal expression on that subject. Those who put
1339 money in those things, have the feeling that that is what they ought to receive.

Q. Do you know of any street railroad company that earns ten per cent?

A. Well, that would depend entirely on what you call earnings, whether it was on what it was capitalized at, or what it cost, or what amount of money was put into it. All those things would have to be brought into question, for all street railroads that I know anything about, are different from the telephone properties I am connected with and the difference would have to be explained.

Q. Do you know of any railroad that has any trouble getting money to conduct its business and extend it?

A. Yes.

Q. What company?

A. This street railroad company has had a good deal of trouble from time to time in getting money.

Q. They have gotten it?

A. Well, they have gotten it one way and another, with a great deal of reorganizations and receiverships.

Q. If the management of public service corporations could get all the money they wanted, it would take a very ordinary man to manage them, would it?

A. Yes, if things came easy, it would not take any great ability to do things.

1340 Q. Now, you spoke of these rate ordinances or certain rate ordinances which had passed the Louisville City Council. Do you know of any ordinance ever passing the City Council of Louisville which attempted or in any way purported to affect the

rates of the Cumberland Telephone Company, except the ordinance passed in 1907, and the ordinance which is now being questioned by your company?

A. I do not know that any others were actually passed; a good many of them were up for very serious consideration, and a great deal of effort made in that direction. I do not know just how many of them went through or actually passed, but certain it is they have had a great many under consideration.

Q. How many were ever under consideration?

A. Well, they had one under consideration just before they passed this last one; it was in the form of a new ordinance to bring out a new company, which was only a month or two prior to the one they passed, and the schedule of rates in that was different from the one they did pass, and then some years ago they had, it seems to me, some others up. I am carrying it as a general impression that it has been a pow-wow in Louisville City politics ever since I have had anything to do with it or heard anything about it, either in the form of new opposition telephone company or rate regulation for this or that and new franchise for this or *or*
1341 that or cancelling the franchise of the other one, or revoking it.

Q. Now, you say one of these ordinances was inspired by the Home Telephone Co. Can you give any logical reason why the Home Company should want your rates reduced?

A. Well, I could not tell just how that might be, I do not pretend to say. In the*y* beginning they would not have wanted it, but I think they now recognize that it would be somewhat beneficial to them, for the reason that when a customer comes to add up and discover they have to pay a sum total of money to get telephone service, that if they could get our service at a good deal less, it would thereby tend to cause those customers to continue their patronage with the other company. In other words it would have a tendency to make them patrons of both, rather than having a tendency to make them discontinue one or the other.

Q. If you had lower rates would not you be more of a competitor for the Home Company than you are now?

A. No sir, I do not think that would, unless we made rates lower than theirs.

Q. Don't you know that practically all the subscribers of the Home Telephone Co. are subscribers to that company because they get cheaper rates than you charge?

A. That is not true, for the reason that a great many people are patronizing both of us, they still patronize us, paying our
1342 rates and yet patronize the other concern, paying them their rates, so they do not get that only because of cheap rates, they get it because of the fact that they have some customers that patronize them exclusively, making it necessary or desirable at any rate, on the part of business people who reach the whole community, to have to take both of these services, and they do not take it because the rate is cheap, but because they wish to reach the customers patronizing the other company exclusively.

At this hour one o'clock P. M., a recess was taken until tomorrow morning at nine-thirty o'clock.

1343 TUESDAY MORNING, *September 21st*, 1909.

The further cross-examination of Mr. JAMES E. CALDWELL was resumed this morning, September 21st, 1909, at 9:30 o'clock, pursuant to adjournment.

Mr. BLAKEY:

Q. Now Mr. Caldwell, coming to this Board of Trade report about which you have testified and which is made a part of your bill in this case, I understood you to say that the Board of Trade report was based on an investigation made by the Board of Trade. Is that correct?

A. Yes sir, that is correct.

Q. And that the Board of Trade was not deceived in any way by the Cumberland Telephone and Telegraph Co., in reaching the conclusion it did reach?

A It was not.

Q. Now did you represent to the Board of Trade that your real property in Louisville was worth in the neighborhood of a hundred and fifty or a hundred and sixty thousand dollars?

A. Our real estate, do you mean by that?

Q. Yes, your real estate and improvements?

A. Well sir, I do not know what particular figures were presented by me, but whatever figures I presented were true and correct.

1344 Q. Did you represent to them that the figures appearing on your books at that time, as representing the value of your real property, was the value of your real property?

A. Yes, I would say that I did.

Q. And did you at the same time tell them that you were returning that real property for taxation in the City of Louisville for less than one half of the amount you were seeking to earn money on?

A. No, there was no discussion by me with the Board of Trade of taxes at all.

Q. Then to the extent that you were representing to them that you were entitled to earn on a hundred and fifty thousand dollars of property and were valu-ing your property for only seventy-five thousand dollars for taxation to that extent your representations to the Board of Trade was a deception?

A. I did not make any deceptive representations to the Board of Trade or anybody else.

Q. Did you represent to the Board of Trade that you were charging as a part of the expense of conducting the Louisville exchange, rent for the real estate and improvements in the City of Louisville aggregating about eight per cent on the book value of the real property and in addition to that was plac-ing in your operating expenses of the Louisville exchange, the taxes and insurance on that real property?

A. I did not go into the details myself with the Board of Trade or the figures, but I did afford the Board of Trade
1345 every opportunity to examine every book and voucher in this office and it did select an expert accountant to represent it, and do that very thing, and he did perform that service and every book and paper in this office was freely submitted to his inspection, and they had that report in their possession, and made their report after that examination had been made, so that they had access to every item or fact or figure in connection with this business that was available to me.

Q. Do you know how long that accountant was at work here?

A. I do not, but he was here long enough to satisfy himself.

Q. Did you represent to the Board of Trade that you were not discriminating among your subscribers in the City of Louisville?

A. If the question was brought up I would have said so, for such was the fact. We were not intentionally practicing any discrimination whatsoever and if any such circumstances as that occurred, it was an inadvertance, and wholly unintentional and far from being the policy of the company.

Q. Did you represent to the Board of Trade that the costs of toll lines outside of the City of Louisville was charged up as a part of the Louisville exchange?

A. As I have said before, I did not go into the detail of figures with the Board of Trade, but they themselves had their own expert accountant to do that for them.

1346 Q. Did you represent or have anyone represent to the Board of Trade that the cost of operating the toll lines in the City of Louisville, was charged up to the operating expenses of the Louisville exchange?

A. As I said before, all those matters were procured by the Board of Trade Committee through their expert accountant in their own way, and such information as they desired, was placed fully and freely at their disposal, and they made such use of it as they saw fit.

Q. Did you represent that the purchase of material for the use of the East Tennessee Telephone Co. in Paducah and other places over Kentucky, was charged as a part of the construction account of the Louisville exchange?

A. I answer that and repeat the answer I made to the question before.

Q. Now the report of Mr. Wilkinson, and the report of Mr. Farnham, show that your total expenses of operating the Louisville exchange for the year 1905, was $227,171.29, whereas Mr. Smith, your auditor, says and the report of Mr. Munster, who examined the books for the Board of Trade at that time, found that according to your books, the cost of operating the entire exchange for that year was $240,729.52. Is it true that you represented to the Board of Trade that it did cost more than two hundred and forty thousand dollars to operate your exchange for the year 1905?

A. All of those facts and figures were brought out by an
1347 expert accountant selected by the Board of Trade; he was given the free and full access to every book and paper he

desired in this office, and any representations made on that subject, were made by him. There certainly was no effort or intention to falsify or deceive or to practice any sort of deception upon anyone, and no one was attempting to do so and none was done.

Q. Well, if you did represent to the Board of Trade that it cost $240,000, whereas as a matter of fact it didn't cost but $227,000, didn't you deceive the Board of Trade about that?

A. I want to reiterate that any insinuation that I made any sort of improper statements or representations to anyone is wholly and absolutely untrue, has no foundation anywhere and no excuse whatever for resting such insinuation upon.

Q. Now please read him my question, and I will ask him to answer my question if you will?

A. By God, you had better not ask your questions too insinuatingly, for there is a limit to things and I will be God damned if you can not reach it mighty quick with me.

Q. Now, for the year 1905, the joint report shows that the operating expenses for that year were $227,000; the report of Mr. Smith, your auditor, shows them that year at $240,000. If Mr. Smith reported or represented to the Board of Trade that $240,000 was expended that year, whereas as a matter of fact, only $227,000
1348 was expended for operating that business, then is it not a fact that the Board of Trade to that extent was deceived at the time it made its report?

A. Such a circumstance would not imply deception at all. Where accountants make up their accounts like that, large accounts would naturally and it would be no unusual circumstance whatever to show slight variations in results. If Mr. Smith made up figures, he undoubtedly believed them to be true, and I myself would have believed them to be true, but if he did make any errors it is no more than human beings are accustomed to do, and that is all there is of any such circumstance.

Q. Now, when we come to 1906, Mr. Smith states and you swore to it in the bill which you have filed in this case—which the Cumberland Telephone and Telegraph Company has filed in this case, that the expenses for the year 1906 were in the neighborhood of $217,000; the accountants who examined the books say that the expenses were only $233,000. Now if Mr. Smith represented on behalf of the Company, to the Board of Trade, that it cost $217,000 to operate the company in Louisville for the year 1906, and if it is true that it only cost $233,000, then isn't it a fact that the Board of Trade was deceived to the extent of that difference?

A. I repeat the same answer that I made to the question above.

1349 Q. Now you say you paid this voucher because the Board of Trade asked you to pay it, after the work was done?

A. That is true.

Q. Now if the accountant had ascertained the facts and made the report which Mr. Farnham of the Mutual Audit Co. has made in this cause, would you have paid that voucher?

A. It would depend entirely upon the circumstances.

Q. Are you willing to pay Mr. Farnham's expenses for this examination that he has made of your books?

A. No sir, we are not.

Q. What is the difference between the two propositions?

A. From the reason that it is approached in a different way, and Mr. Farnham's employés appeared to be nothing but time servers, wasted the time of his employer while here, they loafed around this building, and around the city, and their whole work could have been done by competent people in far less time than they consumed. In fact I myself brought the matter to a conclusion by stating to his representatives that they were frittering away their time and doing nothing but killing time, apparently to pile up a bill of expense against the City of Louisville, and I should not, under any circumstances recognize any such bill as being legitimate or reasonable or proper, for a moment.

Q. Why were you so greatly interested in whether they frittered away their time and spent the money of the City of Louis-

1350 ville?

A. It got to be such a nuisance here and such a nuisance in the whole situation and it was an abomination, for I do not like to see waste occur anywhere.

Q. Do you know how long they were here?

A. Well sir, they were here weeks and weeks.

Q. They were here less than two months, weren't they?

A. They were here many, many weeks, and were here a much greater length of time than there was any excuse for, and it is a scandal of the worst nature.

Q. Did you know that your attorneys positively refused to allow the City of Louisville to send experts here to examine your books until an order was gotten to that effect?

A. I don't know that it was true, unless they would object to certain character of people being sent here.

Q. Did you know then at that time what character of people the City was going to send here?

A. No, but I had a suspicion they would not be people who were seeking the truth and nothing but the truth for an honest and impartial report.

Q. On what basis did you found that suspicion?

A. It was the manner in which the proceedings were being had.

Q. What was that manner

A. In every conceivable way one could judge of the actions of other people.

1351 Q. Well, indicate some one thing on which you base that suspicion?

A. As I stated before it was based upon every circumstance that came under my observation in connection with the manner in which this case was being treated and handled.

Q. Had the City of Louisville up to that time done anything except pass an ordinance fixing the maximum rates which your company might charge in the City of Louisville?

A. It had done sufficient to cause me to have that fixed opinion.

Q. Well, indicate what it was; you have made an intimation here that the City of Louisville was going out of its way to do something of a suspicious character and I insist upon you saying what it was?

A. It was the manner in which the ordinances before the council were frames up and treated; the manner in which they were publicly given in the newspapers; the manner in which the city's representatives approached this subject and they all indicated that there was more politics than justice that was being sought to be arrived at, and that in that circumstance did not certainly indicate that the proceedings were being had with a view of getting at the truth and justice of the situation, but to seek for some special advantage or hangnail to make a sensation out of.

Q. There are two prominent political parties in Louisville, are there not?

1352 A. I suppose there are sir, as there are two in the United States.

Q. Isn't it a fact that both political parties in Louisville and the newspapers representing both political parties, are demanding and insisting that the rates of the Cumberland Company be lowered?

A. That may be entirely true; I don't know how that is.

Q. How can any political use be made of it then, any political issue be made of it?

A. The political use was in this, that the parties were perfectly willing to utilize this by driving down the business of this company, breaking it down and showed conclusively that they had no scruples in doing so.

Q. Now, do you know anything about the refusal of the Cumberland Telephone Co. to permit the representatives of the City of Louisville to examine the physical property and inspect the physical property of the company in Louisville?

A. No sir I do not know that anything of that kind has been done, for the physical property in Louisville is in evidence and can be seen by anyone and everyone. It is not a thing that can be hid den at all.

Q. Were you advised by your lawyers or were you advising with them in connection with their refusal to permit the City's representatives to inspect the physical property of your plant?

1353 A. As I said before, there was no refusal to permit anyone to inspect the physical property in Louisville, as the property is there and can be seen by anyone and everyone that wishes to see it.

Q. The switchboards cannot be inspected by anybody that wants to, can they?

A. No, perhaps they cannot.

Q. Do you know of your own knowledge that your attorneys did refuse or did not refuse, to permit the City's representatives to inspect the physical property in Louisville?

A. I do not know that he did, but if he did do so, it would have been a very wise precaution to take.

Q. Why?

A. For I do not think any such examination would have been

made in good faith, with a desire to seek the truth, but would have been done with the hope and desire to promote their political aspirations, in hunting for something that would have been seized upon as a pretext to make a noise about and create prejudice against this company and damage its interests.

Q. Now coming to this matter you testified about yesterday in regard to the bulletins you have caused to be published in the Louisville papers, I call your attention to a letter dated July 28th, 1909, addressed to the Editor of the Louisville Post, Louisville, Ky., and will ask you if you wrote a letter on that day to the Editor
1354 of the Louisville Post?

A. I wrote him a letter and I suppose the one you refer to is the one I wrote him. At any rate, I had it published.

Q. Will you procure a copy of that letter and read it into your deposition?

A. I will.

Q. I also call your attention to a letter of July 31st, 1909, addressed to the Editor of the Louisville Post, signed by you, and will ask you to read that letter into your deposition?

A. I wrote the Editor of the Louisville Post on July 22nd, 1909, copy of which I file, and wrote him another on July 28th, 1909, published on August 7th, copy of which is herewith attached, and another one on July 31st, published in the same paper, copy of which is herewith attached.

Q. I will ask you to read into your deposition the letter of July 22nd, the letter of July 28th and the letter of July 31st, 1909?

A. I just included them in the previous answers and herewith file

Q. Will you read them into your deposition?

Q. Will you read them into your deposition.

A. Yes. The letter of July 22nd, 1909, reads as follows:

"JULY 22, 1909.

To the Editor of the Louisville Post, Louisville, Ky.

1355 DEAR SIR: In your issue of the 21st instant you have an editorial under the headlines of "Telephone Combination and Rates", in which appears the two sentences follows:

'Fifty-one per cent of the stock in the local telephone company is owned by the American Telephone and Telegraph Company or some of its subsidiaries.

'It is this stock, which represents nothing except a license from the owners of patents long expired, that makes it necessary constantly to increase the rates in order that these securities may earn enough to make them attractive to the speculating or investing public of New York and the East.'

I am quite sure when you penned these sentences you realized the gravity of your statements, for if such a statement was true it would leave this company and its officials in a most contemptible attitude, and unworthy of the respect or consideration of the very dogs.

A committee of your citizens, to-wit: Messrs. Marion E. Taylor, William R. Belknap, Atilla Cox, George Gaulbert and Logan C.

Murray, looked into all of these questions and made a report
1356 which was exactly contrary to the statements you have made. They took time and patience, went to expense and employed skilled people to get information for them; whereas you have done none of these things, but have made a statement, sweeping and offhand, exactly contrary to the report which they made. Therefore, this statement of yours is just as great a reflection upon these fellow-citizens of yours as they are upon us.

As I say, you have made this statement without any sort of an investigation, for if you had done so, even the most superficial investigation would have shown you that the statements which you have made are outrageously false in every particular. The fact then stands out that you have made a most libelous and outrageous statement without any foundation in fact.

The natural and inevitable conclusion in all such circumstances is that whoever would perpetrate such an act is utterly destitute of morality, honor or integrity. If, however, you have been imposed upon, and have been laboring under some real misapprehension, and if you do have any regard for decency and honor, you will promptly undo this slander by retracting it in as public a manner as is possible.

(Signed) JAMES S. CALDWELL,
President."

1357 The letter of July 28th, 1909, is as follows:

"JULY 28, 1909.

"To the Editor of the Louisville Post, Louisville, Ky.:

DEAR SIR: On the 22nd instant I wrote you a letter calling your attention to libelous statements which you had made with regard to this company, giving you an opportunity to correct the same and make the amende honorable.

I have received no reply to my letter, but instead of showing a disposition to correct this great wrong which you have done, you publish another editorial in your issue of the 27th, making statements which are grossly misleading, and all tending to do this company further damage. So that your purpose is now quite plain—that you are not trying to find the truth and state the truth, and the whole truth, but you are trying to manufacture any sort of damaging statements against this company.

Now, as we gave you an opportunity to correct your statements and make the decent amend, which you have not done, but on the contrary, have shown a maliciousness and a disposition to inflict further harm and injury, we shall therefore give you an opportunity
1358 to prove your assertions in court.

Yours truly,

JAMES E. CALDWELL, *President.*"

The letter of July 31st, 1909, reads as follows:

"JULY 31, 1909.

To the Editor of the Louisville Post, Louisville, Ky.:

DEAR SIR: At the time I wrote you on July 28, I had not consulted with lawyers, believing that there must be ample provision in the law for such gross wrong and malicious statements as you had been making. I am now advised by our attorneys that I am mistaken, and that we have no remedy at law against you?

While this saves you from any loss of money, it does not save you from loss of character and standing as a man, or of appearing as a coward as it is quite plain that when you wrote these slanderous statements you did so knowing that you were not running any risk of being reached and held responsible therefor.

Any form of assassination is despicable and contemptible to all decent people, and all men of refinement and sense of honor consider commercial assassination just as vile as personal assassination,
1359 and this is what you are practicing on this company.

You were not fair enough to publish my letter of the 22d instant, and it is very probable that you will not publish this one.

Yours truly,

JAMES E. CALDWELL, *President.*"

Q. Now, when were those letters first published in the Louisville papers?

A. I don't know what was the date of their first publication, but it was soon after they were written perhaps two or three days after the first letters were written.

Q. And this is another publication of them in the paper of August 7th?

A. Very likely, perhaps it is a reiteration. In other words, a republication of the same letters.

Q. Do you know whether or not they were ever published subsequent to this date or any times other than the two times you mention?

A. I expect they were published oftener than that. Any way, it was the intention to do so.

Q. Now, I show you a letter of September 8th, 1909, addressed to the Editor of the Evening Post dated September 8th, 1909, addressed as above, appearing in the Louisville Herald of Sun-
1360 day, September 12th, 1909 and will ask you if you wrote that letter to the editor of the Louisville Post, and if so, read it into your deposition?

A. I did write that letter dated September 8th, 1909, to the editor of the Louisville Post and published it on September 12th, and it is as follows:

"SEPTEMBER 8, 1909.

To the Editor of the Evening Post, Louisville, Ky.

DEAR SIR: There is no important public utility, and few important private businesses that are not maligned by a certain class

of so called journalists, just as you are doing the Cumberland Telephone and Telegraph Company.

The most praiseworthy administrators of our Government have been likewise attacked. Even the martyred patriot Lincoln suffered from them, for in chronicling such exasperating experiences in connection with his administration, the following language was used:

"He is of a pestiferous class of reckless sensation writers for an unscrupulous set of journalists, who misinform the public mind. Scarcely one of them has regard for truth, and nearly all make use of their positions to subserve selfish, mercenary ends. This forger and falsifier is a specimen of the miserable tribe."

1361 And I reproduce it because it so exactly fits you.

Yours truly,

JAMES E. CALDWELL, *President.*"

Q. Now, in your letter of July 28th, 1909, you refer to a letter of July 22nd, to Mr. Knott, Editor of the Evening Post, and you state in this letter of July 28th, as follows:

"Now as we gave you an opportunity to correct your statements and make the decent amende, which you have not done, but on the contrary have shown a maliciousness and disposition to inflict further harm and injury, we shall therefore give you an opportunity to prove your assertions in court. Yours truly, James E. Caldwell, President.

Was the object of that letter anything except to threaten Mr. Knott with suit for libel?

A. The letter explains itself, and meant exactly what it said.

Q. Is that the object of it?

A. As I said, the language is perfectly plain and can be understood by anyone reading it, and meant exactly what it said.

Q. Do you think that a letter threatening an editor of a paper with libel suit, and the publication of such a letter is a proper charge to the expense of conducting exchanges in the place where the editor happens to live?

1362 A. I think under the circumstances that brought that about it was an eminently proper expense to incur.

Q. Now in your letter of July 31st, you state in substance that at the time you wrote your letter of July 28th, you had not consulted with your lawyers and since that you have been advised by your attorneys that you were mistaken and that you had no remedy at law agaainst the editor of that paper and you also cause that letter to be published, and according to Mr. Smith, your auditor, charged to the expense of conducting the Louisville exchange. Do you think such a letter as that is calculated to advance in any wise the best interests of the community in which your exchange is operating, or the best interests of your company in that vicinity?

A. Yes, for it would certainly indicate to anyone who read those letters, that they would not tamely sit by and allow their business to be misrepresented and assaulted and the grossest sort of misstatements made about it calculating to damage it, and that they would do whatever was necessary to refute any such slanderous things

and make it as emphatic and public as they knew how, so that the public itself would see that it was contradicted and contradicted in as emphatic a manner and in as public a manner as they know how.

Q. In your letter of September 8th, 1909, which you have read into your deposition, you seem to liken the Cumberland Tele-
1363 phone and Telegraph Company to Abraham Lincoln. Was that your intention?

A. Yes, it was very much in that respect that he was maligned by slanderous newspaper writers, very much as Mr. Lincoln on occasions found himself or his administration, for it seemed that they had that character of newspaper writers in that day, just as they have now, and that they pursued their accustomed nefarious practices then as they do now, and that it seemed to be as desirable to brand them and expose them in the proper light then, as it is now.

Q. And you say in this same letter as charging Mr. Knott with perjury or falsifying——

A. I quoted that sentence exactly as it is there; he was certainly falsifying and he was certainly a forger of improper statements.

Q. Now, I should like to know whether the Cumberland Telephone and Telegraph Company ever sold any stock at above par?

A. No sir, it never sold any stock above par.

Q. Has it ever sold any below par?

A. No sir, I mean by that statement, that the company has never put out any issue of stock to its stockholders at above or below par, for that is what the law requires and in all of its capital stock issued and put out they put it out at par, for money, with the exception of those that were made in the consolidations and acquiring of properties.

1364 Q. On January 1st, 1907 and January 1st, 1908, and January 1st, 1909, you made to the directors and stockholders an annual report, which has been published and I should like to have you file a copy of those three annual reports as a part of your deposition, if you will do so?

A. I will do so, marking them Exhibits Nos. 4, 5 and 6.

Q. How much of the stock of the Cumberland Telephone and Telegraph Co. is owned by the American Telephone and Telegraph Co.?

A. About fifty-two per cent. of it.

Q. How much of that stock was originally issued for a consideration other than money?

A. About one half of a million dollars.

Q. What was that consideration?

A. That was for their patent rights and contract relations.

Q. Now I see by the papers that the Cumberland Telephone and Telegraph Co., distributed among its stockholders a few days ago, $380,000 of the stock of the American Telephone and Telegraph Co. How did the Cumberland Telephone and Telegraph Co. acquire that stock?

Mr. GRANBERY: Mr. Caldwell, that is wholly irrelevant to
1365 the issues in this lawsuit and in order that the record may not be encumbered with such matters, I suggest that that

question be left unanswered until the Master Commissioner can rule on it, he not being present at the taking of this deposition.

Mr. BLKAEY:

Q. Has there been any consolidation between the Cumberland Telephone and Telegraph Co., and the American Telephone and Telegraph Co.?

A. None whatever.

Q. Are there any conferences or have there been any conferences looking towards such a consolidation?

A. There has been talk off and on on that subject between me and them for twenty years, and there is nothing more definite now than there was nineteen years ago.

Q. Have you in your possession, the last annual report made by the American Telephone and Telegraph Co.?

A. Yes sir, I have their reports.

Q. Will you file that and make it a part of your deposition?

A. Said reports are in regular printed form and are accessible to the public generally, and I have one. That is the only thing I do have on that subject and I very cheerfully file it as requested, as Exhibit No. 7.

Q. I believe you stated on yesterday that you had not made
1366 any profit other than the ordinary stockholder had made, out of your dealings with the Cumberland Telephone and Telegraph Company stock and properties?

A. Yes I did state that.

Q. Do you know anything about the Southern Telephone Development Co.?

A. Yes sir.

Q. What was the Southern Telephone Development Co.?

A. It was a company owned by the Cumberland Telephone and Telegraph Co.

Q. What was its object?

A. Its object was to promote the financial operations of the Cumberland Telephone and Telegraph Co.

Q. Was its object to purchase the stock of the Cumberland Company?

A. It had for its object the promotion of the financing of the Cumberland Co.

Q. Did it purchase any of the stock of the Cumberland Company for the Cumberland Co.?

A. It purchased stock of the Cumberland Company for itself.

Q. For the Southern Telephone Development Co., or for the Cumberland Telephone Co.?

A. For the Southern Telephone Development Co.

Q. Did the Cumberland Company furnish it any money with which to purchase that stock?

A. The Cumberland Company owned the company out-
1367 right, that is to say, it owned all the capital stock, or well-nigh all the capital stock of that company, and the South-

ern Telephone Development Co. therefore used its own money in making these purchases.

Q. Didn't the Cumberland Telephone and Telegraph Co. furnish it with $195,000 with which to purchase stock?

A. It bought all the capital stock of the Southern Telephone Development Co., and paid that money therefor, and of course, after the stock was bought and the money paid in, the money was the property and assets of the Southern Telephone and Development Co. to do with as it saw fit, and it used that money in purchasing the stock of the Cumberland Company.

Q. Do I then understand you to say that the $195,000 was not furnished by the Cumberland Telephone and Telegraph Co. to the Southern Telephone Development Co.?

A. I have stated that $195,000 was for the purchase of stock in the Southern Telephone Development Co. at par value for that amount of stock, and that this money went into the treasury of the Southern Telephone Development Co., subject entirely to the disposition of its officers, and that I do know of my own knowledge that they used that money in the purchase of Cumberland Telephone and Telegraph Co. stock.

Q. Was that what the Southern Telephone Development Co. was formed for?

1368 A. It was formed to promote the financial interests of the Cumberland Telephone and Telegraph Co. in any way that it could.

Q. Was stock in the Southern Telephone Development Co. issued to the Cumberland Co.?

A. Yes, and went into its trea-ury.

Q. Do you knew whether a part of that $195,000 was used to purchase Cumberland Telephone stock?

A. I think all of it was.

Q. I meant to continue my question and ask whether any part of that $195,000 was used for the purchase of Cumberland Telephone and Telegraph Co. stock from a syndicate of men composed of you, Mr. Williams and Mr. Landis and others, known as the Williams syndicate?

A. A part of that money was used to buy stock from a syndicate as you describe.

Q. And were you one of the members of that syndicate?

A. Yes sir, I was.

Q. And was that stock sold at a premium and did you profit by that sale?

A. That transaction was represented by other parties on both sides; I was, in a sense, a stockholder in it and received my share of the profits as the other members of the syndicate, and it was so bought by the Southern Telephone Development Co. and afterwards sold by them at a profit, and is worth more money today than it was when it was purchased.

1369 Q. Do you know what premium was paid on that stock purchased from the Williams Syndicate?

A. About twenty per cent; about a dollar twenty or a dol-

lar twenty-one, somewhere along there, and the stock today is worth over a dollar forty, and was worth more than a dollar twenty a very short time after it was purchased, and a good part of it was sold at a premium above that.

Q. Was there any occasion for the Cumberland Telephone Co. to sell stock, if it had plenty of funds on hand with which to take care of and conduct its business and extend its lines as required?

A. No, sir, if it had plenty of funds to do that, there would be no occasion to put out additional stock. That was why the issues were put out, to meet the growth and extend the business of the company.

Q. Have you in your possession any circulars issued by Mr. Goulding Marr, a broker of Nashville, dealing with the Cumberland Telephone and Telegraph Co. stock?

A. No, I have not, not that I know of. I have received a great many of them, but they usually go into the waste basket as I do not keep any file of such matters.

Q. I show you a paper which seems to be such a paper as I have just spoken of, issued by Mr. Goulding Marr of Nashville, Tenn., and will ask you to look over that paper if you will and state whether that was issued by the authority of the Cumberland Telephone and Telegraph Co.?

A. Such a paper would not require the authority of the
1370 Cumberland Telephone and Telegraph Co. These are public figures and public facts, and Mr. Marr could make use of them as he saw fit, and he did, although the company would not object to such a matter and would be very pleased to see it go out.

Q. Can you ascertain the facts and figures in that paper, whether they are correct and state whether they are or not?

A. I have not examined them carefully and critically, but I have no doubt but what they are correct.

Q. I will ask you to file that paper and make it a part of your deposition?

A. I will do so, as Exhibit No. 8.

Q. Mr. Smith has testified about a voucher for $2500 paid during the year 1907, to Mr. Harvey S. McCutchen and Mr. Eli Brown, which expenditure was at the time charged up to general expense, and which in July or August 1909, under your instructions, was charged to expense of operating the Louisville exchange. Do you know anything about that voucher or the reason for making that change?

A. I do not recall the circumstances particularly, but I would say that fees were paid to attorneys at Louisville, would be a very proper charge against the business of the company, and we would not be paying any fees we did not think were legitimate and right.

Q. If Brown & McCutchen both live in places other than
1371 Louisville, and do not practice law in Louisville, then on what theory would you charge the item to Louisville?

A. I suppose the services they rendered were in connection with Louisville.

Q. Do you know what services were rendered?

A. Legal services, I suppose; they are lawyers, and I know of nothing else they would be doing for us.

Q. How was your attention called to it in 1909?

A. I do not recall the circumstance.

Q. Could you tell if you had the voucher to look at?

A. I do not know whether I could or not. I would be willing to look at the voucher and see.

Q. Could I get you to send for Voucher No. 751, which is the voucher in question, for the month of February 1907?

A. I find in the files the voucher you refer to, and it shows that $2500 was paid to H. S. McCutchen and Eli T. Brown, February 22nd, 1907, with a memorandum in my handwriting, "should be charged to Louisville." It is made out to H. S. McCutchen and Eli T. Brown Cok Flats, Louisville Ky., and is a regular voucher for attorneys' fees, and is included in quite a number of vouchers, all paid in the regular course of business.

Q. Do you know why that specific expenditure was required?

A. No sir I do not. I have not a doubt but what it was just as regular as all the other attorneys' fees we are paying, which
1372 constitute a very large item in our business.

Q. Do you know what Messrs. McCutchen & Brown did for the Louisville business?

A. I do not; I suppose they handled some litigation up there, looked after it, and aided in litigation up there; we have had a great deal of it there and still have a good deal of it, unfortunately, and it was necessary to employ lawyers and to pay them, which we do.

Q. What litigation have you had there other than the two suits you have brought yourself, recently?

A. I do not know sir, I do not recall that, but it is in my mind that we have had a good deal of litigation, threatened and pending, and damage suits.

Q. Col. David W. Fairleigh is your local attorney there, isn't he?

A. Yes sir.

Q. Now, I notice a memorandum attached to this voucher which reads, "Smith. This should be charged to Louisville, J. E. C." Is that your memorandum?

A. Yes sir that is my memorandum.

Q. Do you know when you made that memorandum?

A. I do not sir, I suppose I made it when the voucher came to me.

Q. Now, I notice at the bottom, June 1909, Voucher No. 5570 made to correct distribution of this voucher. Was this memorandum made in June 1909, this memorandum of yours?

1373 A. As I say, I do not remember sir; it might have been, but if that voucher were presented to me now, I would make such a memorandum on it, for I think that is where it belongs.

Q. Do you recall that it was presented to you and that you made this memoradum in June, 1909?

A. As I say, I do not remember when it was presented to me, but if it were presented to me fresh now, I would so consider that was where it should be charged.

Q. If you don't know what the services were, for where they were rendered, what is your reason for believing that they should be charged to Louisville?

A. Mr. McCutchen stays at Louisville and has been looking after a great many things there for us, and I do not know of any other services, do not recall any services outside of Louisville that he would be making that bill for. In other words, it is my belief that that is where it belongs, that the bill is correct, and that is where it should be charged.

Q. Has not Mr. McCutchen for years been representing your company at different times in matters over the State and in connection with legislative bodies and city councils other than Louisville?

A. Mr. McCutchen has been our attorney or has represented us as an attorney for a great many years; in fact, I believe he stated that we were his first client when he began the practice of his
1374 profession of law at Russellville, Ky. He has looked after a great deal of litigation for us and feels extremely friendly towards the company, has looked after its interests whenever a circumstance presented itself, and often-times without any consideration, but of course, whenever he has appeared in his professional character as a lawyer, we have paid him, and done so regularly, and he has represented us, as I say, in litigation in various parts of the State, commencing at Russellville.

Q. Is his home at Russellville now?

A. His home is at Louisville now, I understand, and so understood for some years. He may claim Russellville as his legal domicil, but Louisville is where he resides and this voucher was sent to him at Louisville, where I understand his office was, Cok Building at that time. It may not be there now, but at any rate, he has an office in Louisville.

Q. Do you know he has an office in Louisville?

A. I understand that is his place of business; that is what he tells me.

Q. Do you know that the Cok Flats or Building is an apartment house?

A. I did not; I do not know that.

Q. Mr. McCutchen is now one of the present Railroad Commissioners of Kentucky, isn't he?

A. I don't know that; I know he was at one time, I don't know whether he is now or not; I know Mr. McCutchen is a regu-
1375 lar practitioner of law and has been for a good many years, is a very good one and a very honorable gentleman, and stands as high as any man in Kentucky, and comes of one of the very best families in Kentucky.

Q. Now, speaking of the depreciation fund which you say is a part of your operations. What is done with the depreciation fund?

A. Well sir, I don't think there has been anything done with it in Louisville, for we have not made enough money to set aside any depreciation fund there.

Q. What is done with it generally?

A. It is preserved for the care of the property.

Q. In what is it invested?
A. It is invested in cash and supplies and working capital.
Q. Invested in the plant?
A. Invested in cash, and supplies and working capital.
Q. Cash, supplies, etc., are placed in the plant?
A. Cash is kept in the treasurer's drawer and in bank, and supplies are kept in the ware-house and when they are drawn from, and that put into the plant, they are charged to it.
Q. Have you in Louisville, Ky., or here, any map or any data from which you can determine over what routes your lines of poles and wires extend in the City of Louisville?
A. I don't know of any such map; I have never seen one.
1376 Q. Isn't it a fact that you have all of your poles in the City of Louisville numbered?
A. No sir that is not true.
Q. Is that true out over the toll line system?
A. They are not numbered on the toll routes.
Q. Do you mean to say your company does not then know how many poles it has, or over what routes its poll lines extend?
A. I think the company would have no trouble in identifying any and all of its property, but I do not know myself how many poles it has.
Q. And don't know just what routes it has?
A. I do not.
Q. Have you any records showing what routes it has in the City of Louisville?
A. I do not.
Q. Do you know anything about a business machine or piece of machinery or instrument which telephone companies use, and whereby they can locate trouble on various parts of their routes?
A. Yes, there are instruments that can do that, is my understanding.
Q. Do you use those instruments in your business?
A. I think we do. I think we have all the best, scientific appliances for handling the business.
Q. Is it possible to use such an instrument as that, unless
1377 you *you* know over what routes your lines extend and where the poles are located, and what their numbers are?
A. The man that would be handling it would know that; I myself do not handle it and therefore do not know, but the men who are handling it would know it and know it accurately.
Q. Do you know how many lines there are connected with the main exchange in the City of Louisville?
A. No sir, I do not.
Q. Is there any record of that kept anywhere?
A. I suppose there is, but I don't know. It is a matter I have no knowledge on, but I am quite confident that we have no trouble in ascertaining that fact. It is a fact that could be easily determined by an investigation of the apparatus itself.
Q. You don't know yourself, then, how many lines extend or are connected with any of the exchanges in Louisville, I suppose?

A. No sir I do not, that is attended to by men that are employed for the purpose and I think they are performing their duties properly.

Q. Do you know whether the exchange in the City of Louisville makes use of what is known as multiple switch board system?

A. Yes, it does.

Q. Is there any part of your capital stock apportioned to
1378 Louisville?

A. There is no part of the capital stock specifically apportioned in the way you refer to, I suppose. A part of it is invested there, a goodly part of it.

Redirect examination.

By Mr. GRANBERY.

Q. Mr. Caldwell, referring to the voucher for $2,500, I will ask you to examine it and state whether it was a regular voucher check paid through the bank as all other vouchers or voucher checks are paid?

A. Yes, it is a regular voucher check for retainer fees and legal services for 1907.

Q. Does it appear to have passed through the General Counsel's office and approved by him?

A. Yes, passed through the General Counsel's office and duly approved.

Q. Is there anything unusual or peculiar about the voucher in any way?

A. Nothing at all.

Q. What was your salary as president of the Cumberland Telephone and Telegraph Co., in June 1899, prior to the purchase of the stock of the Ohio Valley Telephone Co.?

A. My recollection is that it was ten thousand dollars a year.

Q. Now, after the consolidation, what was your salary?

1379 A. My recollection is, it was twelve thousand dollars.

Q. What was your salary during the time you were president of the Ohio Valley Telephone Company?

A. I think it was at the rate of two thousand dollars a year.

Further this deponent saith not.

JAMES E. CALDWELL.

Sworn to when given and subscribed before me on this the 29th day of September, A. D. 1909.

BLUFORD DUKE.
Notary Public.

By Mr. GRANBERRY: At the conclusion of this deposition, the complainant rests its case.

1380 EXHIBIT 41.

Caldwell's Deposition.

In answer to the question, "Why do the Telephone Companies charge more for service in large Exchanges than in small Exchanges?" the following reply was made by a practical Telephone man:

Nearly every one is familiar with the fact that Telephone Companies charge more for service in large cities than in small cities and towns, but many do not understand why this is necessary, and some believe that the charges for service should be reduced, rather than increased, as the telephone exchange grows in number of subscribers.

The general public assumes that the telephone furnished each subscriber is the unit of cost of the commodity which the Telephone Company is selling. It is natural that it does not understand why the company charges more for telephone service in an exchange with a large number of telephones than in an exchange with a small number, and asks why the telephone business differs in this respect from practically all other businesses. This question, while quite generally propounded, is asked under a misapprehension or without due consideration of the real facts.

It can be demonstrated that as an exchange grows, the cost of furnishing under any particular class of service the unlimited use of the entire system, or plant, to each patron increases, and that an increase in the charge made therefor is necessary. It can also be demonstrated that at the same time the cost per unit has decreased, and that the charges based on any reasonable unit of measurement will show a reduction.

In an exchange with a small number of subscribers the cost of the plant is not very great and its construction is simple. The switchboard is inexpensive and easily maintained, not requiring the service of an expert. The poles are small, and the cables, if any,
are not only small, but of short length. No underground
1381 construction is necessary. As the exchange increases in size, these conditions gradually change and in due course of time it is necessary to have underground conduits, underground cables, multiple switchboards, power plants, and supervisory apparatus of many kinds, and the employment of experts at a greater rate of pay becomes necessary.

To illustrate: A switchboard for an exchange of three hundred lines or less can be purchased at from $1.50 to $3.00 per line, while a switchboard with a maximum capacity of ten thousand lines, but equipped for only six thousand lines, and with fifteen sections installed, would cost about $120,000.00 or $20.00 per line, and one fully equipped for ten thousand lines and twenty-five sections installed, which would be necessary to operate that many lines, would cost about $250,000.00, or $25.00 per line. Thus it will be seen that on this one item alone the cost in a very large exchange is ten times greater than in a small exchange. This is on one item, and illus-

trations could be made comparing the cost of underground conduit and cable, underground distribution in the central part of the city, interior block distribution in the suburbs, the cost of real estate, of taxes, of salaries and wages, of damage and compensation, of bad debts, forced reconstruction or replacement due to abnormal growths or requirements of the city. In fact, practically all items of furnishing service in a large city increase as compared with the cost of similar items in a small town, and, when the unlimited use of the entire plant is furnished at a flat rate, this rate must necessarily be larger per station as the city grows and as the exchange grows, and it should not be overlooked that the value of the service to the patron increases just as rapidly.

The preceding paragraphs discuss the cost of furnishing unlimited telephone service in a large exchange as compared with the cost of furnishing unlimited telephone service in a small exchange.

Consider this question from another standpoint and agree upon some unit of measure of the commodity which the Telephone Company is selling. It will then be seen that, just as in other classes of business, in furnishing telephone service it costs less per unit
1382 the greater the volume of business. It may be safely said that there is probably no other business in which the cost of production per unit and the price charged per unit decreases more rapidly as the volume increases.

When one buys coffee, tea, flour, or sugar, it is readily understood and accepted that the purchases are made by the pound. In buying electric light, the consumer knows he is getting it at so much per kilowatt. In buying gas, he knows that he is getting it at so much per thousand cubic feet. When traveling by train, the charge is so much per mile. In fact, when buying anything except telephone service, the purchaser and the seller both recognize a unit. The Telephone Company does not sell the telephone on the wall, in the office, or the residence, neither does it rent it to the subscriber. In any exchange where there is a flat rate for the unlimited use of the entire plant, the company places this plant, consisting of switchboards and Central Office apparatus, underground conduit, cable, poles, wires, etc., all at the subscriber's disposal, and places the instrument in his office or residence in order that the subscriber may be able to avail himself of the different uses of the plant, as his necessities may require.

Several suggestions as to the unit, or basis, of measuring what the Telephone Company sells and what the subscriber purchases are submitted, in order that it may be clearly seen that the selling price, if based on any one of these units, is smaller in a large exchange than in a small one.

First. Consider the number of miles of wire constructed and maintained for the use of the subscriber at a flat rate per month, taking, if you please, the use of 1,000 miles of wire per month as the unit. Assuming that there are two miles of wire per telephone as a fair basis, an exchange of 2,500 telephones will require 5,000 miles of wire to connect them with the Central Office. If the charge for a special line telephone is $5.00 per month, it will be seen that

the rate charged for the use of the wire is $1.00 per month per thousand miles of wire.

If this exchange grows until there are 5,000 telephones connected with it, and if the average amount of wire for each telephone is still two miles (as a matter of fact the average length of wire
1383 for each telephone will have increased), it will require 10,000 miles of wire to connect all of the telephones with the Central Office. If the rate is still $5.00 per month for a special line telephone, the rate charged is 50 cents per month per thousand miles of wire, or just 50 per cent. as much as was paid for the service when there were only 2,500 stations connected with the exchange.

If the same exchange increases to 8,000 telephones and still has an average of two miles of wire per telephone (which is less than will be the case in actual practice), there will be 16,000 miles of wire, and, if a rate of $5.00 per month is charged for a special line telephone, the subscriber will pay only 37½ cents per month per thousand miles of wire, or only three-eighths as much as he paid when the exchange had only 2,500 telephones in operation.

This reduction in the nature of things cannot go on indefinitely, and the time comes when the Telephone Company cannot furnish all of the wire, now amounting to many thousands of miles, at the same price it furnished all of the wire when there were only a few thousand miles. The net results of a Telephone Company's operations will easily convince any reasonable man that it cannot furnish the use of 16,000 miles of wire at the same price it furnished the use of 5,000 miles. It can, however, furnish it at very much less per thousand miles, and it will not be necessary to charge three times as much for telephone service when the company has 16,000 miles of wire in use as it was necessary to charge when it had only 5,000 miles of wire in use.

Second. If the cost of the telephone plant is taken as a basis for making charges and $1,000.00 is considered as the unit, upon this basis the charges continually grow less and less per unit as the exchange grows. In other words, the cost of the service to each subscriber is not increased in the same proportion as the investment in the plant is increased.

To illustrate: Assume that an exchange with 5,000 telephones can be constructed and put into operation for $500,000.00. If the Telephone Company furnishes to each subscriber at $5.00 per
1384 month the unlimited use of a plant costing $500,000.00, this is at the rate of $1.00 per month per $100,000.00, or one cent per month per $1,000.00. When the exchange has increased to 10,000 telephones and the investment has increased to $1,000,000.00 (or more), the unlimited use of the million-dollar plant at a rate of $6.00 per month for a special line telephone is very much less per unit of $1,000.00 than it was when the exchange was smaller, as stated above. It is now 60 cents per month per $100,000.00, or six-tenths of a cent per month per $1,000.00, instead of one cent as before, or 40 per cent cheaper.

Third. Consider the number of telephones with which the subscriber can talk for an unlimited flat rate per month as the basis

of charge for the service. Assuming 5,000 telephones and a charge of $5.00 per month for special line service, it will be seen that the charge is $1.00 per month for each 1,000 telephones with which the subscriber can be connected. With 10,000 telephones and a flat rate of $6.00 per month, the charge would be 60 cents per month per 1,000 telephones, or 40 per cent. cheaper than the rate charged when there were only 5,000 telephones.

Fourth. Another unit for computing the charge made, and one accepted by many experts, is the message mile; that is, the transmission of one telephone message for a distance of one mile. In a small town, with a small number of subscribers, say 100 or less, the distance between each telephone is not very great and the distance traversed by each conversation is small. On account of the small number of people with whom the subscriber can talk in a small exchange, the number of calls per telephone per day is also small. When the second one hundred telephones are added, each of these subscribers has the opportunity to talk to the first one hundred and also to ninety-nine of the second one hundred. As the exchange grows, so does the town or city, and, in a large city with a large number of telephones, the subscriber is enabled to talk to many people at a very considerable distance. In this way the average number of miles traversed by a telephone conversation is, in a large exchange, much greater than in a small exchange. Statistics
1385 from a number of small exchanges, as well as a number of large exchanges, of one of the Telephone Companies of this country indicate that the average length of wire for each subscriber in a small exchange is less than 1.2 miles, while in an exchange of 10,000 or 12,000 telephones the average is 3.4 miles of wire.

In a given city the average length per line is 2.3 miles. The average length of line used for each telephone conversation is twice this figure, or 4.6 miles. The average number of daily conversations per telephone is eight, including Sundays. This figure multiplied by the length of line used for each conversation, 4.6 gives 36.8 message miles per telephone per day, or 1,104 message miles per telephone per month. The average rate per telephone in this exchange is $4.24 per month. This gives a cost per message mile in this exchange of thirty-eight one-hundredths of a cent.

On the other hand, an average of ten small exchanges of the same company, chosen at random, having an average rate per line of $2.28 per month, shows an average length per line of .8 miles, and the average length of line per conversation is twice this, or 1.6 miles. The average number of daily conversations at these ten exchanges is 4.1 per telephone, including Sundays. This multiplied by the length of line per conversation, 1.6, gives 6.56 message miles per line per day, or 196.8 message miles per line per month. The subscriber pays $2.28 per month, as stated above. This gives a cost per message mile to the subscriber of 1.16 cents. Compare this with .38 cents for the city above referred to in which a large exchange is operated. It is seen that the average cost per message mile to the subscriber in the larger exchange is only 35 per cent. of what it is to the subscriber in the smaller exchange, although

the average rate per station per month at the smaller exchange is scarcely more than one-half that at the larger exchange.

It will, we believe, be apparent to many, upon reflection, that the unit of cost in furnishing telephone service is not the station, or telephone instrument on the wall, and also that the cost per unit decreases as the exchange grows, provided the true comparative unit is used.

The following illustration may make the meaning entirely
1386 clear: Suppose a 600-ton sailing vessel could carry boxes of articles, running 100 pounds to the box, between certain points, at 80 cents per ton, or 4 cents per box, and that a 3,000 ton vessel could carry the same articles at 40 cents per ton, if packed in 500-pound boxes, but not in 100-pound boxes. The rate per ton in the large vessel would be only one-half of what it was in the small vessel, yet the 500-pound boxes would cost 10 cents each, or two and one-half times as much as the smaller boxes in the smaller vessel. It would certainly be wrong to say that the cost of service in the larger vessel was the higher merely because the cost per box was higher. The true unit of camparison is the ton, and, based on that, the larger vessel gives the cheaper rate per unit of service performed.

Unfortunately, in the telephone business there are a large number of fixed charges irrespective of the amount of service performed, and the most of these tend particularly to increase with the size of the exchange, so that it is impossible for a Telephone Company to sell service at large exchanges in small enough quantities (to carry out the simile—to have it packed in small enough boxes) to make the initial price as low as in a very small exchange, even when a specific charge is made for each message over a certain number.

Among these increasing costs are:—

Investment.—In a large exchange the average investment per station is greater than in a small exchange, and past experience shows that this will continue certainly up to twenty-five or thirty thousand telephones operated in one city. This investment is represented by property of two classes: Central Office equipment and station equipment, and the construction necessary to connect the station equipment with the Central Office. In a small exchange smaller poles are used, carrying a few cross-arms and mostly open wire with a little cable, and no underground conduit or underground cable and no interior block distribution. Also an inexpensive switchboard will answer every purpose, costing not more than $4.00 per line for a switchboard of 300 lines or less. When there are more than 400 stations, multiple switchboards should be
1387 substituted. Above five hundred, they are necessary in order to furnish efficient service. As the exchange grows, naturally the town or city grows, and a different class of outside construction as well as inside construction is then necessary. For instance, it becomes necessary largely to substitute underground conduit and underground cable for aerial pole lines and substitute multiple switchboards for single section switchboards, and this renders the investment of large sums of money necessary. For

instance, a fifteen section switchboard equipped for six thousand circuits will require more than ninety thousand spring jacks with wires soldered to each of them, and in each section with positions for three operators there will be over six thousand spring jacks with wires soldered to them, and other complicated and costly apparatus. In each individual section of a main switchboard equipped for six thousand lines with fifteen sections, installed, in each section of which would terminate four hundred lines, there would be sixty-four hundred spring jacks, or an average of sixteen spring jacks to each line instead of only one spring jack to each line, as would be the case in a small switchboard, and the cost of a large multiple switchboard, including the necessary Central Office apparatus, averages from $15.00 to $25.00 per line as against less than $4.00 per line in a small office.

The cost of the outside plant is also much greater per station, due both to the greater length of the line, the increased cost of building the line, and to other conditions. The cost of station wiring is also greater in a large exchange than in a small exchange, due both to the larger houses and the greater length of interior wiring, and due to the fact that the houses are on an average finer than in small towns, thus requiring more skilled workmanship for interior wiring than is necessary in a small town. This increased investment, varying from about $40.00 per station in the smallest exchanges to $140.00 per station in some of the largest exchanges, renders an increased rate per station absolutely necessary in order to maintain the property in a high state of efficiency and to earn a reasonable return on the investment.

1388 Operating.—At an exchange of three hundred subscribers or less a chief operator and other non-productive forms of labor are not needed. When the size of an exchange requires five operators or more, a chief operator must be employed, and, when the exchange has grown to such size as to require a multiple board and a large number of operators, then a chief operator, assistant chiefs, monitors, supervisors, information operators, trouble clerks, and other non-productive labor is required.

The duties of a chief operator can well be understood by a layman. The duty of a supervisor consists of walking up and down behind a certain number of operators, helping out when any one of them is overloaded, and seeing that they perform their duties in accordance with the company's rules and regulations. The monitors are seated at desks equipped in such manner that they can observe the service rendered the patrons, and can quickly note imperfections; and they render valuable assistance in furnishing efficient service in a large exchange. Trouble clerks are to answer calls from subscribers reporting telephones out of order, make out trouble slips with such information as they can get as to the nature of the trouble and to forward the same to the Maintenance Department for correction of the trouble. The duty of the information operators is to answer calls from subscribers who desire to ask questions, such as "Has So-and-So a telephone? What is their number?" and hundreds of other questions which subscribers wish to

ask the operator answering their call, but which would seriously interfere with the performance of her regular duties if she attempted to make reply. This would largely reduce her efficiency as an operator, and thus render many more sections of switchboard necessary, adding largely to the cost of the plant and to the cost of furnishing the service, and information operators are in the interest of economy and for the benefit of the subscriber. None of this nonproductive labor adds to the revenue, but does add to the cost per station of furnishing the service in a large exchange as compared with a smaller exchange.

1389 In large exchanges multiple switchboards (that is, numbers of sections each containing the entire number of lines) are necessary, in order that the answering operator may be able to call any subscriber from her position, and in very large exchanges more than one switchboard is necessary, the number varying according to the number of patrons to be served, and, when the second board is installed, then trunking switchboards become necessary, which adds still further to the cost and complication of the apparatus. This renders necessary efficient and trained operators and the closest supervision, and is one of the reasons why supervisors and monitor operators are necessary, and, due to the trunking between the various offices or switchboards in large exchanges, the average number of calls which can be handled by an operator is reduced, thus handling less stations to each operator.

Maintenance.—The cost of maintenance per station from many causes increases as the exchange grows. The Central Office plant is more intricate, and subject to many troubles requiring experienced men. The average length of the lines is longer and therefore more likely to be interrupted, and their greater length consumes more time of the linemen to make repairs. The station equipment is more costly on account of the character of the interior wiring demanded in more costly houses. The average investment, being very much greater per station, naturally calls for the setting aside of a larger sum for replacement. All of the material composing the various parts of the plant, from the Central Office through the cables and open wire to the subscriber's station, deteriorates and must be completely replaced every few years, averaging from seven to twelve years, according to the location and character of the plant. Of course, current repairs are made with regularity, and begin immediately after the construction is completed, but with these repairs replacement eventually cannot be avoided. A telephone plant can very well be compared with a suit of clothes; the clothes can be cleaned, pressed, and repaired, and for quite a while will look and wear about as well as they did the first day; but, if the clothes are continuously worn, no amount of pressing and repairing will obviate the necessity of eventually discarding them and getting a new suit.

1390 Engineering, etc.—The larger exchanges demand engineering talent of a higher grade than the smaller ones and take a larger proportion of time per station of the general officers of a company in looking after their vicissitudes.

Discontinuances.—The proportion of discontinuances to new installations is much greater at the larger exchanges than at the smaller, owing to the more stable character of the population at the latter. This element adds greatly to the expense for the reason that not only is the proportion of discontinuances larger, but they are of a more expensive character, due to the higher cost of interior wiring in the larger cities, as stated under Investment. Therefore, as the exchange grows, this element rapidly assumes great importance. Also a large proportion of idle line wire results, which it is not wise to remove, but which adds to the idle investment, upon which returns must be earned by the active investment to avoid insolvency.

Other Idle Investment.—It is necessary to provide a large proportion of facilities in advance of demand at large exchanges, owing to the fact that in small towns the degree and direction of growth can be much more accurately predicted.

Taxes.—Taxes are higher per station in large exchanges than in small ones. This is due to several causes. The investment per station being greater, the ad valorem tax naturally increases and the tax rate is usually higher, and frequently there are special taxes in large cities, and too often in such amounts as to create a hard-ship or unreasonable burden on the business.

Rent, Light and Heat.—The expenses under this account are greater per station in large exchanges than in small ones, and this is easily accounted for. Not only is realty more valuable, rendering higher rents necessary, but, due to the large costs of Central Office apparatus and the great importance to telephone patrons of providing as far as possible against cessation of service on account of fire, expensive buildings are quite necessary, and any Telephone Company operating large exchanges that did not recognize this would not be performing its duty. A casual examination of a telephone building in almost any large city where multiple
1391 switchboards have been installed will demonstrate this fact and convince the patron of the wisdom of this increased expense.

Cost of Labor.—As is well known, the cost of living is greater in large cities than in small towns. This fact reflects itself in the payroll and demands higher salaries for the same degree of efficiency.

Many other illustrations could be given showing that expenses of almost every kind increase as an exchange grows, and at frequent periods entire replacement of a substantial part of the plant becomes necessary in order to meet the situation, and with each of these changes additional investment and increased expense follow. It is safe to say that Telephone Companies earnestly wish that this was not so. However, the value of the service to the patron increases in greater proportion.

The question of the value of the service to the subscriber is interesting and important. In no other business does this value play so small a part in the mind of the purchaser. Usually, price depends upon a combination of cost to seller and value to buyer. In the real estate business it depends almost wholly on value to buyer. Recent computations show that, if one-half of all telephone connec-

tions be assumed to be of a social nature and useless from an economic standpoint, and if it be further assumed that the average value of the time of the telephone user is $900.00 per year and the average time saved for one man twenty minutes per business message (all of these being conservative assumptions), then the average value per telephone to the user is more than five times the average revenue per station to the Telephone Company. This refers only to the value of the time saved and added to the productive force of the country, and does not include any direct monetary saving, such as messenger fees, car-fare, etc.

The great excess of value over price is more marked at the larger exchanges than at the smaller. The average value of the time of the user is greater in a large city than in a small town, and the amount of time saved by each message is greater, due to the greater distances to be traversed. Conservative figures place the aver-
1392 age value of the time saved per business message at ten small exchanges at three cents and at ten large exchanges at twelve cents. These figures, dealing with values only, assign no value to the social and trivial conversations, estimated at one-half of the whole number, although such conversations have some value to the user, which is greater at a large exchange than at a small one, and the cost of handling a conversation is the same to the company, irrespective of its value.

The value of the service to the purchaser becomes important as an element of rate making only when, the average rate necessary to run the business at an adequate profit having been determined, the question arises as to the proper differentials to produce this average rate, to be made between the charges for the different classes of service (Business or Residence; Special Line, Duplex, or Party Line; Unlimited or Message Rate, as the case may be). It is a physical impossibility to state the exact relative cost of each of these classes of service. Even if an accounting system were practised which was sufficiently complex to differentiate the direct cost of each, there would be no reasonable method of apportionment of the fixed and the general charges of the company. In determining these differentials, therefore, recourse is taken to the relative value of the service of each class to the user; and since this can be told within narrow limits from the results of past experiments, taken in connection with the present known conditions, the result is an equitable and fair distribution of charges, leaving them well within the value to the user, and imposing no undue burden upon any one class of business

1393 EXHIBIT #3. J. E. C.

Number of subscribers in Jeffersonville and New Albany paying Louisville rate September 23rd, 1909:—
Jeffersonville, 5 subscribers and 2 trunk lines.
New Albany, 19 subscribers and 1 trunk line.

1394 *Twenty-fourth Annual Report of the Directors of the Cumberland Telephone & Telegraph Co. (Incorporated) to the Stockholders for* 1906.

1395 The Cumberland Telephone & Telegraph Co.

(Incorporated.)

Directors.

John W. Barr, Jr., President Fidelity Trust Co., Louisville, Ky.
E. M. Barton, President Western Electric Co., Chicago, Ill.
W. W. Berry, President American National Bank, Nashville, Tenn.
W. S. Bransford, Retired Merchant, Nashville, Tenn.
James E. Caldwell, Nashville, Tenn.
W. R. Cole, President Napier Iron Works, Nashville, Tenn.
Frederick P. Fish, Pres't American Bell Tel. Co., Boston, Mass.
William Litterer, Retired Merchant, Nashville, Tenn.
W. K. Phillips, Wholesale Groceries, Nashville, Tenn.
James S. Robinson, Wholesale Drugs, Memphis, Tenn.
Col. A. G. Sharp, American Bell Telephone Co., Atlanta, Ga.
V. E. Shwab, Geo. A. Dickel & Co., Wholesale Liquors, Nashville, Tenn.
M. J. Smith, Wholesale Groceries, Nashville, Tenn.
F. O. Watts, President First National Bank, Nashville, Tenn.
W. H. Woolverton, V.-Pt. Gamewell Fire Alarm Co., New York, N. Y.

Officers.

James E. Caldwell, President.
W. W. Berry, Vice-President.
William Litterer, Vice-President.
A. G. Sharp, Vice-President.
Leland Hume, General Manager.
T. D. Webb, Treasurer.
J. W. Hunter, Jr., Secretary.
H. Blair Smith, Auditor.

Executive Committee.

W. W. Berry, James E. Caldwell, William Litterer, A. G. Sharp, V. E. Shwab.

W. L. Granbery, General Counsel, Nashville, Tenn.

1396 *Report of the Directors.*

NASHVILLE, TENN., *January* 21, 1907.

To the Stockholders:

We take pleasure in presenting herewith the twenty-fourth annual statement of the Cumberland Telephone and Telegraph Company, and give below the Treasurer's report, showing the result of operations and the financial condition of the Company on December 31, 1906:

Operation, Years 1905-1906.

Earnings.

	1905	1906
Exchange service	$ 3,126,128 19	$ 3,643,657 95
Tolls	1,372,405 23	1,548,550 47
Private lines	1,621 99	1,557 62
Real estate	45,451 37	50,515 04
Other sources	110,815 93	140,563 68
	$4,656,422 71	$5,384,844 76

Expenses.

General expense	$ 357,021 34	$ 396,131 71
Operating expense	989,629 28	1,150,022 50
Maintenance, reconstruction, etc.	1,622,744 43	1,889,330 59
Real estate and miscellaneous expense	7,576 92	11,922 79
	$ 2,976,971 97	$ 3,447,407 59
Earnings over operating expenses	$1,679,450 74	$1,937,437 17
Taxes	$ 160,108 23	$ 191,433 32
1397 Interest	160,058 29	213,567 33
	$ 320,166 52	$ 405,000 65
Net earnings	$ 1,359,284 22	$ 1,532,436 52
Dividends	940,691 49	1,129,504 23
Surplus earnings	$ 418,592 7	$ 402,932 29
Surplus January 1	1,522,249 97	1,940,842 70
Surplus December 31	$ 1,940,842 70	$ 2,343,774 99

Resources.

Invested in plant	$19,198,739 35	$22,724,781 24
Invested in real estate and buildings	645,260 97	764,006 82
Material on hand	395,148 14	560,511 99
Stocks and bonds	46,610 91	74,514 70
Cash	258,601 43	439,033 39
	$20,542,390 80	$24,562,848 14

Liabilities.

Capital stock	$13,449,650 00	$16,812,050 00
Bonds and debentures	1,091,000 00	1,065,000 00
Surplus	1,940,842 70	2,343,774 99
Reserve	1,114,781 17	1,003,093 99
Balance of bills and accounts payable and receivable	2,626,210 17	3,024,186 21
Bills payable for real estate	21,750 00	18,000 00
Reserve for contingent liabilities	62,787 87	2,532 08
Undivided profits	235,368 87	294,210 87
	$20,542,390 80	$24,562,848 14

1398 The figures indicate a healthy and substantial gain in both gross and net earnings. The growth in exchange service and toll service were both quite large. The net gain in subscribers was 23,924, making the total number of subscribers at the close of the year 165,190. This gain was several thousand more than in any previous year in the history of the Company. For many years it was the practice to systematically canvass for new subscribers, but this was discontinued in January, 1905, and therefore this gain in the past year represents the spontaneous and voluntary action upon the part of the public, giving the best illustration of the popular preference for the service rendered by your Company.

The best engineers have raised their estimates of the normal growth and possibilities to be expected in the business—so many unique possibilities can be realized, and are being realized by an intelligent and liberal use of the telephone in connection with commercial affairs, and the social use seems to be almost unlimited; none of which, however, seems insurmountable, but, quite the contrary, the engineering and mechanical talent grows quite apace, if not in advance of public requirements.

To keep up with and make preparation to meet the growth and expansion caused your directors, at a meeting on the third day of January, 1907, to authorize an increase in the capital stock 1399 equivalent to twenty per cent of the amount then outstanding, to be due and payable in quarterly installments during the year 1907. This, when taken, will make the present authorized capital of the Company fully taken up and paid for.

The following figures will perhaps give a clear idea of the growth of the Company during the past year, and from these figures conclusions are reached as to the probable requirements for the coming year:

Total number of poles purchased during the year.....118,681
Cross-arms purchased during the year.....298,381

New exchanges were opened and equipped during the year at the following points:

		No. Subscribers.
	Athens, Ky.	68
	Auburn, Ky.	94
	Bandanna, Ky.	42
	Barlow, Ky.	33
	Bearden, Tenn.	43
	Blackford, Ky.	23
	Boyce, La.	70
	Bunkie, La.	67
	Cadiz, Ky.	83
	Celestine, Ind.	45
	Clay, Ky.	20
	Colfax, La.	46
	Collins, Miss.	90
	Crab Orchard, Ky.	30
	Crofton, Ky.	29
	Cropper, Ky.	42
	Cross Plains, Tenn.	97
	Depoy, Ky.	36
	Difficult, Tenn.	23
	Dixon Springs, Tenn.	33
	Drakesboro, Ky.	47
	Eagleville, Tenn.	33
	Elkton, Tenn.	35
1400	Enterprise, Miss.	81
	Goodlettsville, Tenn.	32
	Gracey, Ky.	29
	Greenville, Ind.	46
	Hanson, Ky.	66
	Henning, Tenn.	47
	Hollendale, Miss.	33
	Hosmer, Ind.	76
	Huff, Ind.	52
	Java, Miss.	137
	Kevill, Ky.	26
	Kingsport, Tenn.	57
	LaCenter, Ky.	27
	Lewisburg, Ky.	18
	McCays, Tenn.	104
	Mackville, Ky.	28
	Marion, Tenn.	37
	Marksville, La.	121

Melville, La	71
Mendenhall, Miss	59
Milton, Tenn	22
Mooresville, Ky	39
Mortons Gap, Ky	43
Natchitoches, La	190
Nebo, Ky	58
Normandy, Tenn	47
Nortonville, Ky	23
Olmstead, Ky	65
Palmyra, Tenn	38
Prospect, Tenn	48
Rockfield, Ky	23
Rockport, Ky	57
St. Charles, Ky	57
St. Matthews, Ky	60
Sacramento, Ky	40
Sango, Tenn	56
Slaughters, Ky	16
Southside, Tenn	70
Utica, Ind	53
Waco, Ky	62
Wades Mill, Ky	30
White Bluff, Tenn	37
White House, Tenn	33
Wickliffe, Ky	56
Willisburg, Ky	37

This made, at the close of the year, 508 exchanges in operation by the Company.

1400*a* The net gain in subscribers shown in a few of the larger exchanges was as follows:

	Increase in Subscribers.	Total Subscribers.
Chattanooga, Tenn	753	4,726
Clarkeville, Tenn	26	1,046
Evansville, Ind	758	4,787
Hattiesburg, Miss	672	1,097
Hopkinsville, Ky	135	1,268
Jackson, Miss	411	1,579
Jeffersonville, Ind	150	1,341
Knoxville, Tenn	837	3,389
Louisville, Ky	1,287	10,399
Memphis, Tenn	596	7,805
Meridian, Miss	259	1,341
Nashville, Tenn	1,368	8,246
Natchez, Miss	9	1,111
New Albany, Ind	81	1,018
New Orleans, La	1,470	13,195
Owensboro, Ky	137	1,226
Paducah, Ky	527	3,131
Shreveport La	240	1,879
Vicksburg, Miss	119	1,367

The number of lineal feet of cable purchased during the year was	1,607,024

931 miles of toll pole routes were added, with 8,151 miles of wire.

The number of exchange messages handled daily averaged	1,534,000
Total exchange messages for the year	480,142,000
Total number of toll messages for the year	4,692,577

The Company owns and occupies buildings of its own in twenty-one cities. New buildings were built or acquired at the following places during the year:

Jackson, Tennessee.

Memphis, Tennessee—one branch office.

Nashville, Tennessee—two new branch offices, new shops and new warehouses.

New Orleans, La.—three new branch offices.

Chattanooga, Tenn.—one new branch office.

1400*b* It is with sincere regret that we call attention to the loss of Mr. George R. Knox, one of the Directors of the company, who died in the latter part of the year. Mr. Knox was one of the charter stockholders of the Company, and took an active and lively interest in its affairs up to the time of his death. His loss is keenly felt and very greatly deplored.

While the capital account of the company has grown from year to year, the number of stockholders has grown even larger, and in greater proportion. On the first of January, 1906, there were 989 registered stockholders, holding an average of 136 shares each; on January 1, 1907, there were 1,260 stockholders, holding an average of 134 shares.

The books and accounts in the main office were audited by competent auditors during the year, and found to be correct; also the various exchanges and branch offices of the Company.

It is very gratifying to be able to state that the great rank and file of the employés of the Company were found absolutely straight and correct, and this report cannot be closed without again paying tribute to the enthusiasm and support of the officials, representatives and employés generally.

For the Board of Directors.

JAMES E. CALDWELL, *President.*

(Here follows map marked page 1401.)

MAPS

TOO

LARGE

FOR

FILMING

THE CUMBERLAND TELEPHONE & TELEGRAPH CO.

(INCORPORATED)

ANNUAL REPORT

FOR 1907.

1402

TWENTY-FIFTH

ANNUAL REPORT

OF THE

DIRECTORS

OF THE

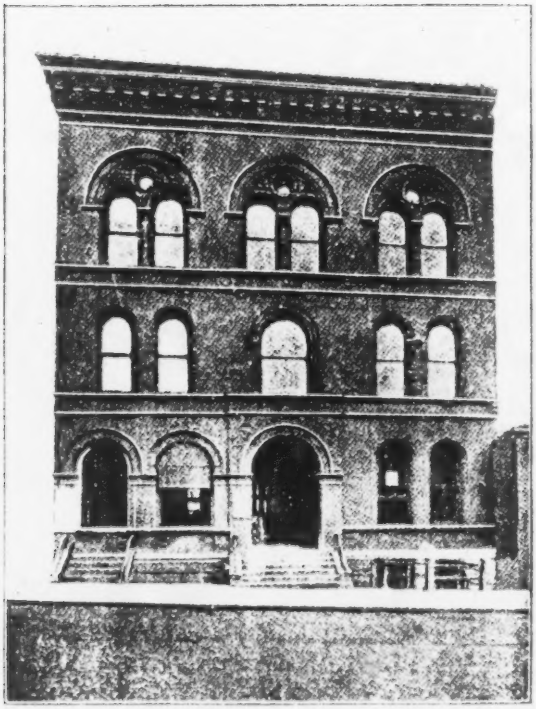
CUMBERLAND TELEPHONE & TELEGRAPH CO.

(INCORPORATED)

TO THE

STOCKHOLDERS

FOR 1907



MAIN EXCHANGE BUILDING,
NASHVILLE, TENN.

1403A

The Cumberland Telephone & Telegraph Co.

(INCORPORATED)

DIRECTORS.

JOHN W. BARR, JR., President Fidelity Trust Co.	LOUISVILLE, KY.
E. M. BARTON, President Western Electric Co.	CHICAGO, ILL.
W. W. BERRY, President American National Bank	NASHVILLE, TENN.
W. S. BRANSFORD, Retired Merchant	NASHVILLE, TENN.
JAMES E. CALDWELL,	NASHVILLE, TENN.
W. R. COLE, President Napier Iron Works	NASHVILLE, TENN.
WILLIAM LITTERER, Retired Merchant	NASHVILLE, TENN.
W. K. PHILLIPS, Wholesale Groceries	NASHVILLE, TENN.
JAMES S. ROBINSON, Wholesale Drugs	MEMPHIS, TENN.
COL. A. G. SHARP, American Bell Telephone Co.	ATLANTA, GA.
V. E. SHWAB, Geo. A. Dickel & Co., Wholesale Liquors	NASHVILLE, TENN
M. J. SMITH, Wholesale Groceries	NASHVILLE, TENN.
THEO. N. VAIL, Pres. American Telephone & Telegraph Co.	BOSTON, MASS.
F. O. WATTS, President First National Bank	NASHVILLE, TENN.
W. H. WOOLVERTON, V. Pres. Gamewell Fire Alarm Co.	NEW YORK, N. Y.

OFFICERS.

JAMES E. CALDWELL,
PRESIDENT.

W. W. BERRY,
VICE PRESIDENT.

WILLIAM LITTERER,
VICE PRESIDENT.

A. G. SHARP,
VICE PRESIDENT.

LELAND HUME,
GENERAL MANAGER.

T. D. WEBB,
TREASURER.

J. W. HUNTER, JR.,
SECRETARY.

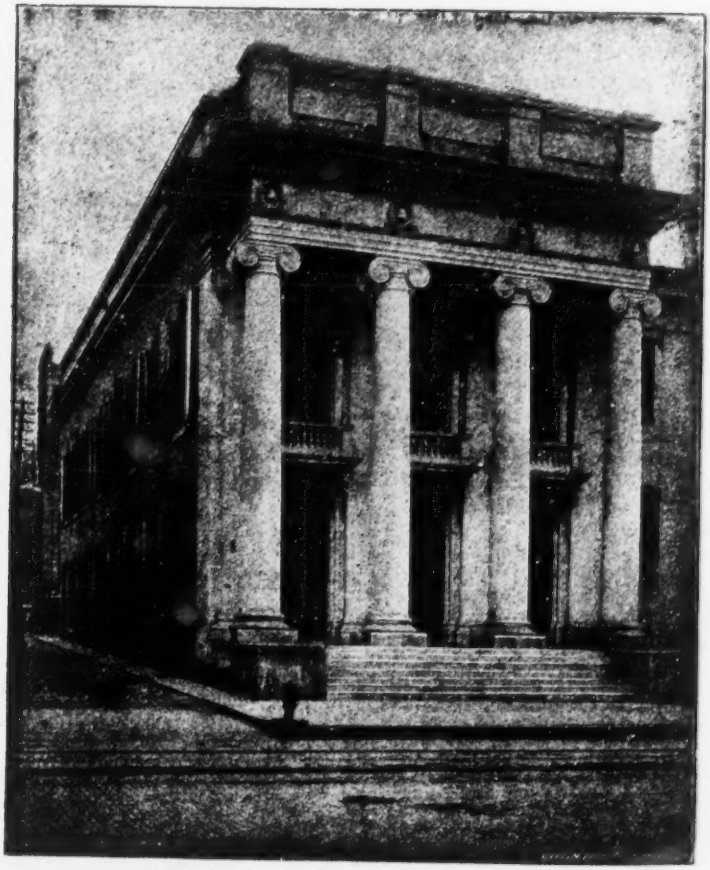
H. BLAIR SMITH,
AUDITOR.

EXECUTIVE COMMITTEE.

W. W. BERRY, A. G. SHARP,
JAMES E. CALDWELL, V. E. SHWAB,
WILLIAM LITTERER.

W. L. GEANBERRY, General Counsel . . . NASHVILLE, TENN.

1403R



CUMBERLAND TELEPHONE BUILDING.
MEMPHIS, TENN.

REPORT OF THE DIRECTORS.

NASHVILLE, TENN., January 30, 1908.

To the Stockholders:

We take pleasure in presenting herewith the twenty-fifth annual statement of the Cumberland Telephone and Telegraph Company, and give below the Auditor's report, showing the result of operations and the financial condition of the Company on December 31, 1907:

OPERATION, YEARS 1906-1907.

EARNINGS.

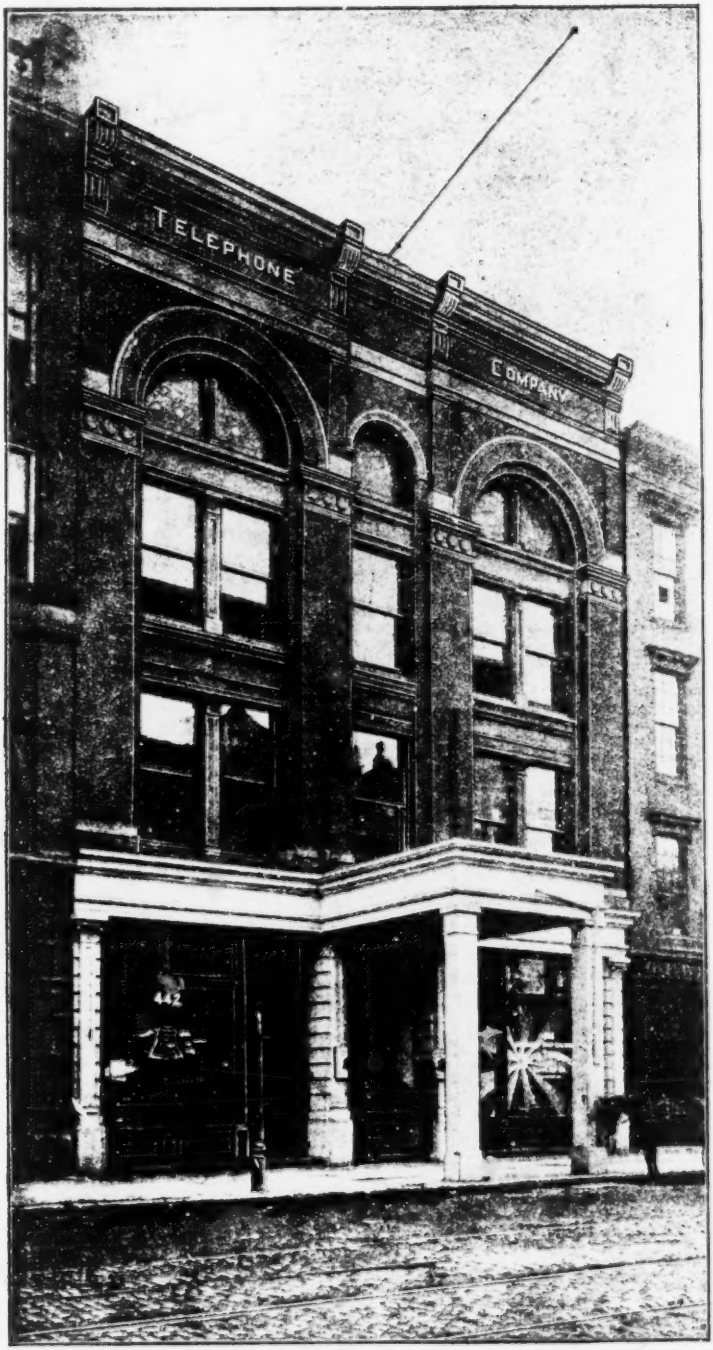
	1906	1907
Exchange Service	$ 3,643,657 95	$ 4,026,815 86
Tolls	1,548,550 47	1,661,887 53
Private lines	1,557 62	1,910 59
Real estate	50,515 04	64,301 64
Other sources	140,563 68	162,357 82
Total	$ 5,384,844 76	$ 5,917,273 44

EXPENSES.

General expense	$ 396,131 71	$ 419,834 04
Operating expense	1,150,022 50	1,247,936 55
Maintenance, reconstruction, etc	1,889,330 59	1,962,312 42
Real estate and miscellaneous expense	11,922 79	12,551 10
Total	$ 3,447,407 59	$ 3,642,634 11
Earnings over operating expenses	$ 1,937,437 17	$ 2,274,639 33

DEDUCT FIXED CHARGES.

Taxes	$ 191,433 32	$ 319,846 80
Interest	213,567 33	202,103 01
Total	$ 405,000 65	$ 521,949 81
Net earnings	$ 1,532,436 52	$ 1,752,689 52
Dividends	1,129,504 23	1,327,681 23
Surplus earnings	$ 402,932 29	$ 425,008 29
Surplus January 1	1,940,842 70	2,343,774 99
Surplus December 31	$ 2,343,774 99	$ 2,768,783 28


TELEPHONE
COMPANY
442

RESOURCES.

Invested in plant	$22,724,781 24	$23,895,126 87
Invested in real estate and buildings	764,006 82	787,753 67
Material on hand	560,511 99	426,520 82
Stocks and bonds	74,514 70	240,324 66
Cash	439,033 39	475,095 95
Total	$24,562,848 14	$25,824,821 97

LIABILITIES.

Capital stock	$16,812,050 00	$19,680,150 00
Bonds and debentures	1,065,000 00	1,020,000 00
Surplus	2,343,774 99	2,768,783 28
Reserve	1,003,093 99	1,018,885 07
Balance of bills and accounts payable and receivable	3,024,186 21	896,657 92
Bills payable for real estate	18,000 00	12,000 00
Reserve for contingent liabilities	2,532 08	83,943 08
Undivided profits	294,210 87	344,402 62
Total	$24,562,848 14	$25,824,821 97

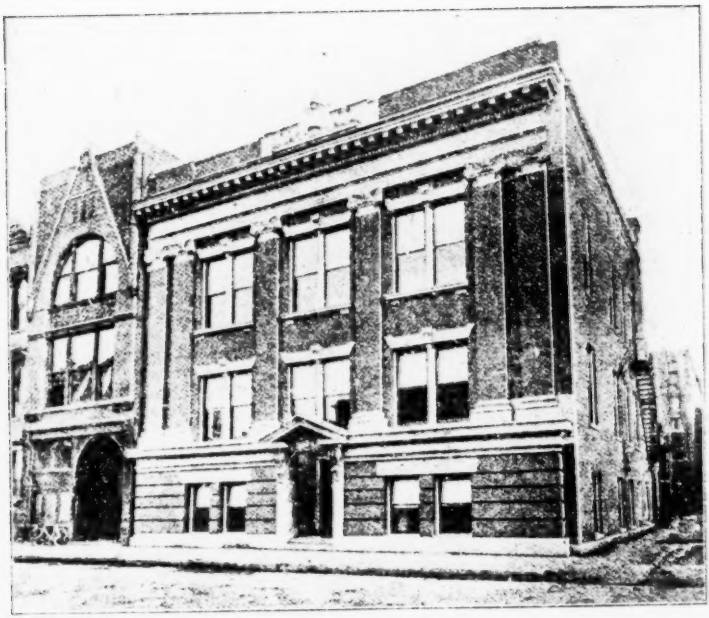


CUMBERLAND TELEPHONE BUILDING.
NEW ORLEANS, LA.

While the figures show a substantial surplus earnings over and above the dividend paid, yet, neither the surplus earned nor the rate of dividend paid is sufficient; it is not a sufficient profit or a just reward for the capital and enterprise that has been put forth to develop a new and novel art, for the hazard that was assumed and the necessity that for many years prevented the payment of more than 4 per cent on the capital. If the business should have proven a failure, the loss would have been well-nigh complete, as the money was invested in a class of property that could not be converted; and, on the contrary, if the art was developed, and it has been developed to a point where it is now referred to as a necessity, it indicates the great value that has been produced, and hence some extra reward should be received for the money and the enterprise that has been put forth to bring these results about; therefore, every consideration of justice demands that the rates and earnings be increased and improved, and justice and fairness calls for a still further advance and improvement in the net profit, to the end that the capital that has been honestly invested and faithfully employed during these years to bring to success so useful and valuable a facility should have a greater return paid thereon than the present rate of dividend.

Early in the year an increase in the capital stock was made; coincident with the date for payment thereof indications all foreshadowed financial disturbances, causing the directors to apply the proceeds of this increase of stock towards reducing the floating indebtedness, and a discontinuance of extensions and development as much as possible. This did not stop all extensions, but to an extent which left only such development as was quite necessary and advisable. This let-up in construction enabled the management to economize to some extent in expense of operating, and to effect reforms in rating, which have already shown some improvement in earnings, and should show still further improvement with succeeding months. This policy also put the Company in position to go through the panic without embarrassment or inconvenience.

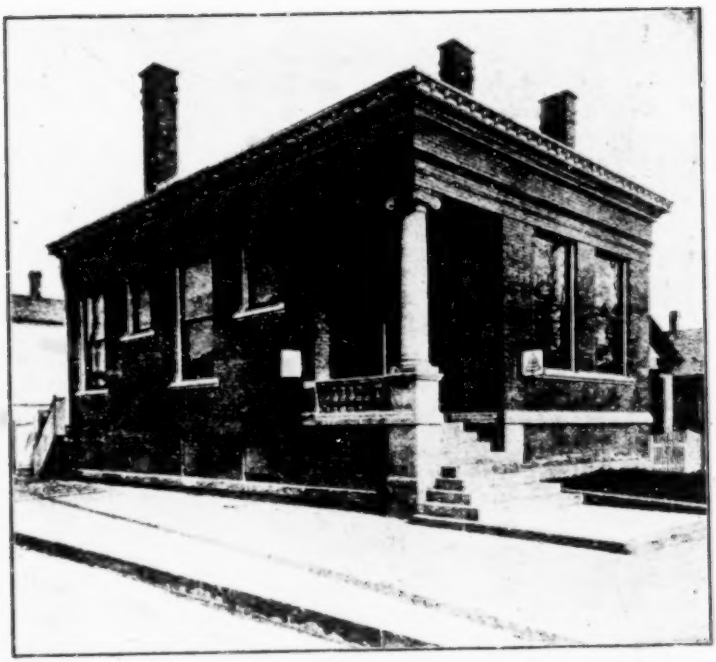
In this connection it is pertinent to call attention to the underlying strength of our business. "Talking" is undoubtedly the strongest of human impulses, indeed the great-



CUMBERLAND TELEPHONE BUILDING.
EVANSVILLE, IND.

est of human necessities, and the development of the dual telephone facilities, "Local and Long Distance," places at the public's disposal a facility to promote this desire of such a convenience, and so reasonable that its use is on a constant ascending scale. Every circumstance seems to promote its use—even panics call forth increased use thereof—and a comparison of the earnings of 1893 and in the last half of 1907, show that, during the months when the strain was most intense, the use of the Company's facilities were taxed to their uttermost. Even "hard times" and political agitation bring on more "talk"—that which the telephone is designed to meet. The political agitation—we may say the political reign of terror sweeping over the country—has brought our business in for its share of attention. This has undoubtedly frightened off some who were inclined to invest in our securities—it has naturally caused uneasiness among our stockholders. The hostile attitude of the public authorities, and the fierce attacks of the newspapers, both formidable and at times quite menacing, producing more or less litigation, and calling forth more or less adverse legislation from state and city authorities. It must be borne in mind, however, that this state of affairs has existed in a minor degree for more than twenty years, but up to the present, however, not a single successful point has been scored against this Company along these lines, and this for the reason—not on account of any shrewdness or popularity of its officers or directors, except in so far as they have never permitted or engaged in any unsound financiering or manipulations—that these facts no court, legislature, city council or board of trade has ever been able to break down or overcome, viz.: that the capitalization of the Company was absolutely sound and honest—not one bit of water or inflation therein; that its expenses are as low as possible; that its development is extensive, indeed in many ways admirable; character of construction first-class; rates only sufficient to return a rate of dividend that cannot be criticised—indeed, none have ever intimated that a higher rate up to 10 per cent. could be deemed too much—considering, as they must, the economy, the great use and value of such a system, reaching as it does every city, town and village, most every post-office, and a large percentage of the farmers in an area extending from the Ohio River to the Gulf of Mexico, a

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CUMBERLAND TELEPHONE BUILDING
NEW ALBANY, IND.

thousand miles long by four hundred miles wide. Such facts as these have caused the courts of all the states to pronounce in its favor—the highest courts in Tennessee and Kentucky to refer to it in such language as follows:

"The object and purpose of the Company and all such companies is to do the best work possible, and keep in touch with the people and their interests."

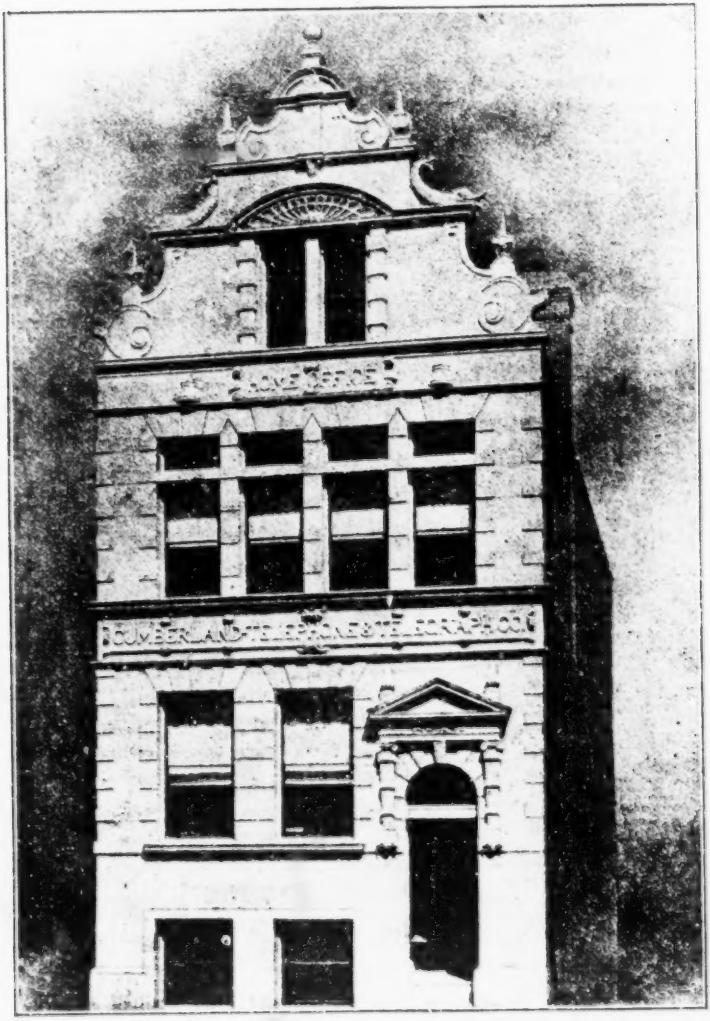
* * * *

"The Cumberland Telephone, with its local and intrastate connections, has become one of the most important agencies of social and commercial life, the loss of which would be felt keenly, possibly in every neighborhood of the state."

The question of rates will always be a subject of controversy; during the life of this company it has come up in every conceivable form. During the early part of 1907 it was found necessary and proper to advance our rates in the city of Louisville. This action was promptly challenged by the Board of Trade of that city; and their handling of the question was so enlightened, and such an advanced step as to make it noteworthy, indicating the enlightenment of that community, and giving assurance that no real anxiety need be felt over all this agitation and political hue and cry. As a result of the conference had between the officers of this Company and the Directors of the Board of Trade of said city, it was agreed to leave the whole question of rates in Louisville to a committee of five of their prominent business men, all users of our service, and whose rates were affected; articles of agreement were drawn up and duly signed; the committee was named as follows:

W. B. Belknap, Wholesale Hardware,
Attilla Cox, President Columbia Trust Co.,
George Gaulbert, Wholesale Drugs,
Logan C. Murray, President American National Bank,
Marion Taylor (Chairman), Wholesale Liquors.

These gentlemen, not one of whom was ever interested directly or indirectly in this Company, employed an expert accountant and made a thorough investigation, and reported unanimously that our rates and actions were reasonable, fair and justified. Their report was adopted by the Board of Trade, and is being lived up to by them in the best of faith. An example has here been set that in that community their



CUMBERLAND TELEPHONE BUILDING
HOPKINSVILLE, KY.

foremost men will take the time, and can be implicitly trusted in dealing with questions which mean an increase in their own expenses.

Competition is cutting a sorry figure; all of the fair promises claimed by the promoters in this line have been exploded; from one end of the country to the other it is a tale of woe—by business people forced to a double patronage, and by those who have been duped into putting their money into the ill-starred ventures.

The following extract from a recent report instigated by the Board of Trade of one of the prominent cities in the country tells the whole story and conveys the idea complete:

REGULATION BY COMPETITION.

"To the examination of this most important branch of my investigation I have devoted much time and study.

"The telephone is, in its very essence, a means of intercommunication, just as much as the postal service. No community would, for a moment, tolerate a dual postal system under which the letters entrusted to one company could not be delivered to the patrons of its competitor.

"A single telephone system promotes general intercommunication. A dual system renders thorough intercommunication impossible. A dual system of telephones divides the population of a city into two camps, and the individual users must either be content with half a service, or must pay, if not a double, at least a greatly increased cost.

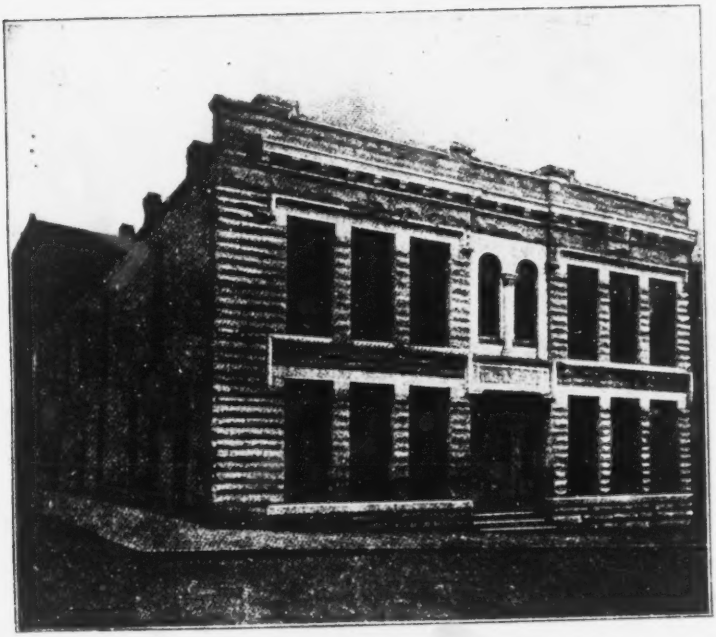
"Where there are two telephone systems, the business man is almost obliged to take both. * * * * * *

"The same reasons which are urged for the introduction of a second telephone company would apply just as forcibly to the introduction of a third or fourth. If the arguments of those who advocate dual systems are pushed to their logical conclusion, the more telephone companies a city could boast of, the cheaper prices would become and the more perfect the service would be, and the greater the development of the use of the telephone. The mere prospect of half a dozen companies simultaneously enjoying the privilege of tearing up the streets and planting miniature forests of unsightly poles throughout the residence district reduces this proposition to an absurdity, and yet the inconvenience would only be proportionately greater than that of having a dual system."

The Company's finances are in such a condition that it will be able to take care of its growth during the ensuing year without any necessity for increasing the capital stock, or the issuance of any bonds.

For the Board of Directors.

JAMES E. CALDWELL,
President.



CHATTANOOGA TELEPHONE BUILDING.

TWENTY SIXTH

ANNUAL REPORT

OF THE

DIRECTORS

OF THE

CUMBERLAND TELEPHONE & TELEGRAPH CO.

(INCORPORATED)

TO THE

STOCKHOLDERS

FOR 1908

1418



GENERAL OFFICE AND MAIN EXCHANGE BUILDINGS
NASHVILLE, TENN.

The Cumberland Telephone & Telegraph Co.

(INCORPORATED)

DIRECTORS

JOHN W. BARR, Jr., President Fidelity Trust Co.	LOUISVILLE, KY.
E. M. BARTON, President Western Electric Co.	CHICAGO, ILL.
W. W. BERRY, President American National Bank	NASHVILLE, TENN.
W. S. BRANSFORD, Retired Merchant	NASHVILLE, TENN.
JAMES E. CALDWELL,	NASHVILLE, TENN.
W. R. COLE, President Napier Iron Works	NASHVILLE, TENN.
WILLIAM LITTERER, Retired Merchant	NASHVILLE, TENN.
W. K. PHILLIPS, Wholesale Groceries	NASHVILLE, TENN.
JAMES S. ROBINSON, Wholesale Drugs	MEMPHIS, TENN.
COL. A. G. SHARP, American Bell Telephone Co.	ATLANTA, GA.
V. E. SHWAB, Geo. A. Dickel & Co., Wholesale Liquors	NASHVILLE, TENN.
M. J. SMITH, Wholesale Groceries	NASHVILLE, TENN.
THEO. N. VAIL, Pres. American Telephone & Telegraph Co.	BOSTON, MASS.
F. O. WATTS, President First National Bank	NASHVILLE, TENN.
W. H. WOOLVERTON, V. Pres. Gamewell Fire Alarm Co.	NEW YORK, N. Y.

OFFICERS

JAMES E. CALDWELL
PRESIDENT

W. W. BERRY
VICE PRESIDENT

WILLIAM LITTERER
VICE PRESIDENT

A. G. SHARP
VICE PRESIDENT

LELAND HUME
GENERAL MANAGER

T. D. WEBB
TREASURER

J. W. HUNTER, Jr.
SECRETARY

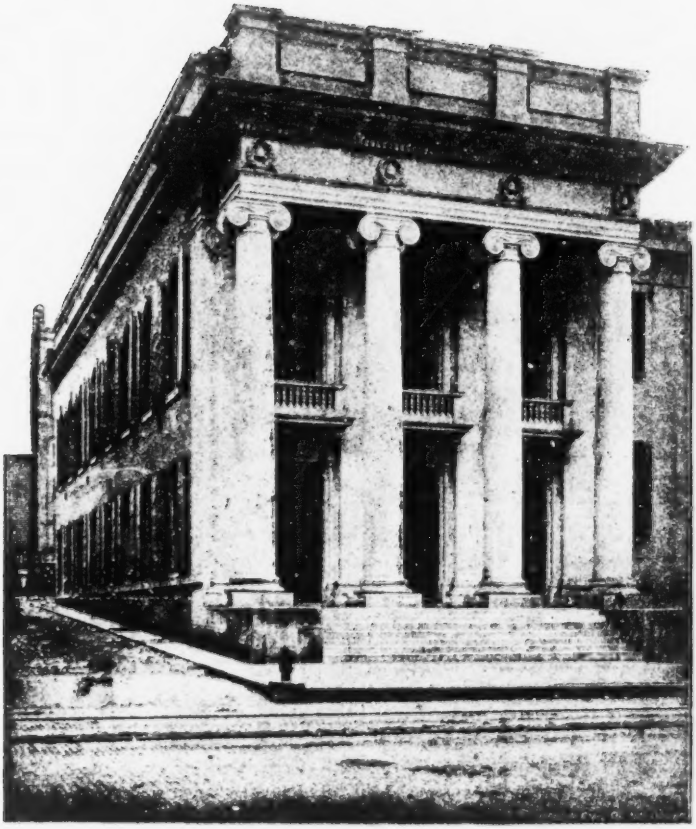
H. BLAIR SMITH
AUDITOR

EXECUTIVE COMMITTEE

W. W. BERRY — A. G. SHARP
JAMES E. CALDWELL — V. E. SHWAB
WILLIAM LITTERER

W. L. GRANBERY, General Counsel . . . . . NASHVILLE, TENN.

1420



CUMBERLAND TELEPHONE BUILDING
MEMPHIS, TENN.

366x97249
4,148 38781

REPORT OF THE DIRECTORS.

NASHVILLE, TENN., January 30, 1909.

To the Stockholders:

We take pleasure in presenting herewith the twenty-sixth annual statement of the Cumberland Telephone and Telegraph Company, and give below the Auditor's report, showing the result of operations and the financial condition of the Company on December 31, 1908:

OPERATION, YEARS 1907-1908

EARNINGS.

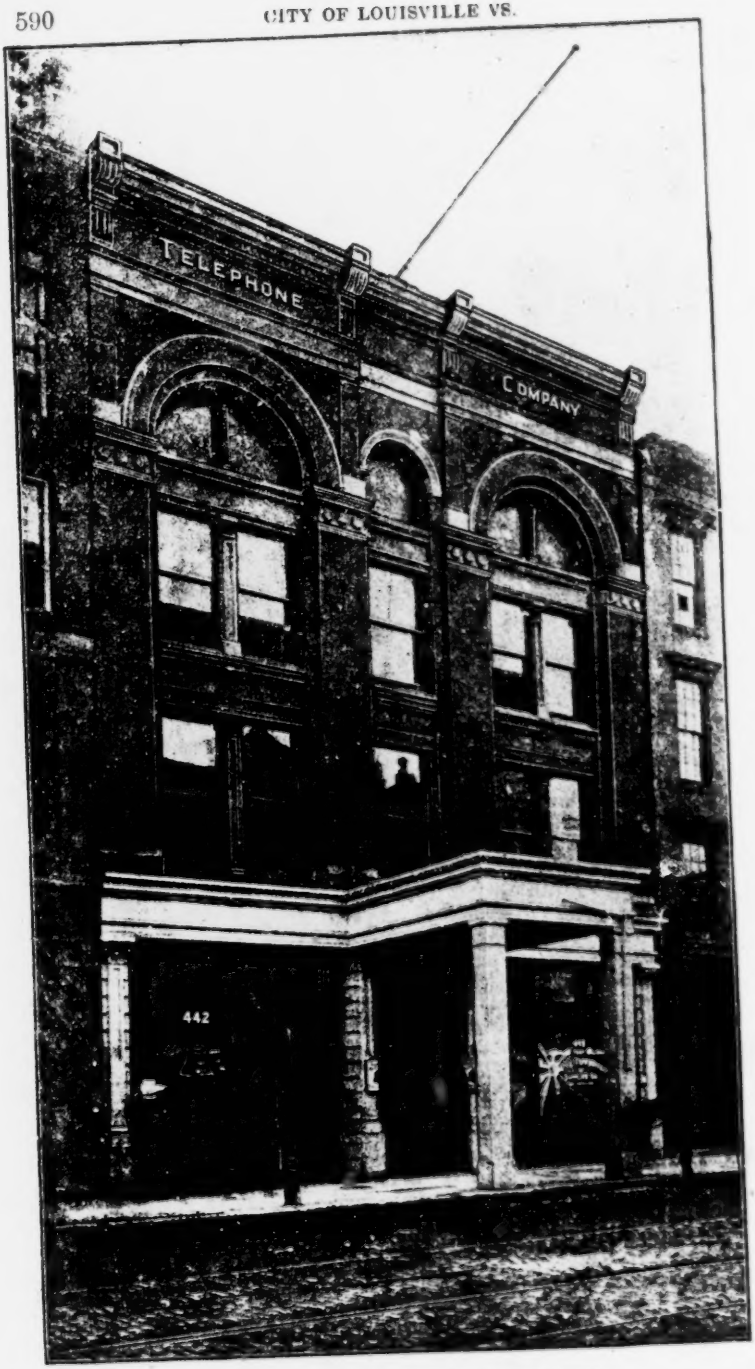
	1907	1908
Exchange Service	$4,026,815 86	$4,232,429 41
Tolls	1,661,887 53	1,654,699 41
Real Estate	64,301 64	63,617 92
Other sources	164,268 41	191,071 21
Total	$5,917,273 44	$6,141,817 95

EXPENSES.

General expense	$ 419,834 04	$ 366,435 44
Operating expense	1,247,936 55	1,345,997 45
Maintenance, reconstruction, etc	1,962,312 42	1,933,111 47
Real estate and miscellaneous expense	12,551 10	17,428 13
Total	$3,642,634 11	$3,662,972 49
Earnings over operating expenses	$2,274,639 33	$2,478,845 46

DEDUCT FIXED CHARGES.

Taxes	$ 319,846 80	$ 331,171 97
Interest	202,103 01	154,243 41
Total	$ 521,949 81	$ 485,415 38
Net earnings	$1,752,689 52	$1,993,430 08
Dividends	1,327,681 23	1,476,011 24
Surplus earnings	$ 425,008 29	$ 517,418 84
Surplus January 1	2,343,774 99	2,768,783 28
Surplus December 31	$2,768,783 28	$3,286,202 12



CUMBERLAND TELEPHONE BUILDING

RESOURCES.

Invested in plant	$23,895,126 87	$24,381,297 64
Invested in real estate and buildings	787,753 67	790,163 23
Material on hand	426,520 82	640,891 40
Stocks and bonds	240,324 66	435,509 04
Cash	475,095 95	457,546 49
Total	$25,824,821 97	$26,705,467 80

LIABILITIES.

Capital stock	$19,680,150 00	$19,680,150 00
Bonds and debentures	1,020,000 00	1,000,000 00
Surplus	2,768,783 28	3,286,202 12
Reserve	1,018,885 07	1,198,586 30
Balance of bills and accounts payable and receivable	896,657 92	1,144,721 52
Bills payable for real estate	12,000 00	
Reserve for contingent liabilites	83,943 08	2,204 86
Undivided profits	344,402 62	393,603 00
Total	$25,824,821 97	$26,705,467 80



CUMBERLAND TELEPHONE BUILDING
NEW ORLEANS, LA.

The use and convenience of the telephone is so well known to the public that further effort in that direction is not considered necessary, but the most steady and persistent effort has been put forth to improve the service in every way and maintain it at a high state of efficiency.

All legitimate new business in the territory has been promptly cared for, and the Company is in position to continue to do so; and the fixed policy, which will be steadily adhered to, is to maintain the property and improve the service in every way possible, to meet the legitimate growth of the business promptly with the best type of apparatus known to the art, and to keep squarely abreast with the improvements in apparatus and methods as they are developed from time to time.

The management feels a keen sense of gratification, and hereby expresses its high appreciation of the loyal and hearty support of its employes and representatives as a whole. It is to this state of affairs that the Company is indebted for its best results.

Respectfully submitted,

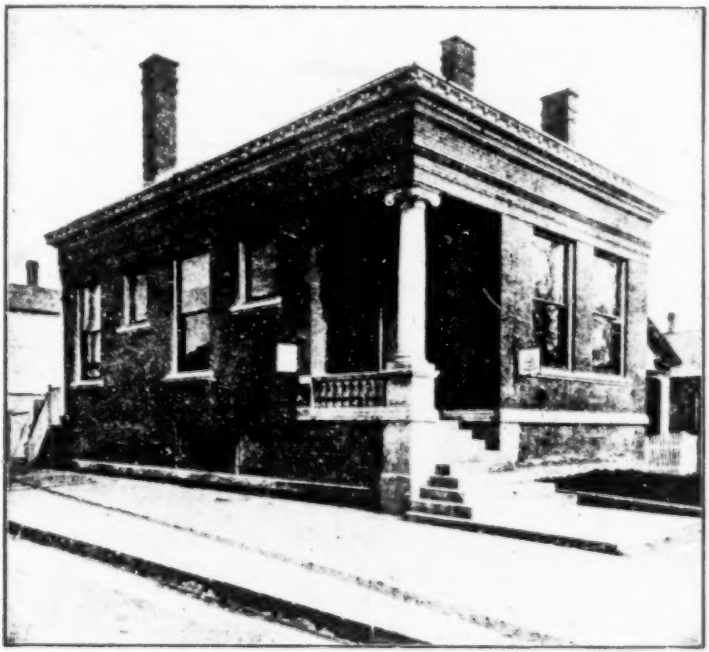
For the Board of Directors.

JAMES E. CALDWELL,

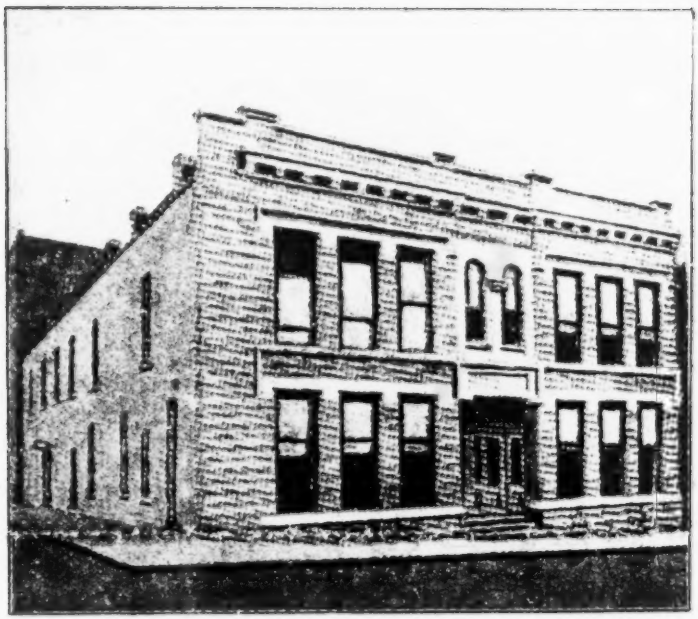
President.



CUMBERLAND TELEPHONE BUILDING
EVANSVILLE, IND.



CUMBERLAND TELEPHONE BUILDING
NEW ALBANY, IND.



CUMBERLAND TELEPHONE BUILDING
CHATTANOOGA, TENN

1430 EXHIBIT #7, WITH DEPOSITION — J. E. CALDWELL.

1908.

Annual Report of the Directors of American Telephone & Telegraph Company to the Stockholders for the Year Ending December 31, 1908.

Boston: Geo. H. Ellis Co., Printers, 272 Congress Street, 1909.

1431 1908.

Annual Report of the Directors of American Telephone & Telegraph Company to the Stockholders for the Year Ending December 31, 1908.

Boston: Geo. H. Ellis Co., Printers, 272 Congress Street, 1909.

1432 American Telephone & Telegraph Company.

Officers for the Year 1908.

Theodore N. Vail, President.
Edward J. Hall, Vice-President.
Bernard E. Sunny, Vice-President.
Charles P. Ware, Vice-President.
William R. Driver, Treasurer.
Charles Eustis Hubbard, Secretary.

Directors.

Charles W. Amory, Thomas B. Bailey, George F. Baker, Francis Blake, Harry H. Brigham, Alexander Cochrane, T. Jefferson Coolidge, Jr., W. Murray Crane, George L. Green, Henry S. Howe, Charles Eustis Hubbard, William Lowell Putnam, Thomas Sanders, Sylvanus L. Schoonmaker, Nathaniel Thayer, Theodore N. Vail, John I. Waterbury, Moses Williams.

1433 *Report of the Directors of American Telephone and Telegraph Company.*

NEW YORK, *March* 16, 1909.

To the Stockholders:

Herewith is respectfully submitted a general statement covering the business of the Bell system as a whole, in addition to the report of the American Telephone and Telegraph Company, for the year 1908.

Bell System in the United States.

Subscriber Stations.

The number of stations at the end of the year operated directly by the associated companies which constitute our system in the United States was 3,215,245, an increase of 179,712. In addition to this number, there were 1,103,144 exchange and toll stations connected to our system by our toll and long-distance lines, but operated by local coöperative and rural independent companies or associations having sub-license or connection contracts. Adding also our telephones employed for private line purposes, there was a total of 4,364,629 stations connected to the Bell system as against 3,839,000 stations at the close of the previous year, an increase of 525,629 stations.

1434 Wire Mileage.

The total mileage of wire in use for exchange and toll service was 9,830,718 miles, of which 1,220,126 were added during the year. These figures do not include the mileage of wire operated by sub-licensees.

Traffic.

Including the traffic over the long-distance lines, but not including sub-licensees, the daily average of toll connections was about 463,000, and of exchange connections about 18,500,000, as against corresponding figures in 1907 of 494,000 and 18,130,000; the total daily average for 1908 reaching 18,963,000, or at the rate of about 6,106,000,000 per year.

Plant Additions.

The amount added to plant and real estate by all the companies, excluding sub-licensees, constituting our system in the United States during the year 1908 was:

For exchanges	$15,824,000
For toll lines	8,812,600
For land and buildings*	2,000,600
	$26,637,200

Plant Additions of Previous Years.

The amount added in 1900 was $31,619,100; in 1901, $31,005,400; in 1902, $37,336,500; in 1903, $35,368,700; in 1904, $33,436,700; in 1905, $50,780,900; in 1906, $79,366,900; and in 1907, $52,921,400, making the grand total of expenditure upon these properties during the nine years $378,472,800.

* Not including a large amount of real estate purchased from the American Telephone and Telegraph Company during the year.

1435 Maintenance and Reconstruction.

During the year $39,736,700 were applied out of revenue to maintenance and reconstruction purposes.

The total amount of maintenance and reconstruction charged against revenue for the last six years was over $186,700,000.

The result of the appraisements and studies on depreciation given below establishes the fact that our charges against revenue for maintenance and reconstruction are conservative and on the right side.

It would not be wise or good policy to reduce our maintenance until we have accumulated enough surplus to provide for and make possible any change of plant or equipment made desirable, if not necessary, by the evolution and development of the business.

In the meantime the public is getting the use of the surplus and reserve without being called on to meet charges on securities issued against it.

Permanency of Plant.

There exists much misunderstanding as to the permanent value of a modern telephone plant. Originally exchange plants were open wire construction, largely on house-top fixtures and to a certain extent on poles. The central offices were in leased buildings, seldom fire-proof, the equipment was of various types and standards due to the rapid improvement or development then taking place.

Now the central offices in all the principal centres and in many of the less important are in fire-proof buildings built for the purpose and owned by the companies.

From these offices radiate the underground conduits connecting the central offices with each other and the various districts of the exchange territory. Through these subways the wires are
1436 run in cables of copper wire, sheathed with lead covering.

The extensions of these lines are open wire, generally copper, or aërial cables strung on pole lines of substantial construction. The various cities and exchange territories are connected by means of pole lines of substantial construction, on which are strung for the most part copper wires. As fast as improvements in transmission methods make it possible, underground construction for long-distance trunk lines is being done. There are now underground conduits and cables between New York and Philadelphia, Chicago and Milwaukee, and a substantial part of the way between New York and Boston.

Of the total mileage of exchange wires over 57 per cent is underground. Of the total value 84 per cent is copper and 16 per cent iron. Of toll wires 91 per cent is copper and only 9 per cent iron.

All the subways and pole lines are built, with few exceptions, under franchises which are actually or in effect permanent; the larger pole lines for a considerable part are built over rights of way actually owned by the companies, which were acquired at a cost of some $8,000,000, and could not now be acquired at many times that outlay, if at all.

The central office and sub-station equipment are uniform, and all

of the highest standard. Each year shows a marked improvement in both durability and permanency of standard.

Depreciation.

Studies have been made during the year to determine the actual rate of depreciation which should be provided for.

Figures from actual experience could be made for pole lines, iron wires and most of the central office and sub-station equipment, but underground conduits, copper wires, and cables must still be ascertained from experience.

1437 Of the total value of the telephone plants owned by the American Telephone and Telegraph Company and associated companies:

Real estate constitutes..... 9%
Underground conduits and cables.....20%
Copper wires and aërial cables on poles.....18%
Pole lines not including wires.....26%

$8,000,000 of this represents ownership of rights of way over private property.

Iron wires..... 4%
Central office and sub-station equipment.....23%

As to the depreciation of property, real estate is standard and established.

Underground conduits can be classed with real estate, or rather with permanent construction on long-term ground rents.

Cables and copper wires have shown very small depreciation, and experience has not yet established a definite rate; there is, however, a net scrap value of 40 per cent.

Iron wires have a life of from eight to fifteen years.

Pole lines have a life of from ten to sixteen years.

Central office and sub-station equipment have a depreciation dependent on their character, the condition in which they are maintained, and on the policy of renewal or replacement by new or improved apparatus.

Construction for the Current Year.

Estimates of all the associated operating companies and of the American Telephone and Telegraph Company for all anticipated requirements for 1909 have been prepared. Maximum expenditure in each case has been agreed upon, and all who are responsible for the expenditures are working in entire accord with these agreements and understandings, and it is believed that the results will be, as they were in 1908, well within the limits fixed.

1438 Associated Companies.

Financial Condition.

The associated operating companies of the United States (not including the American Telephone and Telegraph Company) com-

menced the year with a reasonable indebtedness, which has however been substantially reduced. The obligations of those companies to other than the American Telephone and Telegraph Company decreased for the year $2,709,000, while the cash on hand increased at the same time $2,295,000—a net improvement in condition of $5,004,000.

During the year the Western Electric Company decreased its indebtedness $6,225,000 and decreased its cash $1,194,000, making a net improvement of $5,031,000 for that company.

The total improvement of our associate operating and manufacturing companies in the United States was thus over $10,000,000, bringing the current and floating indebtedness of all the associated companies well within the limits of current operations.

Physical Valuation of Telephone Plants.

For the purpose of determining the relation between the physical plant and the capitalization, a valuation of the exchange, toll and long-distance line plant included in the Bell system in the United States was made in 1907. The valuation was based on the replacement cost of the existing plant. This appraisement gave our plants a value $35,000,000 in excess of the obligations outstanding against them.

No new valuation as a whole has been made, but several valuations of all or parts of the plants of several of the associated
1439 companies have been made either by or under the direction of public authorities.

In every case has the valuation so made exceeded the valuation as carried on the books.

If to this variation be added the value of patents, franchises and rights of way, the position and strength of the business must be conceded.

The following statements will show the book value of plant, outstanding obligations existing against it, and the growth and financial condition of the associated companies.

Bell Telephone Companies in United States.

American Telephone and Telegraph Company Not Included.

Comparison of Earnings and Expenses, 1907 *and* 1908.

(Duplications Excluded.)

	1907.	1908.	Increase.
Gross Earnings	$120,753,200	$127,117,200	$6,364,000
Expenses: Operation	48,731,600	49,083,800	352,200
Maintenance	34,665,700	37,204,200	2,538,500
Taxes	4,510,700	5,173,600	662,900
Total Expenses	87,908,000	91,461,600	3,553,600
Balance Net Earnings	32,845,200	35,655,600	2,810,400
Deduct Interest	7,025,500	6,973,700	*51,800
Balance	25,819,700	28,681,900	2,862,200
Deduct Dividends	19,206,100	21,605,300	2,399,200
Undivided Profits.	6,613,600	7,076,600	463,000

*Decrease.

1440 *Combined Balance Sheet,* 1907 *and* 1908.

(Duplications Excluded.)

Assets:	Dec. 31, 1907.	Dec. 31, 1908.	Increase.
Contracts and licenses.	$8,800,200	$8,107,600	*$692,600
Telephone Plant	447,284,600	475,034,600	27,750,000
Supplies, Tools, etc.	16,238,700	14,858,500	*1,380,200
Receivables	39,961,200	36,359,400	*3,601,800
Cash	6,435,300	8,730,400	2,295,100
Stocks and Bonds	22,642,300	23,450,400	808,100
Total	$541,362,300	$566,540,900	$25,178,600
Liabilities:			
Capital Stock	$348,129,400	$375,891,600	$27,762,200
Funded Debts	37,115,300	39,649,800	2,534,500
Bills Payable	92,615,100	85,179,300	*7,435,800
Accounts Payable	19,415,500	17,205,500	*2,210,000
Total Outstanding Obligations	497,275,300	517,926,200	20,650,900
Surplus	35,125,200	34,491,500	*633,700
Depreciation Reserves.	8,961,800	14,123,200	5,161,400
Total	$541,362,300	$566,540,900	$25,178,600

*Decrease.

The decrease in "Surplus" account is due to a change in the dividend dates of several companies—bringing them within the quarter and year in which the earnings are made; and also to charging off all uncollectible and a large amount of doubtful accounts.

Entire Bell System, Including Canada.

American Telephone and Telegraph Company and Associated Holding and Operating Companies in the United States and Canada, Not Including Connected Independent or Sub-Licensee Companies.

We submit a balance sheet and earnings and expense statement of the Bell Telephone business as a whole, eliminating all
1441 duplications and showing the figures and results as if operated by a single company.

In addition to the above, there are associated or connected with and forming a part of the system for all purposes of communication, some 7,700 independent or sub-licensee companies operating over 1,100,000 stations, and representing an aggregate investment of capital which a few years since would have been considered ample for the whole country, probably over $100,000,000 in all.

Comparison of Earnings and Expenses, 1907 *and* 1908. (*All Duplications, Including Interest, Dividends and Other Payments to American Telephone and Telegraph Company by Associated Holding and Operating Companies, Excluded.*)

	1907.	1908.	Increase.
Earnings:			
From Exchange Service	$90,782,300.	$95,847,700.	$5,065,400.
From Toll Service	36,291,600.	37,600,100.	1,308,500.
From Other Sources	5,933,000.	6,568,600.	635,600.
Total Earnings	$133,006,900.	$140,016,400.	$7,009,500.
Expenses:			
Operation	$47,554,800.	$47,329,300.	$225,500.*
Maintenance	38,372,800.	41,027,200.	2,654,400.
Taxes	5,013,700.	5,685,900.	672,200.
Total Expenses	$90,941,300.	$94,042,400.	$3,101,100.
Balance Net Earnings	$42,065,600.	$45,974,000.	$3,908,400.
Deduct Interest	10,654,100.	11,034,500.	380,400.
Balance	$31,411,500.	$34,939,500.	$3,528,000.
Deduct Dividends	18,714,100.	21,338,100.	2,624,000.
Undivided Profits	$12,697,400.	$13,601,400.	$904,000.

* Decrease.

Combined Balance Sheet, 1906, 1907 *and* 1908.

(Duplications Excluded.)

Assets:	Dec. 31, 1906.	Dec. 31, 1907.	Dec. 31, 1908.	2 Years' Increase.
Contracts and Licenses	$9,162,000.	$9,078,000.	$8,107,600.	$1,054,400. *
Telephone Plant	465,411,900.	521,514,500.	545,045,600.	79,633,700.
Supplies, Tools, etc	18,588,100.	17,702,200.	16,130,700.	2,457,400. *
Accounts Receivable	23,653,100.	24,490,100.	20,689,900.	2,963,200. *
Securities and Loans	24,374,000.	28,672,300.	35,154,400.	10,780,400.
Cash and Cash Assets	8,444,800.	25,440,700.	54,916,000.	46,471,200.
Total	$549,633,900.	$626,897,800.	$680,044,200.	$130,410,300.
Liabilities:				
Capital Stock	$263,762,700.	$299,014,100.	$311,837,300.	$48,074,600.
Funded Debts	131,966,800.	198,776,700.	238,680,500.	106,713,700.
Bills Payable	69,613,900.	45,175,700.	35,680,800.	33,933,100. *
Accounts Payable	25,190,000.	20,386,200.	21,605,700.	3,584,300. *
Total Outstanding Obligations.	490,533,400.	563,352,700.	607,804,300.	117,270,900.
Surplus	24,473,700.	32,737,600.	31,759,600.	7,285,900.
Depreciation Reserves, Plant	11,839,900.	15,227,800.	20,728,500.	8,888,600.
" " General	22,786,900.	15,579,700.	19,751,800.	3,035,100. *
Total	$549,633,900.	$626,897,800.	$680,044,200.	$130,410,300.

* Decrease.

The figures represent all the outstanding obligations belonging to the public, and the property which is represented by those outstanding obligations.

Particular attention is called to the decrease in "Supplies" and "Bills and Accounts Payable," which still include the $25,000,000 1910 notes of the American Telephone and Telegraph Company and the $6,000,000. 1909 notes of the Western Telephone and Telegraph Company,—a total of $31,000,000. less $4,403,000. already purchased.

The "Surplus" account is after charging off patents, all discounts on notes and bonds of the past, and all uncollectible and a large amount of doubtful accounts.

1441*b* The business of the Western Electric Company, like that of all other manufacturing companies, has shown a shrinkage for the year—not entirely, however, from the same causes.

The business of the Western Electric Company outside of that with the American Telephone and Telegraph Company and associated companies shows a slight increase over 1906—the year of the largest aggregate business of the company.

The year's business would have shown a manufacturing profit sufficient to have provided for all charges if the company was expected to do only the amount of business equal to that done last year, but under an organization such as is necessary to care for the increasing business of the last five years and for the prospective business of the next five years, and after charging off even more than the usual depreciation, showed a loss.

We, after careful consideration, thought it would be far cheaper to maintain in its entirety the organization than to undertake to reconstruct it, particularly when we take into account the very large surplus of the company on the books, and the much greater actual surplus.

The latter part of the fiscal year ending December 1, 1908, showed a decided improvement and it is expected that the current year will be satisfactory to all.

The work of moving the manufacturing department from Chicago to Hawthorne, Ill., is proceeding as rapidly as possible, and the real estate in Chicago is on the market for sale. This property, which showed on the books of the Company at $2,700,000, has been appraised by the Chicago Real Estate Board at $3,755,000, and offers have been made for part at more than the appraisement.

The financial condition of the company was never better. Quoting from the annual report:—

1442 "The quick assets (cash on hand and accounts and bills receivable) were $16,467,859 at December 1, 1908, or 43.5 per cent. more than all the payables (including current accounts) $11,477,033."

American Telephone and Telegraph Company.

The earnings of the year as shown by the statements on pages 29 and 30 show a decided improvement over last year and every previous year.

The net revenue was $18,121,707.26, out of which dividends of 8% were paid, amounting to $12,459,156.00, leaving a surplus of $5,662,551.26.

With no improvement, our dividend and other charges for the current year, including the increased dividend charges which would be due to the conversion of the outstanding convertible bonds into stock, if all were converted, would be provided for, leaving a handsome surplus. If the returns of the first two months are any indication, the current year will show the continued improvement shown in past years.

Share Capital.

There were outstanding in the hands of the public at the close of the year 1,584,766 shares of capital stock. There were 26,370 shareholders with an average holding of 60 each. 26,213 shareholders held less than 1,000 shares each,—an average of 43 each; 153 shareholders from 1,000 to 10,000 each, with an average holding of 2,140 each; and four 10,000 or over each, holding a total of 121,516 shares.

1443

Convertible Bonds.

The balance of the $150,000,000 convertible bonds were taken by the bankers who bought the first $100,000,000. These became convertible beginning March 2, 1909.

With the proceeds, the financing of our company for all current operations, including our financing of the associated companies, is completed for 1909 and 1910. This, of course, includes the payment of the $25,000,000 5 per cent. notes due in 1910, and also provision for the $6,000,000 5 per cent. Western Telephone and Telegraph Company's notes due in 1909.

Future Financing.

As to future financing, it is believed that it will be possible to so organize that a great part, if not all, of our semi-urban and rural expenditures can be financed locally and a considerable part of all other financing. This will reduce the necessary demands on the American Telephone and Telegraph Company for current operations to an amount which can be very easily taken care of.

American Telephone and Telegraph Company's Relations to Associated Companies.

The relations of the American Telephone and Telegraph Company and the associated companies are not generally understood. The American Telephone and Telegraph Company is primarily a holding company, holding stocks of the associated operating and manufacturing companies. As an operating company it owns and operates the long-distance lines, the lines that connect all the systems of the associated operating companies with each other.

1444 In addition to these two functions it assumes what might be termed the centralized general administrative functions of all the associated companies.

The Bell system is one system telephonically inter-connected, inter-communicating and inter-dependent. This is such a system that any one of over 4,000,000 subscribers can talk with any other one within carrying power of the voice over wires, the only exception being that the Pacific Coast and the Middle Rocky Mountain region are not yet connected.

This system was built up under this policy and its continuance as a system depends on the continuance of the policy.

In the telephone business development is continuous. As conditions enlarge and change, new methods develop. The whole business suggests changes and stimulates inventions, and opportunities for improvements are frequent.

If each separate exchange or group of exchanges had not been assisted and directed in the development and introduction of these new ideas, methods and inventions, there would now be as many systems, as many methods of operating as there are separate companies. This would have made impossible the organization which now gives the Bell system that universality and preponderance on account of which no matter how many other systems may exist, every one of any commercial or social importance must have connection with the Bell system.

The same generalization runs through many departments. The companies are so organized, or fast becoming so, that every department continues through the local administration to the central administration of the American Telephone and Telegraph Company.

The American Telephone and Telegraph Company owns and maintains all telephones. It also owns either directly or
1445 through the Western Electric Company all patents.

It has a department which was organized at the very beginning of the business and has continued since, where is to be found practically everything known about inventions pertaining to the telephone or kindred subjects. Every new idea is there examined, and its value determined so far as the patent features are concerned.

The Engineering Department takes all new ideas, suggestions and inventions, and studies, develops, and passes upon them.

It has under continuous observation and study all traffic methods and troubles, improving or remedying them.

It studies all construction, present and future development or extension schemes, makes plans and specifications for the same, and gives when desired general supervision and advice. It has a corps of experts which, in addition to the above work, it as all times at the service of any or all of the separate companies.

When it is considered that some of these questions involve the permanency, duration and usefulness of a telephone plant costing millions of dollars, and changes costing hundreds of thousands, some idea of its importance can be formed. To give an illustration: one group of patents covering inventions which seemed likely to be useful and economical in the service was purchased by the company.

These inventions were developed into operating apparatus and put into use. While this cost hundreds of thousands of dollars, placing it beyond the scope of one operating company, the saving already accomplished to the associated companies runs into the millions.

A large staff has been and is continuously engaged in the consideration of disturbances arising from transmission and other lines carrying heavy currents, and in many cases that any telephone system can even exist in the vicinity of such lines is due to
1446 the constant and continued attention given this subject.

Every new trouble, and there are many, comes before this department. When settled there, it is settled for all. This has established a commercial, operating and plant practice not only for our own associated companies, but for others of high standing throughout the world.

All devices or inventions submitted receive the most thorough and painstaking investigation, and it is safe to say that there has as yet been no instance where any invention, system or method, rejected by the Patent and Engineering Departments of the American Telephone and Telegraph Company has ever had any permanent success when used elsewhere.

The Manufacturing Department creates and builds the equipment and apparatus which have been adopted. In this way throughout the whole grand system will be found standardization and uniformity. This is not any handicap on improvement or development of the art, for, on the contrary, every suggestion or idea, and there are many, has abundant opportunity to be tested, which would not be possible otherwise. No one of the companies could by itself maintain such an organization, and it would be fatal to any service to introduce or try out undeveloped ideas in actual service.

In the Legal Department all the big and general questions are looked after. It forms a clearing house in all legal matters for all the legal departments of the separate companies to which assistance and advice are given on all questions of general scope.

In the administration all questions which affect all companies, all questions between the associated companies, and the general policy and the general conduct of the business, are considered and close touch and relationship maintained with all
1447 parts of the system. Experts on every subject connected with this business are continually at work on old or new subjects and ready at call to go to the assistance of any of the companies. In short, the great work and substantially all the expenses of the American Telephone and Telegraph Company are involved in this "Centralized General Administration," taking care of all those matters which are common to all companies, or which if taken care of by each company would mean multiplication of work, effort, expense without corresponding advantage or efficiency.

To sum up, quoting the words of the representative of a large stockholding interest in one of the associated companies: "The contract relation with the American Telephone and Telegraph Company is the biggest asset this company has."

Criticism of Independents.

We have been criticised to some extent for our policy of publicity so far as it concerns the so-called "Independents." There has not been sufficient distinction between the "Independents" and the "Opposition" in the minds of the public. We have no quarrel with either. With many of the Independents we are working in complete harmony and for all practical purposes our system is part of theirs and their system part of ours. In fact it is expected and believed that a large part of the development in the semi-urban and rural territory can be done much more effectively and satisfactorily through independent local companies operating with us through or under connecting contracts or sub-licenses.

We can be called antagonistic only because we try in the protection of our property to expose and correct the misleading statements and impossible promises put out by would-be franchise vendors or mistaken company organizers, or mistaken associations
1448 for public protection, or when we call attention to the fact that what we claimed would happen, has happened.

In view of our preponderating interests in the telephone business of the country, we think it is due to ourselves to at least call attention to misleading statements, to promises in prospectuses impossible of fulfilment, and to advertisements offering to the public securities at large discounts, promising large prospective dividends, issued to build exchanges in which service is to be given at impossible rates.

If all who are interested in honest corporate securities would take the trouble to educate the public and exhibit courage enough to denounce all such misleading efforts, there would be a much more healthy condition.

In all controversies as to rates, franchises, etc., in all hearings before public bodies, our representatives have been confronted with such promises—statements as to what interests other than the Bell were doing—assertions that if it were not for watered stock or other methods of milking the public, rates could be reduced, or the business conducted at a profit on much more favorable terms to the public. All that experience has taught was as nothing before the promises of franchise vendors and manufacturers' agents. Established business and property were put in jeopardy with the result that there are many instances where the public has on its hands a partially duplicate exchange with partially duplicate subscription costs and no one has benefited except the promoters of the schemes.

There is now a decided tendency on the part of the public to favor consolidation wherever there are two exchanges. A great difficulty in the way is that, as a rule, much of the duplication of plant cannot be utilized for many years, if ever.

Gradually the public is becoming convinced that—quoting from last year's report—

1449 "Two exchange systems in the same community, each serving the same members, cannot be conceived of as a per-

maneney, nor can the service in either be furnished at any material reduction because of the competition, if return on investment and proper maintenance are taken into account. Duplication of plant is a waste to the investor. Duplication of charges is a waste to the user."

General.

In submitting this report, we wish to call your attention to two things which indicate the stability of the company and property.

One is the wide dispersion and small average holding of the shares—including the shareholders in the associated and connected companies, there are over 70,000 shareholders in the Bell system. From January 1 to March 2, the date of bond conversion, the shareholders increased about one hundred per week.

Another is the stability of the business, year after year shows an increase, no matter what the prevailing business conditions. There has, it is true, been a slight decline in the rate of increase in exchange earnings, and the toll line business has given some indication that conditions were not normal, but even in that there was an increase in earnings.

This stability and the position that the Bell system holds is due very largely to the policy and conditions under which it was developed, not alone to the telephone.

A telephone—without a connection at the other end of the line—is not even a toy or a scientific instrument. It is one of the most useless things in the world. Its value depends on the connection with the other telephone—and increases with the number of connections.

1450 The Bell system under an intelligent control and broad policy has developed until it has assimilated itself into and in fact become the nervous system of the business and social organization of the country.

This is the result of the centralized general control exercised by the company, the combination of all local systems into one combined system developed as a whole.

Nor could the development have been made in any other way. If the business had been developed by different organizations—each absolutely independent of and unrelated to the others—each little system would have been independent and self-contained without benefit to any other. No one has use for two telephone connections if he can reach all with whom he desires connections through one. Through the development of the Bell system, the relation and benefit as a whole have been considered. The policy has been to bring together all units which contribute to the value of the whole. The demand for facilities is seldom found waiting in these days for the facilities to come. The demand is created by the existence of the facilities. This is particularly true of the telephone service. It took courage to build the first toll line—short as it was—and it took more to build the first long-distance line to Chicago.

If in the early days the immediate and individual profit of the

long-distance toll lines had been considered, it is doubtful if any would have been built.

There are no other countries where the telephone service occupies the same relation to the public. Elsewhere narrow control and a policy of restriction have prevented its full development. Whatever is good in those systems has been adopted from the practice in this country.

There has been oftentimes comparison between the rates of this and other countries. The average rate of this country taking all classes of service and conditions into consideration is
1451 about the same as the average rate of all other countries.

There may be no maximum rates in other countries equal to some in this country, but on the other hand, there is no such maximum value given. Cheapness is relative to value, not to price. Value in telephone service depends on development, extent of system, certainty and promptness. Promptness and certainty mean operators and facilities sufficient to meet the maximum demands. It means constant and close attention on the part of attendants, sufficient in number to immediately care for any of the many troubles inherent in everything connected with the service from both outside and inside, the troubles which seem to develop and multiply with the development and increase of the business. Promptness and certainty in meeting maximum demands mean idle operators when the demand is less; it means a small average use of operators and facilities.

In any given time a certain possible use—number of connections or messages—expressed in units of service can be given by any fixed number of operators with certain given facilities. If in any given time these possible units of service are not availed of, they are lost—they pass away with the time.

Promptness and certainty therefore mean that each message, connection or other unit of actual service availed of must bear the expense of a number of unused possible units not availed of. If, instead of the immediate or prompt service of this country, the service as it exists in most other countries were in vogue, the cost would be reduced, but to a much greater extent would the value be reduced. Delayed service—service which keeps a line of customers waiting, so that there need be no loss of units of service, would reduce to a minimum the number of operators and given facilities, and all that creates cost.

Instead of waiting and idle operators and facilities, there would be waiting, idle and patient, customers.

1452 We do not think the American public desires this kind of service.

During the year we have had many questions before the courts, state commissions and other public bodies. We have met them in a spirit of absolute frankness and candor. The results have been on the whole satisfactory, and the treatment we have received has been fair and considerate, and we have found an evident desire to ascertain the real conditions and to meet them fairly.

While during these discussions the anxiety of the officials of our

companies has been keen, their attention distracted from the ordinary operations of business and the work and expense incurred in furnishing information and in attendance have been great, we believe that through this work and through our policy of publicity, our relations with the public are closer, the public mind is better informed, many erroneous impressions and opinions have been corrected, and that the public is beginning to recognize and admit—what the "Bell system" as conducted by the American Telephone and Telegraph Company stands for to the community at large.

For the directors,

THEODORE N. VAIL, *President.*

1453 *Bell System in the United States.—Toll Lines.*

	Jan. 1, 1900.	Jan. 1, 1901.	Jan. 1, 1902.	Jan. 1, 1903.	Jan. 1, 1904.	Jan. 1, 1905.	Jan. 1, 1906.	Jan. 1, 1907.	Jan. 1, 1908.	Jan. 1, 1909.	Increase.
Miles of Pole Lines.....	89,292	101,087	110,459	122,409	130,178	136,547	145,535	154,869	163,218	161,452	•1,766
Miles of Wire...	501,832	607,599	716,265	837,912	975,702	1,121,228	1,265,236	1,461,173	1,664,081	1,732,039	67,958

• Decrease.

Toll Connections.

The average daily number of toll connections is.....	463,021
Or a total per year of about.....	149,093,000

1454 *Bell System in the United States.—Exchanges.*

	Jan. 1, 1900.	Jan. 1, 1901.	Jan. 1, 1902.	Jan. 1, 1903.	Jan. 1, 1904.	Jan. 1, 1905.	Jan. 1, 1906.	Jan. 1, 1907.	Jan. 1, 1908.	Jan. 1, 1909.	Increase.
Exchanges	1,239	1,348	1,411	1,514	1,009	4,080	4,532	4,889	5,108	5,043	•65
Branch Offices..	1,187	1,427	1,594	1,861	2,131						
Miles of wire on poles and buildings	524,123	644,730	841,140	1,109,017	1,358,140	1,654,379	2,159,567	2,754,571	3,057,138	3,467,092	409,954
Miles of wire underground ...	489,250	705,269	883,679	1,328,685	1,618,691	1,888,760	2,345,742	3,241,471	3,883,051	4,625,047	741,996
Miles of wire submarine....	3,404	4,203	4,200	6,048	6,358	6,671	9,373	11,690	6,322	6,540	218
Total miles of wire.....	1,016,777	1,354,202	1,729,019	2,443,750	2,983,189	3,549,810	4,514,682	6,007,732	6,946,511	8,098,679	1,152,168

• Decrease.

Bell System in the United States.—Exchanges.—Continued.

	Jan. 1, 1900.	Jan. 1, 1901.	Jan. 1, 1902.	Jan. 1, 1903.	Jan. 1, 1904.	Jan. 1, 1905.	Jan. 1, 1906.	Jan. 1, 1907.	Jan. 1, 1908.	Jan. 1, 1909.	Increase.
Total Circuits..	422,620	508,262	592,467	742,654	798,901	930,251	1,135,449	1,384,175	1,541,727	1,668,211	126,484
Total Employees	29,818	37,067	45,990	55,403	61,476	67,756	89,661	104,646	100,884	98,533	†2,351
*Total Stations.	632,946	800,880	1,020,647	1,277,983	1,525,167	1,799,633	2,241,367	2,727,289	3,035,533	*3,215,245	179,712

* Including all companies connected with the Bell system, the number of stations is 4,364,629 against 3,839,000 at January 1, 1908, an increase of 525,629 stations. † Decrease.

Exchange Connections.

The estimated number of exchange connections daily in the United States, made up from actual count in most of the exchanges, is..... 18,499,376
Or a total per year of about..... 5,956,800,000

The number of daily calls per station varies in different exchanges, the average throughout the United States being about 6.

1456 American Telephone and Telegraph Company.

Balance Sheet, December 31, 1908.

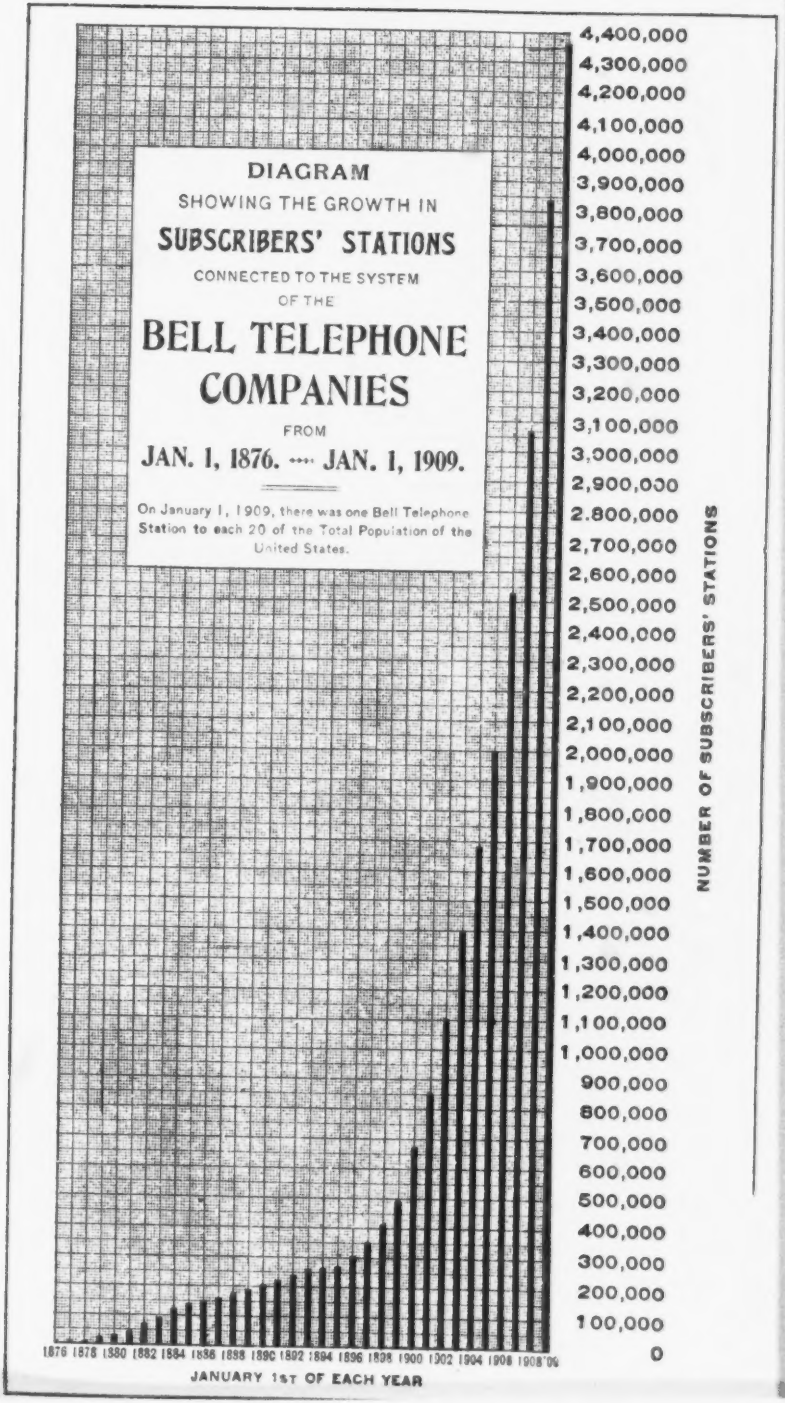
Assets.

Stocks of Associated Companies..	$235,729,305.60	
Bonds and other obligations of Associated Companies	73,289,388.92	
		$309,018,694.52
Telephones	$9,599,137.26	
Real Estate	2,181,728.67	
Long Distance Telephone Plant..	42,650,989.97	
		54,431,855.90
Cash and Deposits.....	$41,137,264.33	
Temporary Cash Loans.....	7,988,000.00	
Short Term Notes.....	3,277,466.52	
		52,402,730.85
Accounts Receivable		2,969,140.64
Treasury Stock		22,110,400.00
		$440,932,821.91

Liabilities.

Capital Stock	$180,587,000.00	
Surplus	16,225,917.64	
		$196,812,917.64
Four Per Cent. Collateral Trust Bonds, 1929	$53,000,000.00	
Four Per Cent. Convertible Bonds, 1936.....	136,000,000.00	
Four Per Cent. American Bell Bonds, 1908	48,000.00	
Five Per Cent. Coupon Notes, 1907	6,000.00	
Five Per Cent. Coupon Notes, 1910	25,000,000.00	
Dividend Payable January 15...	3,169,532.00	
Interest and Taxes accrued but not due	3,709,232.91	
Accounts Payable	1,302,979.83	
		222,235,744.74
Depreciation Reserve		21,884,159.53
		$440,932,821.91

C. G. DuBOIS, *Comptroller.*


DIAGRAM
SHOWING THE GROWTH IN
SUBSCRIBERS' STATIONS
CONNECTED TO THE SYSTEM
OF THE
BELL TELEPHONE COMPANIES
FROM
JAN. 1, 1876. .... JAN. 1, 1909.
On January 1, 1909, there was one Bell Telephone Station to each 20 of the Total Population of the United States.
4,400,000
4,300,000
4,200,000
4,100,000
4,000,000
3,900,000
3,800,000
3,700,000
3,600,000
3,500,000
3,400,000
3,300,000
3,200,000
3,100,000
3,000,000
2,900,000
2,800,000
2,700,000
2,600,000
2,500,000
2,400,000
2,300,000
2,200,000
2,100,000
2,000,000
1,900,000
1,800,000
1,700,000
1,600,000
1,500,000
1,400,000
1,300,000
1,200,000
1,100,000
1,000,000
900,000
800,000
700,000
600,000
500,000
400,000
300,000
200,000
100,000
0
NUMBER OF SUBSCRIBERS' STATIONS
1876 1878 1880 1882 1884 1886 1888 1890 1892 1894 1896 1898 1900 1902 1904 1906 1908 '09
JANUARY 1ST OF EACH YEAR

1457 American Telephone and Telegraph Company.

Comparative Statement of Earnings and Expenses.

Earnings:	1907.	1908.
Dividends	$11,805,166.81	$13,280,127.54
Interest and other revenue from associated and licensed companies	9,307,023.72	9,720,466.04
Telephone Traffic (net)	3,901,653.93	3,976,512.07
Real Estate	162,228.49	160,007.95
Other Sources	433,598.31	761,856.45
	$25,609,671.26	$27,898,970.05
Expenses	2,130,381.16	2,003,956.06
Net Earnings	$23,479,290.10	$25,895,013.99
Deduct Interest	7,209,902.16	7,773,306.73
	$16,269,387.94	$18,121,707.26
Dividends Paid	10,943,644.00	12,459,156.00
Balance	$5,325,743.94	$5,662,551.26
Carried to Reserves	$3,500,000.00	$3,000,000.00
Carried to Surplus	1,825,743.94	2,662,551.26
	$5,325,743.94	$5,662,551.26

C. G. DuBOIS, *Comptroller.*

1458 American Telephone and Telegraph Company.

Annual Earnings and Dividends, 1900–1908.

Year.	Net revenue.	Dividends paid.	Added to reserves.	Added to surplus.
1900	$5,486,058	$4,078,601	$937,258	$470,198
1901	7,398,286	5,050,024	1,377,651	970,611
1902	7,835,272	6,584,404	522,247	728,622
1903	10,564,665	8,619,151	728,140	1,217,374
1904	11,275,702	9,799,117	586,149	890,435
1905	13,034,038	9,866,355	1,743,295	1,424,388
1906	12,970,937	10,195,233	1,773,737	1,001,967
1907	16,269,388	10,943,644	3,500,000	1,825,744
1908	18,121,707	12,459,156	3,000,000	2,662,551

C. G. DuBOIS, *Comptroller.*

(Here follows diagram marked 1458*a*.)

1459 EXHIBIT H 8, CALDWELL'S 1ST DEPOSITION.

Goulding Marr, Dealer in Stocks and Bonds, Nashville, Tenn.

Cumberland Telephone & Tel. Co. Stock as an Investment.

March 1, 1909.

1460 Cumberland Telephone & Telegraph Company.
(Incorporated.)
Executive Offices, Nashville, Tenn.

Capitalization.

Capital Outstanding	$19,680,150
Surplus and Reserves	4,979,194
Bonds	1,000,000

History.

The Cumberland Telephone & Telegraph Company was chartered in the year 1883, under the laws of the State of Kentucky, and its headquarters were established in Nashville, Tennessee. For twenty-six years the Company has an unbroken record of quarterly cash dividends, beginning in 1883 at the rate of 4% per annum and now paying 8%, and since its organization has built up one of the largest and strongest telephone properties in the country.

Territory Served.

The Company controls the Bell telephone exchanges throughout a large and most prosperous territory in the South; it has a complete network of toll lines of its own, extending from Louisville, Ky., to New Orleans, La., having exchanges at Evansville, Louisville, Memphis, Nashville, Chattanooga, Knoxville and New Orleans. Its numerous exchanges also cover the entire States of Tennessee, Kentucky, Mississippi and Louisiana, besides parts of Illinois and Indiana, a territory 1,000 miles long by 400 wide. This territory represents one of the richest agricultural sections in the Union, promising a much greater and more rapid growth, both in wealth and population, than that of the Northern States, which are more fully developed.

Franchise.

Over 90% of all its franchises are perpetual and unrestricted. It has unlimited and unrestricted franchises in Louisville, Nashville, Memphis and New Orleans. It has a thirty-five year franchise in Evansville which has thirty-three years yet to run. Notwithstanding their enormous money value, none of the Company's franchises are carried on their books as an asset.

Growth.

The growth of the Cumberland Telephone Company for the past ten or twelve years has been most remarkable. Back as far as 1897 the capital was only $1,695,700.00, with a surplus of $166,144.54, and a total number of subscribers amounting to 10,635. The stockholders received dividends at the rate of 4% per annum. At the present time the capital is $19,680,150.00, surplus and undivided profits $4,979,194, total number subscribers 187,259, and is now paying dividends at the rate of 8% per annum.

Up to the present date, this Company has paid in dividends to its shareholders the total sum of $9,235,750.00, besides laying aside a surplus and undivided profits amounting to $4,979,194. It must be remembered, too, that for more than half of this period of time the Company was working on an average capital of only about $4,500,000.00.

1461 The following table gives the remarkable growth of this Company in condensed form:

Year.	Capital.	Surplus, reserve and undivided profits close of year.	Net earnings for the year.	Rate of dividend.	Exchanges in operation.	Subscribers close of year.	Range in market price of stock.	
							High.	Low.
1897	$1,695,700 00	$166,144 74	$220,849 46	4%	53	10,635	76	50¼
1898	2,875,000 00	419,731 72	326,937 96	5%	88	19,655	98	69
1899	3,459,200 00	663,851 57	439,681 88	6%	137	30,751	134	98
1900	6,017,700 00	1,329,572 60	517,061 07	7%	232	57,080	132	102
1901	7,261,200 00	1,600,803 12	638,062 68	7%	289	78,915	140	129½
1902	9,106,200 00	1,746,567 62	782,164 70	7%	338	92,425	130¾	122½
1903	11,367,250 00	2,197,316 87	1,040,092 18	7%	354	103,744	127	115
1904	11,695,350 00	2,804,509 44	1,174,167 46	7%	399	121,313	122¾	112½
1905	13,449,650 00	3,353,780 63	1,359,284 22	7%	441	141,266	124	116
1906	16,812,050 00	3,643,611 93	1,532,436 52	7%	508	165,190	118¾	115
1907	19,680,150 00	4,216,014 05	1,752,689 52	7%	526	170,039	115	93½
1908	19,680,150 00	4,979,194 28	1,993,430 08	8%	518	187,259	128	96½

Panic Proof.

The fact that the earnings of the Company justified an increase in dividends from 7% to 8% per annum, beginning October 1, 1908, reflects great credit on the managers and officers of the Company, especially when it is remembered that just at this particular time most all other corporations were still suffering from the effects of the panic of 1907, quite a number having reduced their dividends, while many discontinued paying altogether. It was thoroughly demonstrated all through the panic year of 1907 that telephone properties (Bell Licensed) when properly managed suffer less during times of depression than most any other class of business. During the months of October and November, 1907, right at the worst time of the panic, the toll and rental receipts of the Cumberland Telephone Company were $1,019,000.00 as compared with $918,000.00 for the same period of time the previous year, showing a gain of $101,000.00, notwithstanding the hard times. The fact that the telephone business is done practically on a cash basis is another safeguard towards protecting its earnings during times of depression.

To Investors.

In calling your attention to this stock as an investment I have endeavored to impress you with its growth and increasing earning power. The stock has a broad market, having over 1,600 shareholders distributed over thirty-nine different States, and is listed on the Boston and New Orleans stock exchanges, besides being traded in actively by brokers in Nashville, Louisville, Memphis and Chicago. Among bankers and investors, generally, the stock ranks as a high grade, safe investment; there being only $1,000,000.00 of bonds on the property, it is owned by the stockholders and not bondholders. If interested I will be pleased to give you the very closest market quotations. Today the market ranges from 126 to 129. On its present dividend basis of 8% the stock will net the investor:

6 per cent at 133⅓.
5½ per cent at 145½.
5 per cent at 160.

GOULDING MARR, *Broker*,
214 *Union Street, Nashville, Tenn.*

1462 J. E. JAGOE, called on behalf of Complainant, being first duly sworn, testified and deposed as follows:

Direct examination.

By Mr. GRANBERY, for complainant:

Q. State your name, age, residence and occupation?

A. Age thirty-three years; I live in Nashville; I am employed in the plant department of the Cumberland Telephone and Telegraph Co. as assistant superintendent of plant.

Q. Who is your superior?

A. The general manager.

Q. Does he perform the duties incumbent upon the superintendent of plant?

A. He is acting superintendent of plant.

Q. And you are his assistant, in that department?

A. Yes, sir.

Q. Is there anyone between you and the general manager or are you next to him in the work?

A. I am next to him.

Q. Where were you educated Mr. Jagoe?

A. I finished my education at the Christian Brothers' College in Memphis, Tenn.

Q. What experience have you had in the telephone business?

A. Ten years, active.

1463 Q. What has been your department or branch or part of the telephone business, what have you been engaged in?

A. Mainly plant work.

Q. Are you familiar with the properties of the complainant company?

A. Yes, sir.

Q. What are your duties as assistant superintendent of plant?

A. To supervise all construction and plant work done by the company, to determine the cost of it, to establish units of cost, to distribute all plant expenses and to advise with the engineering department on all proposed work.

Q. Are you familiar with the complainant's telephone plant in the City of Louisville?

A. Yes, sir.

Q. Have you made a special study of that plant recently?

A. Yes, sir.

Q. When did you begin that study?

A. In the middle of January.

Q. And it has continued up to the present time?

A. Up to a few days ago.

Q. Now I want you to state what is the value of that plant and give the different quantities of material upon which you base your statement?

Mr. BLAKEY, for defendant:

Mr. Master, you will remember that the complainant has closed its case, its evidence in chief in this case. The depositions
1464 of its auditor, and president, were taken to establish the facts which were referred to you for investigation. Thereupon the defendant introduced its evidence, completed the taking of depositions to establish its contention as to the various matters referred to you for investigation. The defendant in doing this employed, at a very great expense, three experts on the valuation of plant, and they went into detail as fully as they could, and testified as to the value of that plant. Now the question asked here is not in rebuttal of what those men stated, but is to establish what the complainant was compelled to establish on direct testimony. The result of this testimony now, I assume, would be that the defendant would have to begin over again and take its proof over again, to answer the case that is

made now, and which should have been made in the first instance, and of course such a course of testimony would be interminable, and when the defendant gets through answering the case complainant makes now, the complainant would be—on the same theory that he is now allowed to testify, to come in and state all over again its case, and so we will never reach an end.

1465 It seems to me when the complainant has once introduced proof on all the questions it thought were pertinent to matters under investigation, that should be the end of its direct proof, and it should not now be permitted to come in and establish a case which it did not establish at the outset. It took no proof at all at the outset to establish the value of its plant.

Mr. GRANBERY, for complainant:

Counsel is in error in assuming this is original testimony. It is strictly in rebuttal of the testimony he has sought to develop by his experts. He is also mistaken in assuming there was no direct proof as to the value of this plant in our original testimony. It was stated by the president most emphatically that this property could not be reproduced, for, and was worth more than the amount claimed for it in the bill.

Now, if counsel will simply be a little patient, he will find before we get very far that this is rebuttal evidence and is intended to show the expert testimony which he has introduced as to the value of that plant, is not worthy of serious consideration, when the

1466 explanation of it is made.

The MASTER:

I will let the witness answer. I think the more light that can be thrown on the basic question, of the value of the plant ought to come in, even at the last minute, as far as the Master is concerned, and would be glad to hear any proof on that point that is pertinent. That is one of the serious points in the case.

Mr. GRANBERY, for complainant:

I might also call the attention of the Master to the fact that the order of reference requires you not only to report the value of the plant at the time the bill was filed, but at the time his report is made, and therefore I assume this would be competent as original testimony going to different matters in answering that inquiry as to the present value of the plant, when making his report.

The MASTER:

Go ahead with the testimony.

Exception *preserved* by defendant.

Mr. GRANBERY, for complainant:

Q. Now you may answer the question?

A. We have in Louisville 13,870 poles, which I designate

1467 as local poles, valued at $23.92 each. In this pole classification I have included the cross-arms, bolts, lag screws, washers,

brace-threetimes pipe bracers and strap bracers, brackets, foot blocks, anchors, guy clamps, guy hooks, guy shins, pins and nails, the poles themselves, guy stubs, pole steps, cable arms and guy wire. I value these at $23.92 each, making $331,770.40.

We have 21,154.5 conductor miles of aerial cable and this classification includes all the cable which is strung on poles, the messenger to which it is fastened, the cable clips and the tie wires, sleeves, paraffine, compound and solder used in splicing the cable, the bolts and fasteners used in terminating the messenger and the cable boxes with the protectors, which are used in terminating the cable, wires, bridle rings and apparatus used in distributing it. The value of this I place at $20,418 a mile, making the valuation of aerial cable $431,953.35.

We have 5548 miles of aerial wire and in this classification I include the wire which is strung on poles in order to serve subscribers, the insulators, the solder and paste used to connect the wires, and I value it at $13.8853 per mile, making the valuation of the aerial wire, $77,035.87.

We have 438,803 duct feet of conduit, valued at 38.829 cents per duct foot. In this classification we include the conduit itself, the cement, sand, gravel, brick, steel rods, I-beams, angle irons, traps, cable hangers, the iron pipe-bands, lag screws, pipe plugs go-
1468 ing to complete the conduits and manholes. I value that at 38.829 cents per duct foot, making the value of the conduit system $170,384.21.

We have 18,626.3 conductor miles of underground cable, and in this classification we include all cables underground, the sleeves, solder, paraffine, compound and other materials used in splicing and connecting these cables, pot-heads and terminals at the distributing boxes, the boxes with their protectors, the wool-covered cable which connects it to the main frame, and we value that at $15,512 per conductor mile, making a valuation of underground cable of $288,942.50.

The Central Office equipment, which includes all switchboards, commonly known as A boards, and B boards, distributing frames, the intermediate frames, the wire-chief's testing apparatus and all the apparatus from the horizontal side of the main frame inward, in each central office which we value at $32.90 per subscriber, making the valuation $309,102.93.

We had on the 22nd day of February 1910 I think the date was, 9,395 subscribers' stations. Included in the subscribers' station equipment, the private branch exchanges, the subscribers' instruments, the interior wires, interior block wires, the drop wires, the booths, coin collectors, pay station apparatus and special fittings used in connection with that class, we value at $19,622 per station, making the value of this class of plant $184,351.04, or a grand
1469 total of all the plant in Louisville of $1,793,540.30.

Q. Does that include the entire value of the exchange plant, exclusive of real estate, office furniture and fixtures, working capital, supplies on hand, teams and tools?

A. Yes, sir.

Q. Mr. Jagoe, do you know that you have got the correct number of poles in that exchange?

A. Yes, sir.

Q. How did you arrive at the poles you allotted to the exchange in contradistinction to the poles you allotted to the long distance lines?

A. I had the poles in the Louisville exchange counted and classified. First, those poles which carried only exchange lines. We have 12,584 of that class. Second, poles which carry both local and toll lines and we have 1815 of that class. Third, those which carry toll lines only and we have 1129 of that class. And then poles which are used as guy poles, and we have 404 of that class. The guy poles were not included in my total of exchange poles at all. The poles which carry toll lines only, were not included in our count of such poles. The 1815 poles which carried both classes of wire, were divided route by route in proportion to the number of circuits of each class, toll or local, carried on each route. By following out that proportion for each route we arrive at the conclusion that 1286 of those poles could properly be called local and 529 toll.

1470 Q. Suppose there were no toll lines in Louisville, would those 1800 poles carrying both classes of wire, have to be there to carry the local subscribers' lines?

A. They would.

Q. But you have divided them in proportion to the number of circuits of each class?

A. Yes, sir.

Q. Now, what character of poles are used in that exchange?

A. We have chestnut poles, creosoted pine poles and red cedar poles.

Q. I believe Mr. Polk stated that we had a few cedar poles and the remainder were chestnut poles. What have you to say to that?

A. Mr. Polk did not make any inspection of the Louisville plant, and that was a hypothesis purely. We have in Louisville, not only creosoted pine poles and cedar poles, but long routes of those classes of poles.

Q. Can you give some of the pole routes built of creosoted pine poles in Louisville?

A. Yes, sir.

Q. Were they there prior to March 6th, 1909?

A. Yes, sir.

Q. Give some of those?

A. On Sixth Street, West Jefferson Street, West Main Street, Bank Street, Grayson Street and others we have routes of

1471 fifty-foot creosoted pine poles. On West Market Street between Fourteenth Street and Twenty-Second Street, is a route of largely creosoted pine poles; that is one of the best routes I have ever seen anywhere; it is the kind that makes a telephone man glad to have been there.

Q. Where do those creosoted pine poles come from?

A. Originally they come from the pine belt of Mi-si-sippi, and Louisiana, they are cut there, shipped into New Orleans or some other point—all of ours are treated in New Orleans the most convenient

point we have—and they are there subjected to a special process and shipped from New Orleans to the point desired, these were shipped to Louisville, and then erected.

Q. In the figures you have given, what size pole on an average do you allow in the Louisville exchange?

A. Forty feet.

Q. Does it make any difference in the cost, the length of the poles and the size of the poles?

A. Yes, sir.

Q. Is there much difference between the cost of twenty-five foot poles, or pole route, and a forty foot pole route?

A. A great deal of difference. The cost of the pole itself and the cost of erecting the pole is always in a much larger proportion than the lengths. A fifty foot pole would possibly cost five times as much as a twenty-five foot pole.

Q. Is this average of forty foot pole in this exchange, high
1472 or low?

A. Low.

Q. Is it necessary to use poles of that height in Louisville?

A. It is necessary in Louisville to use taller poles than in any city we do business in.

Q. Why is that so?

A. It is one of the largest cities we have. The business houses there make it necessary for us to get up high enough to keep from obstructing them, and all the trees are very well set along nearly every street we have, so that it is necessary for us to get up possibly ten or fifteen feet higher than if the town was not so well shaded. Then, again, in any City where we have a large amount of business and where we have a large amount of wire and other appliances on the poles, of course the more we have, the higher the pole has to be to carry it. In one place in Louisville, there are, beginning at the main exchange and running through South Louisville and Beachmont, by the Jockey Club, we have a route of 55, 50 and 45 foot poles continuously for seven miles.

Q. How many miles of poles has the Louisville exchange?

A. About 270 miles.

Q. That places how many poles to the mile?

A. Fifty.

1473 Q. You say that is the valuation of the plant. Is that the valuation of the plant as of March 6th, 1909, or at the present time.

A. Of today.

Q. What was the value of the plant March 6th, 1909?

A. Well, I was in a measure familiar with the plant as of that date, I didn't know it as intimately as I know it now, and I have no way of judging it except to take into consideration what I know has happened to us or has not happened to us in Louisville during that period, and the general depreciation of the plant and I would say the valuation today is slightly less than it was then.

Q. Has there been any additions to the plant since March 6th, 1909?

A. No, sir.

Q. Has the property been maintained in the meantime?
A. Yes, sir.
Q. Now you have given a classification of the material in that exchange, what classification do you follow?
A. The classification that is used by this company, and it has been agreed on practically by all the big companies in the United States and by all the telephone experts.
Q. There are various other classifications, are there not, of a telephone plant?
A. Yes, sir.
1474 Q. You can make as many classifications as you have different kinds of material?
A. Yes, sir.
Q. So, at last, it is a matter of judgment and opinion as to how you will classify your plant?
A. Yes, sir.
Q. Giving the amounts and quantities of material of each particular kind?
A. Yes, sir.
Q. Have you read the deposition of Mr. Crum and Mr. Polk?
A. Yes, sir.
Q. Are you familiar with the cost units in the report made by Prof. Jackson, in valuing the New England Telephone Company properties at the instance of the Massachusetts Highway Commission, and which has been filed as an exhibit in this case?
A. Yes, sir.
Q. Is it possible to compare the quantities and prices given by Messrs. Crum and Polk and yours, accurately?
A. That depends on whether or not I understand these gentlemen right. They mention a class and in that class it is very difficult to tell exactly what they include in it. According to my understanding of the different classes it will include all of the property in one or the other, I can.
Q. Suppose we take this basis; take the Central Office
1475 apparatus, what do you put it at?
A. $309,102.93.
Q. What does Mr. Crum state it to be?
A. $200,000.
Q. Does he include the same apparatus in that, which you do?
A. Yes, apparently.
Q. Now, what does Mr. Polk state it to be?
A. $203,000.
Q. What does Prof. Jackson state it, taking his units of value?
A. $192,907.53.
Q. Now, take sub telephones, pay stations and private branch exchange boards, what do you put that at?
A. $141,604.78.
Q. Now, what does Mr. Crum place that at?
A. $100,000.
Q. And Mr. Polk?
A. $102,500.
Q. And Prof. Jackson?

A. $151,597.72.
Q. Now take conduits, what do you put them at?
A. $170,384.21.
Q. What does Mr. Crum put them at?
A. $100,000.
Q. And Mr. Polk?
A. $94,900.
1476 Q. And Prof. Jackson?
A. $224,327.80.
Q. Take the aerial cable, what do you put that at?
A. $393,709.98.
Q. Mr. Crum?
A. $225,000.
Q. Mr. Polk?
A. Mr. Polk does not separate his aerial from his underground cable.
Q. And Prof. Jackson?
A. $485,594.22.
Q. Now, the underground cable, you put it at how much?
A. $288,942.50.
Q. And Mr. Crum?
A. $200,000.
Q. And Mr. Polk?
A. Mr. Polk does not separate his from his aerial.
Q. Prof. Jackson?
A. $277,958.32.
Q. Now, you have wires, drops, poles, messenger and sub station service wire, at how much?
A. $489,795.90.
Q. And Mr. Crum how much?
A. $150,000.
Q. Mr. Polk?
1477 A. Mr. Polk does not include service wire and with that exception, values it at $248,000.
Q. And Prof. Jackson?
A. Prof. Jackson does not make that classification anything like that.
Q. So, it is impossible to compare accurately the figures given by Crum, Polk with your Figures?
A. Except in one or two instances.
Q. Now Mr. Polk undertakes to give the basis upon which he arrives at the quantities and value of the cable in the Louisville plant, is that accurate?
A. No, sir.
Q. Give us the real facts?
A. Mr. Polk was handicapped in that he did not have the time necessary to make an appraisal of this plant. In his deposition he says that there is a small amount of cable shown as No. 20 gauge which was not worthy of consideration. Now, the blue prints that are filed in the case I believe as exhibits to Mr. Crum's deposition, show on that 52,846 feet, which is more than ten miles of this cable containing 20,909,800 conductor feet of No. 20 gauge cable.

That is over one fifth of the total conductor feet of all the cable in Louisville. That is plainly marked on those blue prints as No. 20 gauge cable.

Q. Were those blue prints the ones Mr. Polk used?

A. Yes, sir.

1478 Q. You have examined them since and you say that cable is shown on those blue prints?

A. Yes, sir.

Q. As a matter of fact is the cable there?

A. It is.

Q. Go ahead?

A. Mr. Polk says what was the result of that was he divided it, some No. 19 and some 22 gauge. Now, right there I had better remark that 19 gauge cable contains over twice the amount of copper that 22 gauge cable does and the copper is the most expensive part of the cable. Now these plans did not give all the cable in Louisville, didn't show all the measurements, in a number of cases, they were only working plans of proposed cable extensions and they could not be considered absolutely accurate in any sense, but they did give us substantially the amount of cable that was in the town. Now on them Mr. Polk made an absolute division between No. 22 and No. 19 gauge cable, and I presume where the measurement and gauge wasn't given, and the number of pairs, the only way he could have done it was to guess at it. But, eliminating all that doubtful cable, not counting it in any class, I find that we have shown plainly on those blue prints, twice the amount of No. 19 gauge fifty pair cable that Mr. Polk gives us credit for. If you count that 22 gauge cable instead of 19 gauge, as it properly is, it will account for some of the variation between Mr. Polk's valuation and mine, and perhaps all of it, following out the same proportion. To be exact, Mr.

1479 Polk says that there are 37,630 feet of No. 19 gauge, fifty pair cable. Plainly marked on those maps in runs of some size, leaving out the little runs that do not count much, and which there is any doubt about at all, we have 79,571 feet of fifty pair 19 gauge cable.

Q. Are you prepared, if counsel desires, to specify the particular places in the streets of Louisville where that cable is?

A. Yes, and the length in each location.

Q. Now you can proceed?

A. Mr. Polk states that this company has 87,483 feet of 19 gauge 100 pair cable—I would like to say here, in my list of this cable, I made measurements and observations wherever the blue prints were doubtful, and ascertained exactly the right amount, so in my classification I have the cable as it is there today. But on those prints, plainly marked is over 150,000 feet of 100 pair, 19 gauge cable.

Q. Now if you take the actual amount of cable that exists in the Louisville plant and apply to it the valuation units used by Mr. Polk, is there any material difference, or any difference, between the valuation of the cable on your figures and his figures?

A. There would be very little.

Q. Now, take another big discrepancy between you and Mr. Polk,

on the question of the valuation of the poles. How does that come in?

1480 A. Mr. Polk presumes that nearly all of our poles there are are chestnut. Chestnut is the cheapest pole we could have in Louisville, because it is nearer the place of supply of chestnut poles. We have, as I have said before, a great many of other, more expensive kinds of poles in the city. Mr. Polk estimates 11,000 poles in the city of Louisville, and as he has not seen it, it is purely an estimate, and we have made an actual count of the poles in the city and the values on his pole, I believe he placed it at $15.00 per pole. We cannot set them at that price at all. There could be poles set for $15, but they would not be the length poles and class of poles we have in Louisville.

Q. Now take the next matter, take the units of value first used by Prof. Jackson, and applying to the number of poles in Louisville, what would be the result?

A. $190,379.62.

Q. Now, what have you to say with reference to his unit of value?

A. His unit of value is very close to our unit of value on all poles used within the company's territory.

Q. What does his unit of value include?

A. It includes every pole in Massachusetts, including the 25 foot poles out in the country routes. After we leave the City, the average pole is possibly about twenty-six or twenty-seven feet, and the cost of it is about $6.50 each. Mr. Jackson used of course, those poles, as well as the city poles in his estimate.

1481 Q. Of course I assume that these valuations you have given include the cost of labor, of placing the property in usable condition as it stands today?

A. All the labor, freight, cartage and all expenses incident to erection into the plant.

Q. You say you have not allowed anything for working capital, supplies on hand, teams, tools and matters of that kind?

A. No sir.

Q. How much ought to be allowed in a plant of that size knowing the conditions as you do and having had the practical experience you have had with that plant?

A. To provide for a normal growth and usual conditions there would ordinarily be kept on hand about fifteen to twenty thousand dollars' worth of material. I am not familiar enough with the working capital to pass upon that.

Q. What about the tools and teams?

A. The tools and teams in a city the size of Louisville, would be valued at twenty thousand dollars.

Q. Have you made any allowance for depreciation of plant? Are you valuing this plant as it stands today or as it would stand brand new?

A. I am valuing this plant at what it would cost to replace it today, were it all done under one contract.

Q. Now, by the time it was installed and ready for operation it would no longer be a new plant, would it?

A. No sir.

1482 Q. Now, take that plant as it stands today, in its present condition, what is its actual value, exclusive of real estate, tools and teams, working capital, supplies on hand and other elements entering into it?

A. I would value it at the figures I have given, $1,793,540.30.

Q. You have not figured anything for expenses of getting rights of way, tree-trimming privileges and getting business, franchises or anything of that kind?

A. No sir.

Q. Is Mr. Crum's deposition in detail sufficient to enable you to take up or check up any of the valuations he places upon the property?

A. No sir Mr. Crum does not give anything that would enable us to know upon what amount of property he bases those valuations, except in one instance, I believe he says we assume they have 10,000 poles in Louisville, in all.

Q. Is there any difference in the cost of a telephone plant of the same size in different cities?

A. Yes sir.

Q. Why is that?

A. There is an individuality about every plant, that you cannot separate from it. There are conditions in every city that are different from the conditions in every other city, and one of the biggest features that often escape attention is the class of
1483 service given. We can serve 10,000 subscribers in one class for one third of the construction expense that you can serve 10,000 subscribers of another class; and then, it is possible to give connection to subscribers at one price and then, by increasing the efficiency of the service or the reliability of the service, to add fifty per cent to the construction value.

Q. Can you give us an illustration of that idea?

A. Well, in the first part of it, Mr. Crum states that in Chicago the value is, I believe $99.96 per station. The plant in Chicago is undoubtedly a good plant, it is owned by a company which intends to do business in Chicago for some time to come, and their construction is good, undoubtedly, though I have not seen it. But they serve a very different class of subscribers. They have in Chicago a large number of ten-party lines. For instance in this book here, report of the Chicago Commission, reporting in August 1906, Chicago is shown to have had 23,942 private branch exchange telephones. Now you will note here this class of telephone has not any direct connection with the switchboard. They have 9,163 flat rate business telephones; 6511 flat rate residence telephones, and 30,657 measured service telephones. Now, those last three, which comprise about 46,000 telephones, include all the direct, two-party and 4-party lines in the city. They have 38,461 ten-party telephone and 6,693 extension telephones. This book does not give anywhere the number of lines in service in the City of Chicago, but
1484 by applying the ratio which would be proper, I find that the proportion of the number of lines in the City of Chicago to the instruments installed, would be about thirty per cent. The

proportion of lines in the Cumberland Telephone and Telegraph Co. plant to the number of instruments installed is sixty-two per cent, so that, except for the subscribers' instruments and the inside wiring, the proportion of all other plant including central office equipment, conduits, poles, cables and all outside plant, would be twice as large in Louisville as it is in Chicago. By running that proportion out, you will find, if we were to serve in Louisville the same class of people that they do in Chicago, we could do it for about $104 per station on our present valuation.

Q. Do you have to keep an excess of instruments and facilities on hand for new subscribers?

A. Yes sir.

Q. Suppose they are used in getting new subscribers, then what has to be done?

A. They have to be replaced by additional apparatus and equipment.

Q. Mr. Polk spoke of telephone pole routes being on both sides of the street and as I recall, intimated this was done to block the Home Telephone Co. What have you to say about that?

1485 A. That looks like ancient history, for he says the conditions did not exist at the time he was giving his testimony, and it is recognized as good, wholesome, economic practice to put parallel lines on adjacent streets or even on the same street.

Q. What is the reason for it?

A. It is pretty much as though you were to have a warehouse with capacity say for a thousand hogsheads of tobacco, and needed a capacity of two thousand. This ware-house you have is in good shape and will last you for many years, and will accommodate the thousand hogsheads, and you have space next door you can build another ware-house on, and it just resolves itself into a question of whether you will tear down your first warehouse and build a ware-house with two thousand hogsheads capacity, or would you build another one of a thousand capacity that you could later on increase to two thousand capacity. In that way, if we have a pole line on one side of the street, if we dismantle that pole route, we absolutely throw away the largest part of the investment. The material is not worth near as much, cable will suffer more by being handled once taking it down than by ten years of ordinary use upon the route, and as long as that route stands there and gives service, we will have two routes practically an insurance to half of our subscribers that they will have service all the time. That route would

1486 ordinarily, by a conservative company, be kept in commission until the maintenance of it assumed such proportions it would be more economical to tear it down and move the cables and wires to the parallel route.

Q. Is there any difference in the cost of telephone plants even in the same city?

A. Yes, difference in the cost of telephone plants in Louisville.

Q. Does it convey any intelligent idea of the value of one plant to talk about the value of the other plant?

A. No sir.

Q. Or high cost of one as compared with the other?

A. No sir.

Q. Does the cost of one have any bearing upon the cost of the other?

A. No more than it would to say the ability of every lawyer is the same.

Q. I will ask you to state whether or not any man, expert or otherwise, has a right to undertake to value a telephone plant as large as the complainant company's plant in the City of Louisville, without an accurate knowledge and a thorough investigation of it?

A. I would not do it. I don't think anybody would have the right to endanger such large property without knowing it.

Q. Messrs. Polk and Crum seem to think a telephone plant can be built in the City of Louisville for about eleven hundred thousand dollars, that will serve ten thousand subscribers. What have

1487 you to say as to that?

A. It would be impossible, in the first place, to even duplicate our plant there. We have rights of way there that it would be impossible to get now, and if it were possible if we were to have all the advantages we have, then we could not begin to do it.

Q. Aside from that question, can a plant be put up in the City of Louisville—a telephone plant that will give service to ten thousand subscribers for $1,100,000?

A. Yes sir.

Q. What kind of a plant would it be?

A. It would be one perhaps slightly inferior to the one owned by the Independent Telephone Co. in Louisville now.

Q. That would depend upon the character of material used and work done?

A. The character of material and the stability of the plant after it was erected and the class of service that plant would be equipped to give.

Q. Mr. Polk or Mr. Crum, one or the other seems, to think that other telephone apparatus is just as good as the Western Electric Co. apparatus. Have you had any experience with that?

A. Yes sir.

Q. What has been the result of your experience?

A. This company has purchased a large number of plants from independent companies. These companies nearly always have

1488 switchboards and apparatus designed and built by manufacturers other than the Western Electric Co. and in every case we have been forced to replace them with Western Electric Co. apparatus, because we found the Western Electric Co. apparatus gave better service.

Q. Does the Western Electric Co. compete with all the other concerns and manufacturers in all the markets of the world?

A. It does.

Q. Does this company buy or exercise its judgment to buy wherever it pleases, of any manufacturers?

A. It does.

Q. Why do they buy generally from the Western Electric Co.

A. Because they get a better grade of apparatus from the Western Electric Co.

Q. That is a matter that the management exercises its own independent judgment upon?

A. Absolutely, yes sir.

Q. Have you in mind any large contract in which the Western Electric Co. got the contract over independents where there was no question of Bell or independent company?

A. The biggest contract that has been given at all, except by Bell Company was given to the Western Electric Co. in London, England for that exchange and the contract was given by the English Government, amounting to twenty millions of dollars and it was secured in competition by the Western Electric Company.

1489 Q. What have you to say with respect to Mr. Polk's estimate of the iron wire in the Louisville exchange?

A. Mr. Polk estimates 3,000 miles of single No. 14 iron wire, 500 miles of single No. 12 iron wire, and he states he does not know what class of wire this company uses, but that B B iron wire is the best telephone wire made. B. B. is not the best telephone wire made or the best iron wire made. Every manufacturer that quotes B B iron wire carries and quotes prices on E B B wire, which is superior to B B iron wire. Now, we have not a single foot of No. 12 iron wire in Louisville.

Q. What have you?

A. We have No. 10 iron wire and this No. 10 weighs 95 pounds per single mile more than No. 12. No. 12 iron wire, B & S Gauge, weighs 165 pounds to the mile, so that the cost of our No. 10 wire would be about sixty per cent more than the cost of the wire which Mr. Polk estimated.

Q. What is your valuation of the aerial wire in Louisville?

A. $77,035.87.

Q. What does Mr. Polk give it?

A. Mr. Polk does not separate the wire from the poles.

Q. What does Mr. Crum give it?

A. He does not separate it from the poles.

1490 Q. Now, with reference to the substation equipment, that is, private branch exchanges, what does Mr. Polk estimate on that?

A. Mr. Polk's estimate, as nearly as I can establish, he specifies we have seventy-five private branch exchanges in Louisville.

Q. As a matter of fact, how many did we have?

A. By consulting the directory, which was in force at the time and in general use, we find 112 private branch exchanges, and it is confirmed by our records.

Q. How much is that above what Mr. Polk estimated?

A. About forty-eight per cent.

Q. Does Mr. Crum give any data from which you can ascertain what he figures on?

A. No sir he does not.

Q. I will ask you to state concisely, so it will all be together, the valuation of the Louisville plant and the classifications you make so

that it will show at a glance all the figures you have used with reference to the different classifications. Is this it, if so, read it to the stenographer.

A. Yes sir that is it, and it is as follows:

"Appraisal of the Plant of the Cumberland Telephone and Telegraph Company, Louisville, Kentucky exchange, compiled
1491 from figures and estimates made in their plant department:

13870 poles at $23.92 each	$331,769.40
22,151 miles of conductor feet aerial cable at $19.455 per mile	431,955.35
5548 miles aerial wire at $13.8853 per mile	77,035.87
42485 duct feet conduit at .4015 per duct ft.	170,676.96
18,669 miles conductor ft. underground cable at 15.477 per mile	288,942.50
Switchboard	309,102.92
9395 sub. stations at $19.63 each	184,465.15
Total	$1,793,540.30

Mr. BLAKEY, for Defendant: Without waiving my right to make a motion to have this deposition quashed, or certainly the largest part of it, I want to ask the witness one or two questions and then make my motion.

Cross-examination.

By Mr. BLANKEY, for Defendant:

Q. When did you begin making this appraisement and inventory of the property of the Cumberland Telephone and Telegraph Company in Louisville?

A. About the 15th of January.

Q. Was that after Mr. Polk, Mr. Crum and Mr. Levings had testified in this case on behalf of the defendant?

A. I don't know when Mr. Levings testified; it was after the other two gentlemen testified.

1492 Q. Did you notify the City of Louisville or anyone for the City of Louisville of the fact that you were going to make such an appraisement and inventory, and give it an opportunity to be with you at the time you made it?

A. No sir.

Q. Or give them an opportunity to have any representative of the city with you?

A. No sir.

Q. Did you know that Mr. Polk had written a letter to the Cumberland Telephone and Telegraph Company asking that company for a list or map or blue print or statement of its property in the City of Louisville?

A. I think I did; I think I saw that in his deposition.

Mr. BLAKEY: Now, Mr. Master, I wish to call your attention to a question and answer in Mr. Crum's deposition; which reads as follows: Question. You spoke yesterday of being unable to procure

a map of any sort or a blue print showing the number of poles and the aerial wire and the location thereof, used in connection with the Cumberland Telephone Company's plant. I will ask you whether you made any attempt to procure such a map or blue print or record from the Cumberland Telephone Co., other than
1493 by inquiring of the officials of the company at the Louisville office?

"A. Yes, I did. I wrote a letter to the attorney for the company, Mr. Farley, I believe his name is, or to the Cumberland Telephone Company in Louisville and it was replied to by the attorney for the company, saying that the maps were not at hand and could not be furnished.

Now, to go somewhat over my first objection, to the first witness answering the question, the complainant took its proof in this case and rested its case. The defendant got permission to inspect the plant of the company, it went to the company's office and procured such data as it had on hand and which the witness Crum testifies as represented to him by the general manager as representing the entire property included in the plant with the exception of a map or blue print or data showing the extent of their pole lines in the City of Louisville. The experts for the City then proceeded to inspect this plant and, taking the data it had obtained from the company, placed a value on it and testified in regard thereto.
1494 The company then proceeded, without any notice to the City of Louisville and without giving the City of Louisville an opportunity to be present, went into such inspection or examination or appraisal of the property on its own account, and now offers testimony which is without question original testimony, is not in rebuttal and it simply puts the City of Louisville in the attitude of having to go to work and go to the expense of employing other experts to go over this same proposition they have already gone over. It is not fair to the City of Louisville and is in violation of all rules of evidence to permit such a thing, and it simply means there is no such thing as coming to a conclusion of this case, if this testimony is to become a part of the record.

And for that reason, I move to quash, certainly all parts of this deposition which are not in rebuttal of what the defendants' witnesses have testified to, and I should like to have an adjournment until the deposition can be written out and taken up question
1495 by question, and passed on.

Mr. GRANBERY, for Complainant: When this case was at issue, we took the depositions of our auditor, president and others. That proof not only showed the cost to us of this property, but we also proved what we thought was its value and there we rested.

Counsel for the City was not content to stop there or accept either statement. The City thereupon insisted upon letting this case stand open and remain open for months while it had expert accountants investigate the records of this company with reference to ascertaining what this property had cost the company. After having done that and taken that proof the City in the meantime had employed expert engineers—so-called expert engineers to make a physical valu-

ation of the property. In order to enable them to do this work, we were called upon to furnish them all the maps of the property we had and we did it, and they are exhibited today with the deposition of Mr. Crum. They had just as much time as they desired to go there, investigate this property, count the poles, count the
1496 cables and the wires and other apparatus, and they have never been denied access to anything we had, either physical properties or the records, and they get on the witness stand and by their own testimony show that they have not given the subject enough thought to justify them in testifying what we had there or its value, but they had made a case that required us to rebut.

Thereupon we went to the expense of having our people go there and accurately see what we did have and we come here now and tell you in a deposition, exactly what we have there and what it is worth, and yet, counsel says it is incompetent testimony and direct testimony. It is strictly testimony to rebut the very statements that this man Crum and Polk and Levings have put in this record and we think we have a right to rebut that, and in addition to that, you were called upon by the Court's order to report the present value. Now this case has dragged for over a year, which was never contemplated by the Court. Now suppose we put no proof in as to the present value of the plant, how would you be able to report to the Court upon that inquiry that is propounded. The deposi-
1497 tion of the auditor and president were taken away back yonder, my recollection is in April or May.

The MASTER: When the complainant finished with its depositions here of the auditor and the president, it had made out as a matter of course a prima facie case. If there had been no proof taken at all, I take it for granted a decree would have gone down—no proof to offset that. Then the defendant took its proof and that proof tended to discredit much of the evidence of the auditor and of the president. Now after doing that, then the defendant proceeded further and took proof as to the physical properties, after exhausting the evidence on the question of the books and the book values and purchase price, they then took evidence as to the physical properties owned by the company in Louisville.

Now, the witnesses did not undertake to show that they made a very detailed examination they were in Louisville a few days every time, for several visits, and they seem to estimate very considerably the poles and miles of wire and all that sort of thing, and
1498 according to their estimates, based upon certain classifications of the property and upon certain units, they say experts have accepted as the proper basis for estimating the value of the properties, they estimate there were so many poles and so many of this, that and the other, and upon that estimate they base an opinion as to the value.

Mr. BLAKEY, for Defendant: If you will allow me to interrupt you there. What Mr. Caldwell and Mr. Smith said, who testified on direct examination, was what in their opinion was the value of that plant, and now we come along and rebut that by having our witnesses show what in their opinion that is worth. Now that is

the opinion and estimate of our people as against the opinion and estimate of the witnesses for the complainant on the direct examination. Now here is——

The MASTER: Yes, I have read all of that.

Mr. BLAKEY: Now here comes in another proposition, this direct proof, which can not be said to be anything but direct
1499 proof—he is bringing in something we are bound to rebut if it can be rebutted, we are bound to make the investigation and make the inspection. If it has taken these people three months to make up this case, we are entitled to three months to inspect it, and appraise it. We never attempted to inspect it or appraise it because they had not attempted to do it. We simply were knocking down the man they had put up, all we had to do was to meet the case they put up. Now, they are putting up another case.

The MASTER: No, I differ with you about that. It seems to me this proof here by Mr. Jagoe as to the actual number of poles and number of conductor feet of conduits and the aerial wires and the quality and the value of the wires, is strictly in rebuttal of Mr. Crum and Mr. Polk and Mr. Levings. It seems so to me, and there may be and I rather think that intermingled with the statements of Mr. Jagoe there is some proof there that possibly might have been introduced in chief.

1500 Mr. GRANBERY, for Complainant: I will state to your Honor we could not possibly anticipate and introduce that proof; we can only do it in rebuttal, because we did not anticipate there would be any such proof in the case.

The MASTER: I was going to say, under the directions to the Master Commissioner, that any proof that is pertinent to this issue, ought to be heard up to the very last day before he makes his report, and I will say very frankly, if you will put your men, any witness you want to on the matters testified to by Mr. Jagoe, and if you ascertain he is in error about any of them, that the Commissioner will hear it, just as much so as if it had been introdued here before.

Mr. GRANBERY, for Complainant: And I will add there will be no objection on the part of complainant's counsel to his doing so, either.

The MASTER: The way I feel about this matter is that everything that would tend to throw light on this matter, ought to be introduced.

It is a very serious matter both to the City and to the Com-
1501 pany. I think the evidence is all right.

And I want to say the Commissioner wants to hear some more testimony in regard to depreciation. I have been reading on the question of amount of depreciation, how that fund has been applied and used and what the annual depreciation of a plant like this, that has been in existence for fifteen years—what effect it has on the present condition and the present status of the plant. That is to say, taking up the maintenance and reconstruction and all that. That has been gone into in a general way, but I have not been able to find actual figures that are entirely satisfactory. I have read all of that proof.

Mr. BLAKEY, for Defendant: That has been discussed somewhat.

Mr. GRANBERY, for Complainant: I will state to the Master that the next witness is the general manager of this company, who has had twenty five years' experience in this business and has been doing nothing else. You will find in the testimony, statements as to the per cent of depreciation and that is as near as you can get it, until you come to apply your figures.

1502 You will recall that the president of the company said seven and a half per cent. Other witnesses put it all the way from five to twelve per cent, and it runs from five to twelve per cent in the proof. The reason I did not ask the present witness about that is that he has not had the experience in that particular part of the business that I thought justified me in making him an expert on it, as we had the general manager who had been familiar not only with this plant, but all of our plants for twenty-five years, and he probably would be a better witness.

Mr. BLAKEY, for Defendant: Going back to the motion which I made, I would like to make this further suggestion to the Master: If after this witness is concluded the City puts on three witnesses who absolutely disprove everything he says, I suppose then the complainant would have the right to put on five witnesses and prove what they say is not true.

The MASTER: No, it would not be indefinitely postponed.

1503 Mr. BLAKEY, for Defendant: On the same theory, I thought it ought to be. They put up one case, we try to knock it down and they put up another.

The MASTER: They are trying to knock down a state of facts you put up by this testimony.

Mr. BLAKEY, for Defendant: I only had my witnesses testify to the state of the case that they first proposed, which was their value of the plant; they said, we consider the plant worth a million seven hundred thousand dollars, and we put three on and they say they consider it worth a million dollars and give their reasons, and this witness says, I consider it worth a million, seven hundred and ninety thousand dollars.

The MASTER: But they are all based upon different theories. Now your witnesses testified as to the value of the physical property, reproduction value, and this testimony is strictly in rebuttal of those witnesses. Now, if you have any others, any time before the latter part of April——

1504 Mr. BLAKEY, for Defendant: I think it would take them three months to do it.

The MASTER: I suggest you take up any part, at random as to his testimony about the conduits, or aerial wires, or anything and test the correctness of his figures.

Mr. GRANBERY, for Complainant: There are two main differences

between the witnesses, witnesses for complainant and the City attorney, are these: One says there are so many actual poles in the Louisville exchange. Neither of the other two gentlemen undertake to do anything except estimate them. The City Attorney can have them counted and if a witness is put on and says I have counted them and says, there are ten thousand, I can ask how many on this street, and I check him up and I don't apprehend there will be a man that will differ with what Mr. Jagoe says. Mr. Polk, the only one of his witnesses who undertook to go the cables, the amount and size of it, Jagoe undertakes to say he didn't do it accurately by the very blue prints he had in hand.

1505 The MASTER: Crum and Levings didn't undertake to go into that at all.

Mr. BLAKEY, for Defendant: We didn't have to go into it, because they had not gone into it.

The MASTER: But they estimate it.

Mr. BLAKEY, for Defendant: That is all Mr. Caldwell and Mr. Smith did.

Mr. GRANBERY, for Complainant: Mr. Caldwell and Mr. Smith knew about it and these other witnesses did not know anything about it.

The MASTER: I somehow think this is rebut-al testimony in the main.

Exception by defendant.

Mr. BLAKEY, for Defendant:

Q. Did you count all the poles in the City of Louisville in use by the Louisville exchange?

A. I had them counted, under my supervision.

Q. They were not counted by you.

A. Not personally.

Q. You don't know whether there were ten thousand or thirteen thousand then, of your own personal knowledge?

A. I know they are there by the records of the company,
1506 as furnished by different people in the plant department.

Q. When were those records furnished?

A. The last one was made during the month of February, 1910.

Q. This year?

A. Yes sir.

Q. You don't know then, of your own knowledge whether there are thirteen thousand or ten thousand poles there?

A. Do you mean to ask did I count the poles myself?

Q. Yes?

A. No, I did not.

Q. And you don't know whether they are there then?

A. I know it as well as I am able to know anything that goes on in my department. They were counted by people under my super-

vision, who were directed to make an absolutely fair count, and to recheck that count.

Q. Now, you say there are 21,154 conductor miles of aerial cable?

A. Yes sir.

Q. Have you inspected that aerial cable yourself?

A. Part of it I took from the records, on those blue prints, where I knew the conditions were as the blue prints showed them.

Q. Do the blue prints show that many miles of conductors?

A. Yes.

Q. And those are the blue prints Mr. Crum filed with his
1507 deposition?

A. Yes sir. Just to explain that I will say that there is practically no difference in the number of conductor miles of cable as furnished by Mr. Polk and myself; in fact I believe I am a little under Mr. Polk's estimate in the mileage.

Q. What is the difference between you and Mr. Polk on the value of that aerial cable?

A. I am unable to tell.

Q. What do you value it at?

A. $431,953.35.

Q. What does Mr. Polk value it at?

A. He does not value the aerial cable separately, but includes both aerial and underground.

Q. What do you value the underground cable at?

A. I value the underground cable at $288,942.50.

Q. What is the total of those two?

A. $720,895.85.

Q. What is Mr. Polk's valuation of those two items?

A. $384,440.

Q. Do you show how many duct feet there are appearing in the conduit system?

A. Yes sir.

Q. How many?

A. 438,803.

Q. How many does Mr. Polk say there are?
1508 A. 436,890.

Q. And what do you say it would cost to reproduce that conduit system per foot?

A. $170,384.21.

Q. I asked how much per duct foot?

A. 38.829 cents per duct foot.

Q. How much does Mr. Polk place it at?

A. 20 cents per duct foot, and he adds $7,500 for the iron pipe, he says.

Q. Now did you install this conduit system in Louisville for the Cumberland Company?

A. No sir.

Q. Did you employ any of the labor or purchase any of the material which went to install that system?

A. No sir.

Q. Do you know what your conduits are constructed of, what kind of material?

A. Yes.

Q. What kind?

A. We have, in the main, three classes; Iron conduit incased in cement—in fact, the whole system is very heavily encased in cement; it was built at a time when it was considered an experiment, and it was very heavily constructed. We have the iron pipe, the Camp tile, which is one of the kinds of multiple tile now in use and the Lynch tile.

Q. When you install conduit systems now, of what is it
1509 constructed?

A. Iron pipe and some kind of vitrified tile was the ones that are commonly used I believe. It all depends on the location and the class of service it is intended to give, and external agencies liable to effect it.

Q. Have you installed any conduit system in New Albany, Indiana, in recent years?

A. Not under my direction.

Q. You didn't know about that?

A. No sir.

Q. None has been installed in Louisville in recent years?

A. None to any extent.

Q. Were those figures you gave awhile ago the figures representing the cable system both inside and outside of the conduits?

A. The underground cable figures I gave, represented the cost of replacement of cables inside of the ducts and the aerial cables are the ones outside.

Q. You gave two sets of figures there as different between yourself and Mr. Polk's estimate, and the one was seven hundred thousand dollars and one was some three hundred thousand dollars?

A. My valuation of all cable appliances in the City of Louisville was $720,895.85.

Q. And Mr. Polk's was how much?

A. $381,440.

1510 Q. What character of wire have you in these cables?

A. Copper.

Q. How is the value usually placed on cables per cable foot, or per cable mile or what?

A. The different companies have different methods of determining the value. Do you mean of the cable in the plant?

Q. Yes?

A. The usual way is to average the number of conductor feet. Other companies average the lineal feet of cable and others separate it into different lengths of each size; our estimate was based on the actual cable that went in, together with our units of cost we are using every day in the construction dpartment for the erection of it.

Q. Did you place any value on this cable system per cable foot?

A. No, sir.

Q. Did you ascertain how many cable feet there were in the system?

A. It was necessary for me to ascertain how many feet of each kind of cable we had, and I don't know whether I assembled it into one measurement or not, but I think I have the figures and can give it to you.

Q. I should like to know how you arrive at the figures you have made?

A. I took the different lengths of different pair cables, a cable having 100 conductors and having in it fifty feet, would have
1511 five thousand conductor feet.

Q. What value did you put on the cable per foot?

A. In estimating that we figure the price of cable at the factory, quotations furnished by three large cable manufacturers, and added to that freight, cartage, labor and other expenses necessary to erect it.

Q. Please give in detail and let me know how you reach those figures there as the reproduction value of the cable system in Louisville?

A. In the underground cable I estimate the total value of the whole underground plant by computing 1842 feet of twenty-five pair No. 22 gauge cable at eleven cents per foot, $202.62.

Q. Is that eleven cents per foot the cost of the cable at the factory?

A. Yes, sir.

Q. All right, go ahead?

A. 2766 feet of 50 pair No. 22 gauge cable at 17 cents, $470.22. You asked me was that the cost of the cable at the factory, that was taken, the average price for the last eight years; I ascertained the average quotations for the three large manufacturers for the last eight years; 54256 feet of 50 pair No. 19 gauge cable at 27 cents; $14,649.112. 2925 feet of 100 pair No. 22 gauge cable at twenty nine cents, $848.25; 1143 feet of 100 pair twenty gauge cable at forty cents, $457.20; 130149 feet of 100 pair 19 gauge cable
1512 at fifty two cents, $67,677.48; 8484 feet of 200 pair, 22 gauge cable at 55 cents, $4,666.20; 55,854 feet of 200 pair 20 gauge cable at seventy cents, $39,097.80; 50,276 feet of 400 pair, 22 gauge cable at ninety-three cents per foot, $46,756.68. Now all the cable in the central office preparing to terminate on the main frame, are wool covered which is much more expensive than the ordinary paper insulated cable, so we have added for the difference in value of this wool covered cable, which was computed by finding out the number of feet and multiplying that by the difference in price of the two, which was $7,950. To splice that cable would require 9400 splicers, costing $12.40 each $11,656; 9400 pounds of lead sleeving at six cents per pound, $564; 9400 pounds of wiping solder at sixteen cents per pound, $1504; 300 cable boxes with protectors, at $21 each, $6,300; 300 pot heads at $10 each, $3,000. In the splicing, pot heads we included the labor and expense of making them. The labor of pulling in these cables at .055267/4 cents per foot, $17,005.50 Laying out 21000 pairs on main frames, $795.00; teaming, $7,749; 1000 pounds of paraffine at seven and a half cents a pound, $75; 37,600 paper sleeves at thirty-five cents per thousand, $13.16; freight and supervision, $57,505.27, making a total of $288,942.50.

Q. That is for the cables inside of the conduits?

A. Inside of the conduits and laterals terminating on the buildings in the underground district and up the pole to mes-
1513 senger level where they join with the aerial cables.

Q. Did you superintend the installation of that cable?

A. No, sir.

Q. You don't know how much it cost to install it I suppose, then?

A. Part of it I do, yes.

Q. How do you know?

A. Because part of that cable work was done since I have been here and we have replaced certain parts of those cables and the cost of doing all work in Louisville during the past two years that I have had supervision of it has been used in assembling the units which we are using in this estimate.

Q. Can you tell how much cable foot per cable foot it would cost then to install that cable in the conduit system, to purchase it and install it.

A. Yes, I can find it out. (Witness figures) A shade less than ninety-four cents per foot.

Q. Now, coming to the aerial cable, please give that, go into detail, state just how you arrive at your figures as to the cost of purchasing and installing the aerial cable?

A. 1275 feet of 10 pair, 22 gauge cable at seven cents per foot; $89.25. 15,181 feet of 25 pair, No. 22 gauge cable at eleven cents per foot, $1,639.91; 22,285 feet of fifty pair 22 gauge cable at seventeen cents per foot, $3788.45; 51063 feet of fifty pair, 19
1514 gauge cable at 27 cents per foot, $13,787.01; 182,362 feet of 100 pair, 22 gauge cable at twenty nine cents per foot, $52,884.98; 155,346 feet of 100 pair, 19 gauge cable at fifty two cents per foot, $80,779.92 103,249 feet of 200 pair, 22 gauge cable at fifty five cents per foot, $56,786.95; 657,628 feet of messenger at .023 cents per foot, $15,125.44; 500 protector boxes at $28.04 each, $14,029; 2301 guy clamps at fifteen cents, $345.15; 1096 U bolts at four cents each, $43.84; 18,300 pounds of lead sleeving at six cents per pound, $1,098; 18300 pounds of wiping solder at sixteen cents per pound, $2928; 2000 pounds of paraffine at seven and one half cents per pound, $150. 372,815 cable clips at $3. per thousand $983.41; 336,000 paper sleeves at thirty five cents per thousand, $128.10; 422 coils of No. 14 iron wire at $2.00 per coil, $844. Labor stringing 530,761 feet of cable at .0505626096 cents per foot, $29,861.12; stringing 657628 feet of messenger at three cents per foot, $19,728.84. Hanging 500 cable boxes at $7.00 each, $3500; 500 pot heads complete at $10.00 each, $5,000; 1830 splicers at $12.40, $22,692; teaming, $16,155. Freight and supervision $89,563.98, total, $431,953.35.

Q. And how much is that per cable foot?

A. Eighty one cents per foot.

Q. Now you spoke of cable clips, how many cable clips did you say there were?

A. 372,815.

1515 Q. Did anybody count those?

A. No, sir. It is necessary to put them a certain distance apart on each size of cable.

Q. It is an estimate?

A. No, sir, it is not exactly an estimate. It is a condition I know exists. I have seen the cable and know it is tied in the regulation manner.

Q. You have there 2301 guy clamps, did you count those?

A. No, sir.

Q. Did anybody else count them?

A. No, sir.

Q. You have 18,300 lead sleevings, did anybody count those?

A. No, sir.

Q. 18,300 wiping solder?

A. That is pounds.

Q. Anybody count those?

A. No, sir.

Q. You have 366,000 paper sleeves, did anybody count those?

A. No, sir.

Q. That is an estimate, then, all those, are they?

A. They are the application of facts that we know; we know we require 200 paper sleeves to make 100 pair splices. Now, I don't open it and go in, could not open it and go in, would not have been practicable, but when I saw a splice, I know it is there.

Q. Did you count the splices?

1516 A. We count the splices by runs of cables and termini of them.

Q. You estimated that then?

A. Yes, sir.

Q. 530,761 of cable stringing, what is that?

A. Feet of cable strung.

Q. Did anybody count that?

A. Yes.

Q. How did you count that?

A. We took those blue prints which show the measurements on them, and where they were not on the blue prints, we measured the cable.

Q. You have 357658 feet of messenger strung, is it?

A. Yes, sir.

Q. What does that mean?

A. That is the wire that supports the cable.

Q. How did you measure it?

A. At the same time that the cable was, and by the blue prints, wherever you have to have cables you have to have messenger to support it and have to carry the messenger beyond the cable one span.

A recess was here taken until this afternoon at two o'clock.

1517 Afternoon Session.

Mr. BLAKEY, for Defendant:

Q. Now the item such as 9400 pounds of lead sleeving, and 9400 pounds of wiping solder, and items of that nature, mentioned in your itemized account of the articles going to make up the cable in the underground system are of the same nature, and the facts you have testified to in regard to the aerial cable apply to those, as they do to the underground, do they?

A. I don't remember exactly what was said about them, but I will state it this way: I did not count the splices; I counted the manholes, where I knew splices had to be made, and I made a computation of what would be absolutely necessary to splice this cable, and in doing this, I consulted recognized authorities on it and I can state positively that this amount of work is necessary for the erection of this amount of plant. Those weights of metal were gotten from my experience and the company's record on similar work, and from other authorities.

Q. Now, you place the value of purchasing and placing in position, the poles, at $23.92 each?

A. Yes, sir.

Q. Did you have anything to do with the purchasing or placing in position of those poles?

A. Very few of them, of course.

Q. You don't know that it cost that much?

1518 A. No. I know what it costs our company during the past four years to purchase and erect similar poles, and that is the amount I have given, and besides that, it seems to be the consensus of opinion among all companies, for when we buy or sell a half interest in poles to friendly companies, where we go into a joint pole agreement, the average price paid for the past two years on forty foot poles has been $22.50 per pole, and that does not include the cross-arms simply the bare pole with the guys.

Q. Do you know what size poles the Home Telephone Company has in Louisville?

A. Yes.

Q. What size poles?

A. In height?

Q. Yes?

A. They will average pretty close to thirty eight feet.

Q. Are they shorter or longer than your poles?

A. They are some shorter.

Q. Some are as long as yours, I suppose?

A. Yes, different wood, though, different class poles.

Q. What kind are they?

A. White cedar.

Q. What kind do you have?

A. Chestnut, red cedar and creosoted pine.

Q. What sort of wire do you have on these poles, aerial wire, not in cables?

A. Iron wire for our local.

Q. Do you place a separate value on that wire?

1519 A. Yes sir.

Q. What value do you place on that wire?

A. $77,035.87.

Q. How do you arrive at that figure?

A. By our experience in the past four years, of what it has cost to erect similar wire in large lumps. Understand me, this is not what I claim the wire has cost us. To put up in small items, it does cost five dollars to string half a mile of wire. If it was necessary to put up half a mile of wire to reach you, to string that individual half mile of wire would cost five dollars, but this is figured on estimate of our putting up all the wire we have in Louisville now. We have 4960 miles of the wire, of No. 14 iron wire, including the price of the wire, insulator, solder and other material, labor and other costs of erecting it, 584 miles of No. 10 iron wire, including all costs of all other material and erecting that wire, according to our average of values, it would be $13.8853 per mile, which would make the $77,035.87.

Q. Do you know how much wire of that character costs?

A. Yes.

Q. What does it cost?

A. From four to four and a half cents per pound.

Q. What does it weigh?

A. No. 10, 250 pounds to the mile of the single wire, and No. 14, 102 pounds.

Q. How much would that be for the cost of wire per mile?

1520 A. Ten dollars for the No. 10, and $1.325 for the No. 14.

Q. What would be the total of all the miles of wire you have, basing it on the cost of the wire alone?

A. $27,358.94.

Q. And how do you arrive at the difference between that and the total amount you have given as the value of the wire in the aerial system?

A. We add to that the other material that is necessary for the erection of the wire.

Q. Indicate what that is?

A. The insulators and the solder.

Q. Indicate the items and the costs for the items for the whole system?

A. There would be 277,400 insulators at two cents each, would be $5,548; labor, teaming, freight and other expenses would cost $6.00 per mile, approximately, which would be $33,288; the supervision and overhead expense would run about ten thousand dollars. That is approximately the figures. I didn't carry them out into cents where each unit applied.

Q. You mean you estimate it would be ten thousand dollars?

A. Yes.

Q. Per mile or for the entire system?

A. For the entire system.

Q. Now you have indicated the price, I believe, based on the average price for the last eight years?

1521 *Q.* How does the price now compare with the average price?

A. It is very close to the same. There has been very little change in the market right now, as compared to that.

Q. Now you say you place the switchboards at $32.90 per subscriber?

A. Yes sir.

Q. How do you arrive at that figure?

A. By the actual invoice price; that is the only class of the plant we had invoices on and I generally go by them.

Q. And you say that is just as valuable now as when purchased?

A. Well, there is a possibility of say five per cent depreciation on that now.

Q. Do you know what the switchboard in the main office cost?

A. The original switchboard, fifteen sections, when we went there, cost $100,000 and we have since added I believe $88,000 to that, additional sections and terminal facilities.

Q. How many sections are there now?

A. I don't believe I can give that to you off-handed.

Q. Did you take into consideration these sections put up and removed?

A. There were some taken out of there and moved to the west office. I made a rough estimate. It must have been about eight thousand dollars' worth of plant, but as it was taken out of one part of the city and put in the other, I didn't consider it.

1522 Q. How much does six sections cost, if you know?

A. Six complete sections would cost—that depends on the section, if they are like the ones I have in mind, would cost about six thousand dollars apiece, according to that, carrying with it all the subsidiary apparatus.

Q. Do you know how long the switchboard lasts?

A. Yes.

Q. How long?

A. A switchboard properly maintained is like the old woman's sock, it never wears out if it is patched up, except for the depreciation that comes in in the nature of improvements. A switchboard that is changed, ninety-nine times out of a hundred, is changed for no other reason than it is not large enough to take care of the business, or some more modern type is demanded.

Q. Now, the switchboard in the main office was installed prior to 1900, was it not?

A. Yes, part of it was and part of it since.

Q. Were the original fifteen sections in there in 1900?

A. Yes.

Q. And you say that is as valuable now as it was in 1900?

A. There might be five per cent depreciation on it, in my opinion. The switchboard in Louisville has been very jealously guarded, Mr. Metzger, the electrician there is the kind of a man that watches

those things and day by day makes replacements of any
1523 small part that becomes worn or inferior in any way. While those fifteen sections are there, I doubt if there is a single part of them, except the bare woodwork that was there at that time; a switchboard is composed of a multiplicity of small parts and they are from day to day changed. The cords on that switchboard, I will guarantee, have not been on there eighteen months. Those minor replacements are made from day to day and if properly maintained, except on the woodwork, would be not noticeable.

Q. Last always?

A. Yes, properly maintained, except the woodwork, would last always, provided no new discovery in the art would make it mandatory to change the type. That is the great danger in electrical apparatus like that.

Q. How about the switchboard in the East Exchange, what value did you place on that?

A. $25,310.60.

Q. When was that installed?

A. I really don't know, I have not those dates at all.

Q. How about the South Exchange, what value did you place on that?

A. $62,671.25.

Q. How about the West Exchange?

A. $16,997.14 and there should probably be an amount added to that for part of the board transferred there from the main exchange. I didn't stop to ascertain the value of that part.

1524 Q. What is the total of those four amounts?

A. $287,537.61.

Q. How do you arrive at the total of $309,600?

A. I added seven and one half per cent to that. Those prices there are invoice prices and I added seven and one half per cent for supervision and interest and overhead expense.

Q. The Western Electric Company installs it for the invoice price, does it not?

A. Yes.

Q. What supervision is necessary?

A. General expense, the engineering and supervision of the officers of the company.

Q. Is that part of the general expense that is charged up as expenses every year?

A. Yes sir.

Q. Is the general expense which you term overhead expense in connection with installing the cables and conduits and the pole lines charged up each year as a part of the general expense of operating the company?

A. I don't exactly understand you. I will state it this way; the general expenses are prorated among the different classes of work, as I understand it, but that is a question for the auditor as I do not know exactly how it is done, but the way I understand, it is usually done, the total amount spent for these general expenses is pro-

rated amongst the different kinds of construction, repairs
1525 and the large accounts or the other accounts, in the proportion of the rest of the money expended on those different classes.

Q. Do you know anything about how many miles or how extensive the conduit system was in 1900 when the company purchased the Ohio Valley Telephone Company?

A. No sir I do not.

Q. Do you know how much has been added since 1900?

A. No sir.

Q. Do you know how much has been added to the cable system since 1900?

A. No sir.

Q. How much to the pole line and wire system?

A. No sir.

Q. Do you know how much has been replaced of the pole lines and wires and cables since 1900?

A. No sir.

Q. Now, what did you include in the subscribers' stations?

A. I included the private branch exchanges, the telephone instruments, the booths, the fittings at the public stations, the coin collectors at pay stations, the interior wires, interior block wires, the protective apparatus located inside of the buildings, and the drop wires.

Q. How many private branch exchanges do you say there are?

A. 112.

Q. Do you know how many there were on April 1st, 1909?

A. 112.

1526 Q. If the statement filed by Mr. Smith, the auditor, showing the number of subscribers, class of subscribers, number of private branch exchanges, shows only 76, then Mr. Smith's statement is incorrect, is it?

A. It would be, yes sir.

Q. What value did you place on the private branch exchanges? Just go into the statement in detail as to how you arrived at $184,000 as the value of the subscribers' equipment?

A. 9395 instruments, including necessary inside drop wires, at $11.35 each, $106,633.25; 112 private branch exchanges, including 422 trunks and equipment for 2417 stations, at $15.50 each, $44004.50; 33 booths at $40.00 each, $1320; 504 pay station signs at $2.00 each, $1008. 1190 coin collectors, 504 of them at $9.05, and 686 at $4.05 each, $7,339.50. Supervision and overhead charges, $24,045.79; total, $184,351.04.

Q. Now you say 9395 instruments at $11.35 each. What does that item include?

A. That includes the instrument and all inside wiring, protective apparatus and drop wires.

Q. What do you term the instrument itself?

A. What is commonly called the instrument itself, the set.

Q. Does that include the transmitter and receiver?

A. No sir.

Q. What value do you place on the stand itself, the telephone stand, what do you mean by stand?

1527 A. Well, you see an instrument there in front of you, with cord attached to it, including the bell, $6.80 each.

Q. What are the individual items going to make up the balance of the $11.35.

A. The inside wiring, including the protector, $1.36, the cost of installing it, 78 cents, the drop wires and cost of insulator, $2.41.

Q. The cost of installing is charged up as part of the expense of operating the plant, is it not?

A. No sir it is charged up as construction expense.

Q. When it is taken out, what happens then?

A. When it is taken out it should be charged off to depreciation, expense.

Q. Now you have 422 trunks and 2417 stations connected with private branch exchanges, $44,000 is that?

A. Yes sir.

Q. $15.00 each?

A. Yes sir.

Q. How do you arrive at that item of $15.50 each?

A. That is the average cost of installing private branch exchanges as has been determined by our experience.

Q. The material or cost of installing?

A. The total cost, material and cost of installing.

Q. The material or cost of installing?

A. Switchboard, swhitchboard-cables, distributing frames

1528 and boxes.

Q. What does the switchboard cost?

A. There are about twenty-five different types, and each one costs a different amount. They will cost anywhere from $140 up to as high as you wish to make them.

Q. You have it down there $15.60?

A. $15.60 per station.

Q. If there are ten sets, would it cost $150?

A. On an average, yes.

Q. Thirty-three booths, $40 each, that is just the wooden booth itself?

A. And the expense of installing it.

Q. 504 pay station signs, those are just the signs out in front of drug stores, etc.?

A. Enameled signs, yes sir.

Q. 1190 coin collectors, what are they?

A. Those are the nickel in the slot machines.

Q. What value do you place on those?

A. We have two types in Louisville, one costing $9.05 and the other $4.05 each.

Q. Who do you get those from?

A. I believe the majority of those in Louisville came from the Gray Pay-Station Company or some such name.

Q. Isn't there some C. P. Co. that furnishes those?

A. I really don't know sir.

Q. Isn't there some company that furnishes them to you and charges you nothing for them?

A. Not that I know of; I never heard of it.

1529 Q. What is the fifteen per cent.

A. That is the expense there that is reckoned necessary for ascertaining the location and getting the proper cable and pin assignment, and looking out or laying out the work when it is necessary to install the subscriber, and the supervision and overhead.

Q. That is the cost that is then charged to the general cost of operating the plant?

A. No sir.

Q. You have placed up here, cost of installing these stations?

A. Those units represent the cost after it is determined where and how to locate the instrument and the men who actually go on the ground and do the work.

Q. The first cost you mean, in connection with each instrument?

A. Yes.

Q. Now, what is the fifteen per cent?

A. That includes the expense of laying out each installation, the furnishing of the assignments to it.

Q. What do you mean by assignments?

A. Determine just how the station will be connected up, what pair of wires it will take in the cable, what pins the wire will be strung on, and how the installation will be made.

Q. That is an overhead expense then?

1530 A. Yes.

Q. And all overhead expenses are charged up as general expense or operating expenses of the plant, aren't they?

A. No sir.

Q. Are not they apportioned among the various items?

A. Not all overhead. I cannot speak for this, but I understand that amongst the companies it is the practice to apportion general expense that way, but when an expense is incurred for a specific purpose, it should be charged to that specific account.

Q. Who does that planning and determining on what kind of wire shall be used, w-ere connected, etc.?

A. Why, the wire chiefs, the chief installer, the city foreman and another class of men we have, profile men, we call them.

Q. Their salaries are charged as part of the operating expense of the plant, aren't they?

A. I don't so understand it.

Q. How is it charged?

A. To the work which they do.

Q. That fifteen per cent item amounts to $24,000 I believe?

A. Yes sir.

Q. How do you arrive at the amount of wire in the aerial system, exclusive of that in cables?

A. I determine that by riding over the city and observing the poles and the amount of wires on each pole, and making up an average of what I conclude to be the number of wires on *on*

1531 each pole, and compute the mileage by allowing fifty poles to the mile.

Q. That is an estimate, then, is it?

A. Yes. There was no attempt made to measure the aerial wire.

Q. Can you file with the stenographer a statement showing the location of all your poles and aerial wire in the City of Louisville?

A. No sir.

Q. You cannot?

A. No sir.

Q. Have you installed, in connection with your exchange at Louisville, a piece of machinery or apparatus to locate trouble that may occur in any part of the city?

A. Yes sir.

Q. How does that operate?

A. I could not tell you.

Q. Isn't it a fact that by means of that instrument you can locate within a square, on any street in the City of Louisville, the exact position that any trouble takes place in the wire?

A. No sir.

Q. What is the object of the instrument?

A. To measure resistance. A great many kinds of trouble can be measured, that is, the location of it can be ascertained with the galvonometer by measuring the resistance, but there are a great many kinds of trouble that it will not touch.

1532 Q. Are your poles in Louisville numbered?

A. There are a large number of them that are numbered after a certain fashion, yes sir.

Q. How many of these thirteen thousand poles are being used by the Cumberland Telephone and Telegraph Company in connection with its exchange at the present time?

A. 13,870.

Q. Are they all being used at the present time?

A. It is possible that maybe from day to day wire on one or two poles will get out of use for a few days, but the poles are not taken down, because we know the pole will be used again. I would not state that they are all being used and I would not state that there are a hundred not being used but, it would be reasonable, and it is ordinary to suppose that there is a certain part of each plant that is not in use.

Q. You cannot say then how much of it is not being used at the present time?

A. There is a very small portion of it.

Q. You don't know that of your own knowledge?

A. No, I don't know the amount, but I know there is a very small part of it only, because I know the amount that is in use.

Q. Do you know how many poles are creosoted pine poles, in Louisville?

A. Individual count, I do not.

Q. Do you know how many are red cedar?

A. I could not name the exact number.

1533 Q. Do you know how many are white cedar?

A. Yes, none.

Q. What was the third kind you mentioned?

A. Chestnut.

Q. Do you know how many chestnut?

A. Not the exact number, no sir.

Q. Did you include the poles that are used in connection with the exchange outside of the City of Louisville, in your count?

A. Yes.

Q. Are those outside of the City of Louisville longer or shorter than the ones in the City of Louisville?

A. Shorter.

Q. Do you know how many of them there are?

A. I think it is very close to four thousand.

Q. What is the length of those poles?

A. They will average about thirty-three feet.

Q. How many of them inside of the City of Louisville are thirty-three feet or shorter?

A. Possibly one thousand.

Q. You don't know that, though?

A. Except in a general way; I have never counted them that way.

Q. You don't know then, how many of them are longer than thirty-three feet?

A. To give the exact number no. About nine tenths of them are.

1534 Q. Do you know of your own knowledge?

A. Yes sir.

Q. How do you know it?

A. Observation; I have driven over all the routes and observed them very closely.

Q. That is your estimate of it, then, is it?

A. Yes sir.

Q. Do you know there are fifty poles to the mile in the City of Louisville?

A. No sir, I know that averages very close to it; it might run fifty-three of fifty-four.

Q. And it might be less, for all you know?

A. It would hardly be less.

Q. But you don't know that of your own knowledge?

A. No, I have not measured them, but I have built and supervised the building of a large number of routes similar to that one, and I know that fifty is very close to the average in similar cases.

Q. And I believe you stated there had been practically no additions to the plant since March 6th, 1909?

A. No sir, I can state that very positively.

Q. Did I understand you to say the blue prints furnished Mr. Crum were practically correct representations of the conduit system and the cable system in the City of Louisville?

1535 A. Yes sir.

Q. Did this count of poles include poles extending across the river to New Albany, Ind.?

A. No sir, no poles north of the river; no poles outside of the State, and only those poles in the Louisville territory proper. After

you cross the River that becomes New Albany, and Jeffersonville, territory.

Q. Now, you refer to Mr. Jackson's report. Have you that in front of you?

A. I have not it right here with me.

Q. What price per station do your figures show to be the value of the Louisville exchange?

A. About a hundred and ninety dollars.

Q. And how much did you say should be added for tools and teams and operating capital?

A. I don't know a thing about the operating capital; I have never had any experience in that line at all.

Q. How much material did you say?

A. From fifteen to twenty thousand dollars.

Q. What value did you place on the teams and tools?

A. About twenty thousand dollars.

Q. And assuming that the real property or real estate is valued by the company at $163,000 and adding to that the $15,000 for material, and $20,000 for tools and teams, makes a total of how much?

A. $1,991,540.30.

1536 Q. Now, how much would that be per station?

A. Approximately two hundred dollars per station.

Q. Do you know anything about how that inventory was made by Mr. Jackson for the Massachusetts Highway Commission?

A. I know only what is given in the report.

Q. That inventory was made jointly by the Highway Commission and by the Telephone Company, wasn't it?

A. No sir, it was made by the Highway Commission.

Q. Didn't the Telephone Company furnish men to do it and pay for it?

A. The Telephone Company paid for it, but it was made under the direction of the Highway Commission. The Highway Commission paid all expenses of the inventories I am informed and they were reimbursed by the Telephone Company.

Q. Now coming to these independent companies that your company has purchased, they have been in small towns or have they been in large cities?

A. The largest city we do business in we purchases a plant from the independents, and I suppose the smallest, we purchased an independent plant. We purchased an independent plant in New Orleans, La., in which we have the largest number of subscribers in any exchange, and we purchased some in towns where we have twenty-five or thirty subscribers.

Q. You abandoned the equipment in New Orleans, I suppose?

1537 A. Yes.

Q. Because you already had a telephone plant there?

A. I would not be certain of that, as that was before my connection with the company?

Q. In the small places in which you have purchased independent plants, do you know how they were erected, whether or not they

were erected by local subscribers simply installing a telephone plant for themselves, practically?

A. Mutual systems?

Q. Yes?

A. We have purchased a few like that, but the majority were erected by people who went into it as a business.

Q. What is the character of equipment placed in small towns as compared with the equipment placed in the large cities?

A. The equipment in a large city is necessarily more expensive than that in a small town.

Q. Do you know anything about the equipment of the plant of the Home Telephone Co. at Louisville?

A. No sir.

Q. Do you know whether it gives as good service as the Cumberland's?

A. I have never used it; I could only judge by the class of service that could be rendered by the plant as I see it. The only interest I have in telephone service is in connection with the outside plant.

1538 Q. Does it cost more to install a telephone plant in a large place than in a small place, per station?

A. A large place.

Q. As between Louisville and Nashville, which would cost the more?

A. Louisville would cost slightly more.

Q. To what is that cost due, that extra cost?

A. The principal factor is, in a large place usually we have a larger number of subscribers to serve and it makes the apparatus more complicated and other factors are the paving in large cities are a great deal more expensive, buildings are higher, the traffic is heavier and the interference with our work is more, and the outside agencies, high induction wires like the street car wires and obstacles to economy, both in aerial and underground wires are much heavier in large places.

Q. How about the more extensive conduit and cable system affecting the cost?

A. Conduit systems, especially in very congested districts, is ordinarily more expensive, but you can reach a stage where a conduit will be cheaper than the aerial plant.

Q. I am talking now about the original construction?

A. That is to what I refer. If you install three or four ducts, that is more expensive than the aerial system would be, but if you install twenty or thirty duct conduit, the chances are it will

1539 cost less than the aerial plant, to take care of the same business.

Q. The original cost would be greater, though, where the extensive conduit system was, would it not?

A. It might, or might not, depending on local conditions. In a congested territory, aerial construction is very expensive. It is a question that is hard to determine unless you are on the ground and have the concrete conditions in front of you. I have built a pole

route on one street one half of the cost of a paralleling street, and we can lay conduits on one street for a good deal less than we will on another. We have laid conduits, made extensive runs, and struck very few obstacles and incurred very slight cost, and maybe in the next run on the same street in a different block, we will encounter obstacles every few feet. In a case like that, the conduits would be very expensive, much more so than the aerial plant.

Q. You don't know anything at all, of your own personal knowledge, about the purchase by the City of London for equipment for its exchange, do you?

A. No sir, I wasn't interested.

Q. You don't know of your own knowledge whether it purchased it from the Western Electric Company or the independent companies, do you?

A. It depends on how you mean that. We have a certain amount of knowledge, for instance, I know that Mr. Taft is Presi-
1540 dent of the United States, but I didn't see him inaugurated nor the vote counted.

Q. You have heard, in other words, that the London Exchange purchased the Western Electric Company equipment?

A. I have heard it in a most positive manner.

Q. And you don't know whether they bid more or less than the independent companies?

A. No, I don't know the amount of the bid.

Q. You don't know whether they cut prices or not?

A. No sir.

Redirect examination.

By Mr. GRANBERY, for Complainant:

Q. Did Mr. Polk allow anything for laterals in the underground system for figuring the conductor feet?

A. Apparently not.

Q. How many feet of laterals, are there?

A. 13,998 feet.

Q. What is it built of?

A. Iron pipe, incased in cement and where they leave the ground, cleated along buildings or poles.

Q. Is iron pipe laid in cement, proper construction?

A. It is the very best.

Q. Do you know of any that has been laid recently by any of the wire using companies?

A. Yes.

1541 Q. By what companies?

A. We have laid it in the past thirty days, The Western Union Telegraph Co. put in their Nashville conduits in that manner, and the Postal Company last year did a large amount of the

Q. How is this conduit work done, by contract, at so much a foot work in Memphis, Tenn. I saw that.

or how do contractors, when it is done by contract, how is it done?

A. It is done by a contract which is almost not a contract. There

are very few reputable contractors that will make a bid without specifying so much for each kind of pavement and so much if you strike certain obstacles, and so much for another, and so much for each class and every condition that can arise in the work.

Q. Now, suppose a contractor should go to a city and say, I will agree to lay so many feet of conduit in this city at twenty cents a foot, how would you consider that?

A. If he was going to have an extraordinary heavy duct run, in other words, would average something like fifteen or twenty ducts to the trench foot, and the manholes were reasonably small, I would consider that he could possibly come out on it and make a good job, but if the conditions were not the most favorable, I would consider he was going to do just as in Louisville by other companies, going to slight the work and crook the conduit. Now here is the beauty of iron pipe in cement. There are a good many people who decry that, because they believe in cheaper construction, but an
1542 iron pipe, firmly encased in cement, gives the most rigid and perfect conduit that can be made, and that is essential in conduits, absolute rigidity and protection from any accident. The biggest accident that happens to a conduit is breakage by laborers with picks. If you can make a perfectly level conduit run, you have a perfect conduit, but if you dodge an obstacle, to do that you slope up and pull over it, it makes a cheaper class of work and very undesirable.

Q. Does the cost depend on the amount of rock or earth you find in digging your trenches?

A. Largely.

Q. Does it depend upon the amount of gas pipes and water pipes and other obstructions under the street?

A. It does.

Q. Does it depend upon the paving and the character of the street and surface?

A. Yes sir.

Q. Does it depend upon whether or not you can find places for your manholes, at proper places or improper places?

A. Yes.

Q. Are there many elements of uncertainty entering into the construction of an underground system?

A. There is really more uncertainty that way than certainty. It is like the doctor's patients, he covers up all his mistakes and
1543 you don't know, until you go over it afterwards, hardly what kind of work it is.

Q. Now, you spoke of there being some Lynch tile. Is that better or inferior to the tile that is usually used now?

A. The Lynch tile is a vitrified clay tile, very much like the McCrory or Camp tile, except it is very much larger. It costs about twenty cents per duct foot and others cost delivered about six cents.

Q. Have you much Lynch tile in your underground system in Louisville?

A. We have 10,590 feet of Lynch tile.

Q. And you say that costs twenty cents a duct foot?

A. Yes sir.

Q. As against how much?

A. Six cents. These prices are delivered.

Q. What is the difference in iron pipe per foot and ordinary vitrified clay pipe?

A. The other costs us an average of twenty-two cents; the difference is sixteen cents.

Q. That is just the pipe?

A. Yes sir.

Q. Have you any maps of poles and aerial construction, either cable or open wire, that were not submitted to Mr. Polk and Mr. Crum?

A. No sir.

Q. Did they have all the information and means of ac-
1544 quiring information that you had?

A. Yes sir.

Q. Is it possible for a telephone company having a plant in a city of the size of Louisville, and serving about ten thousand subscribers, to keep each and every pole constantly in use?

A. No sir.

Q. Why is that?

A. It is a part of the business, if you may state it that way. Our wires are out of use part of the time and the poles, and each part, though it is connected up, the wire that is connected up is only used a small part of the time. Your wire here, for instance, is not in use now.

Q. If a telephone is installed today, you have to run a separate wire to that instrument?

A. Yes sir.

Q. If that telephone is ordered out tomorrow, you don't take down all that wire, but leave it there idle?

A. Yes sir.

Q. Hoping tomorrow, or the next day, you will get another telephone in that neighborhood?

A. Yes sir.

Q. And use that wire instead of stringing new wire?

A. Yes sir.

1545 Q. And in that way, makes some of the poles always idle?

A. Yes sir.

Q. Can that be avoided in any way?

A. No sir. It could be avoided by taking it down, but would run the construction cost twice as high in a few years.

Q. Now, I want to go into the question of cost per station of a telephone plant. Is there any way the engineers have ever found of estimating approximately the cost per station in a plant?

A. No sir.

Q. Now, give us some of the reasons why that is so, and I will ask you to take Boston, Chicago and Louisville as three cities to illustrate it with, as they appear to have been brought into this case?

A. The part of Boston that has entered into this case is the

metropolitan district only. I looked into that and found the value of the plant was $92.80 per station. I looked further into it and found the number of stations in the metropolitan district in Boston was divided in this way, main telephones, 20,201 or private branch exchange sets 17,142; extension telephones, 4,405, which is a total of something like 43,000 telephones, and 22,000 of those had no connection of their own with the central office or the cables or the poles or the conduit or the aerial wire. So, the only part of
1546 the investment that those 22,000 telephones affected was the sub-station equipment, as we call it. Now, had we a system of 42,000 or 45,000 telephones, all on direct lines, and all connected with the exchange, the plant would cost probably four times as much, or something like four hundred dollars per station. Now those main telephones there, I don't know how many are private lines and how many party lines, but even considering them that way, we find that half of those stations, or more than half of them, have no connection with nine-tenths of the plant, consequently, if they did, the investment would be over double.

Now in Chicago in August, 1906, the Chicago Telephone Company had 25,942 private branch exchange telephones; 9,000 flat rate business telephones; 6911 flat rate residence telephones, 30,657 measured service telephones; 38,401 ten-party line telephones; 6,053 extension telephones. So that they are divided up in this way. Over thirty thousand of those telephones had no direct connection with the poles, wires, cables, conduits or central office plant, and the right of way for them, cost nothing. 38,000 were ten-party line telephones, so that less than four thousand lines could take care of that many telephones. There were about 46,000 other telephones to be divided up between the direct lines, two-party line and four party lines. That makes less than one third the number of lines that there are telephones in Chicago. To compare that with Louisville, where there are about two-thirds the number of lines
1547 there are telephones, would not be a fair comparison.

Q. What does the Government statistics show on the subject of telephone cost per station, throughout the country?

Objected to by defendant.

Q. Go ahead and state what you are reading from?

A. The Report of the Committee on Gas, Oil and Electric Light of the City of Chicago, under date of September 3rd, 1907.

Q. That is the same book that contains the Chicago Commission Report?

A. Yes sir.

The MASTER: I don't know that it is evidence, what that book shows, but I suppose it is theorizing about it. I don't hardly think that is proper. There have been a lot of things brought in here, reports of Mr. Jackson and others, though.

Mr. GRANBERY, for Complainant:

Q. Do you know what the government reports show the average per telephone station, in America is?

A. Yes.
Q. What is it?
A. $163.00.
Q. Does that include all exchanges?
A. Yes sir.
1548 Q. What is the great bulk of the exchanges, small or large?
A. The average is about two hundred subscribers per exchange.
Q. I believe you have stated it costs less per subscriber in a small exchange than in a large exchange?
A. Yes sir.
Q. So, as a result of what you have said, is purely a local problem as to the value or cost per station in each particular plant?
A. A telephone plant is not different from any other property, real estate or any other kind of property. You can build a four room house for a couple of hundred dollars or you can build it for a couple of thousand dollars. The telephone plant is similar to any other property in that way. The better you make the plant the more expensive it is, and one peculiar condition is you can give service up to a certain point very cheaply, to everybody. But, you add to the efficiency, if you add five per cent to the efficiency and you will add more than five per cent to the cost, for the last ten per cent of the efficiency of your service will amount to fifty per cent of the cost of your plant.

Recross-examination.

By Mr. BLAKEY, for Defendant:

Q. What were those figures you gave as to Boston? The subscribers in Boston and the class of subscribers?
1549 A. In the metropolitan district of Boston we had main telephones, 20,201; private branch exchange sets, 17,142; extension telephones 5,405.
Q. Do you know how many of those 20,000 are party lines?
A. I don't know sir.
Q. Do you know how many party lines there are connected with the Louisville exchange?
A. I don't know that I have it exactly in that way. I can tell you how many lines there are in use to the switchboard and how many lines are required to serve the 9300 subscribers. 5800 lines are required for it.
Q. There are less than two thousand subscribers in Louisville having direct telephones?
A. I cannot state that; I haven't it that way. I simply ascertained the number of wires which were in use.
Q. Of course, if there were ten thousand subscribers—I mean, if there were ten subscribers to a line, at least half of them would not be on a ten-party line, would they? They might be on or might not?
A. It would be possible to call a line a ten-party line and put one subscriber on it, but in a city like Chicago, where I had reference to,

where the subscribers are in such a small territory, that is where there are so many subscribers per square mile, or per block or whatever unit you care to use, you will find that party lines are always bunched very near to their full capacity.

1550 Q. It frequently happens, however, that the party line is not full up to the capacity that it is intended to carry?

A. Such a thing does happen, yes sir.

Q. How do you know there are over five thousand lines in use running into the switchboard of the Louisville exchange?

A. By the count I made.

Q. Did you count them yourself?

A. Yes sir.

Q. Are they all in use or there for use in case new subscribers may be procured?

A. In use.

Q. Do you know there are about 2500 stations connected with private branch exchanges in Louisville?

A. No sir, there are not that many.

Q. How many?

A. About two thousand.

Q. Do you know that there are something over six hundred extension sets?

A. Yes sir.

Q. Do you know how many there are?

A. 714.

Q. They do not have lines, none of those have lines extending into the exchange, do they?

A. No sir.

Q. Do you know that there are about one thousand party

1551 lines connected with business houses?

A. No sir I don't know the proportion of that.

Q. If there are, then there would be about five hundred lines running into the exchange on account of the business exchanges?

A. If two party lines fill up, yes.

Q. And that, added to the 2750 makes a total of how much?

A. 500 to 2750 would make a total of 3250.

Q. Do you know there are about 2500 2-party residence lines?

A. No sir I don't know a thing about the division of party lines.

Q. If there are, there would be about 1250.

A. If two-party lines, full up, yes.

Q. And 1250 added to the 3250 makes a total of how much?

A. 4500.

Q. And do you know that there are about one thousand pay stations from two to four party lines?

A. No sir.

Q. If there are, there would not be more than five hundred that would have lines running into the exchange?

A. Probably.

Q. And that added to the last figure I gave you, makes how much?

A. That would make 5000 and by adding to that, 422
1552 trunks——

Q. I am not getting to that yet. Do you know there are about five hundred country subscribers who have four-party lines?

A. No sir.

Q. Two to four party lines?

A. No sir, I have not gone into that question of the class of subscribers.

Q. If you add 250, one-half of that amount, to what?

A. 5250.

Q. And that, deducted from 9300 leaves about four thousand doesn't it?

A. Yes sir.

Q. Now, do you have any reason to believe that the proportion of direct lines to party lines in Boston is any different in Boston from what it is in Louisville?

A. No sir I have no knowledge at all of the direct and party lines in the City of Boston from what it is in Louisville.

Q. Now, if a telephone were to lose two thousand of its subscribers in various parts of the city, would the poles and lines used to furnish those two thousand subscribers be idle or in use, to furnish those two thousand subscribers, as a general proposition?

A. As a general proposition, what size exchange do you mean?

Q. I said in Louisville.

1553 A. It would mean that the wires would go out of use ultimately and some percent of the poles, depending entirely on the number of wires on those poles, would go out.

Q. Do you know how many subscribers your company had the first of January 1908?

A. No sir.

Q. Isn't it a fact it had over eleven thousand the first of January 1908 and latter part of 1907, and now has only about nine thousand, then, would you say there was any considerable amount of wires and poles not in use in Louisville at the present time?

A. I don't know of my own knowledge, but from the records of the company I know perhaps there has been some wire taken down there, two or three years ago, so I presume that wire was the wire that served those subscribers.

Q. You don't know that?

A. No sir I don't know that.

Q. Did they take the poles down too?

A. I don't know sir; just answering as a general policy of the company, if it looked like would not get any more business out of it, we take the poles down, but I don't know of my own knowledge.

Q. How much time did you spend in Louisville at the time you made this inventory and appraisement of this property?

A. About five or six visits, I believe it was, at intervals of from one to three days each.

1554 Q. Did you have anybody working on it except Mr. Green?

A. Yes sir.

Q. Who else?

A. Mr. Metzger, Mr. Franz, Mr. Steinhaus and one or two other gentlemen, I don't remember their names now.

Q. And you are testifying from their reports to you, are you?

A. Part of what was said has been on what they reported, and a good part of it on personal observation.

Q. You have indicated where it has been on personal observation, have you?

A. I really could not say, I don't remember, I suppose probably so.

Q. Now I want you to look at your papers there a minute from which you have been testifying, and tell me how much 22 gauge cable you found on those blue prints about which you have testified, and in your answer, give which is ten pair, twenty-five pair, fifty pair, 100 pair, 200 pair and 400 pair?

A. Now I want to qualify that by saying that I went further than those prints. Wherever they were doubtful or obscure, I measured it, or went out and looked at it and found out by the assignments, what the proper capacity and gauge was. Now of ten pair, 22 gauge, 1275 feet; of 25 pair, 22 gauge we have 17,023 feet; of 50 pair, 22 gauge, we have 25,051 feet; of 100 pair, 22
1555 gauge, 185,287 feet; of 200 pair, 22 gauge, 111,733, feet; of 400 pair, 22 gauge, 50,276 feet.

Q. Now is that aerial, or aerial and underground both?

A. Both.

Q. Now of 19 gauge cable, please indicate what you found on that map?

A. 50 pair, 19 gauge, 105,319 feet; 100 pair, 19 gauge, 285,495 feet.

Q. What is the total of that?

A. 390,814 feet.

Q. Now, what other gauge cable did you find on that map?

A. 20 gauge.

Q. Please indicate what you found there.

A. Of 100 pair, 20 gauge, 1143 feet; of 200 pair, 20 gauge, 55,854 feet; total, 56,997 feet.

Q. Now, adding all of those together makes a total of how much?

A. 838,456 feet.

Q. Have you got Mr. Polk's figures before you?

A. No sir. I can get them though.

Q. How much cable did Mr. Polk say there was there?

A. 866,535 feet.

Q. And the only difference between you and Mr. Polk then, as to the amount of cable, is that Mr. Polk says there is more cable than you say, and in addition, Mr. Polk says and gives a
1556 different classification of the cable from what you give?

A. Mr. Polk's figures on the lineal feet, as shown by the maps, is estimated, undoubtedly on guess work, on the number of feet in runs that would be shown for several blocks, I suppose, but would approximate so many feet to the block, and for that reason and for the reason there has been a very small amount of that cable that had been taken out that I had knowledge of, and which I

didn't include, there is that difference between Mr. Polk and me on the lineal feet of cable. On the gauge of the cable, there is a big difference between us.

Q. Do your figures conform to the amounts of gauge cable, amount of feet of cable, as they appear on those blue prints?

A. Not exactly.

Q. Do you know whether Mr. Polk's do?

A. They do not, at all.

Q. Is Mr. Polk in excess of what appears on the blue prints?

A. You mean the lineal feet of cables?

Q. Yes?

A. I would not answer that one way or the other, as a question of whether another person would measure it like he did and estimate those distances, it would be speculation Mr. Polk's measurements and mine are so close together, on such a large amount, they are virtually the same, only about one-half of one per cent difference.

1557 Q. What you say about Mr. Polk's figures then is that they are different as to the gauge?

A. Yes.

Q. And you say that the 20 gauge costs more than the 22 gauge?

A. Yes sir.

Q. And the 19 gauge costs more than the 20 gauge?

A. Yes. Just to show you, 22 gauge cable, same length of cable, 22 gauge would weigh 1024 pounds; 20 gauge would weigh 1632, and 19 gauge would weigh 2049, so, that 19 gauge is practically twice the weight of copper as there is in the 22 gauge cable.

Q. As to the conduit system, I believe you have practically agreed on the number of duct feet, you and Mr. Polk?

A. Yes sir.

Q. The only difference is you say it will cost about thirty eight cents per duct foot to produce it and he says it will cost about twenty cents?

A. Yes sir. There is another difference, that he specifies the kind of duct we have there and does not seem to include this Lynch tile, and does not include the tunnels we have found it necessary to build in town. One tunnel would be equal to forty ducts.

Q. Where did you build any tunnels?

A. There in the rear of the Paul Jones Building, in the rear of the Traction Building, and other places.

1558 Q. Where else?

A. I don't know the other locations. I would not state exactly the locations, but there are those two I have seen myself.

Q. What size tunnels are they?

A. They are something like three feet in height, and three feet across. When the Paul Jones Building was going up the whole street sloughed off and rendered our conduit system useless, ruined it. It was necessary for us to put in a system that would withstand that and give service while that work was going on and to do that it was necessary to build that tunnel and the hammering and pounding at the Traction Building would destroy practically any kind of a conduit we would have put in, so we tunneled there.

Q. Do you know how many duct feet you have there of iron pipe?
A. Yes sir, 84,989.
Q. What were the other two kinds of ducts in your system there?
A. Camp, multiple tile, and Lynch tile.
Q. How much of that?
A. 10,590 feet of Lynch and the balance was Camp.
Q. What is Camp?
A. That is the tile Mr. Camp came down and laid himself, vitrified clay tile, in multiple.

Q. Now this 13,000 feet of laterals that you spoke of,
1559 what is that?

A. Well, if you want to serve a telephone over in this building, in the underground district, we have a manhole in the street and it is necessary for us to reach the building from the manhole, and we lay those iron pipes, and laterals to the building, run up the building ten or fifteen feet and open into the cable box.
Q. Do you know there are 13,000 feet of those?
A. Checks according to those blue prints and measurements.
Q. It appears on the blue prints, does it?
A. Most of them do, yes sir.
Q. And you have no reason to think Mr. Polk did not take those into consideration?
A. Yes, I have.
Q. Why?
A. Because he didn't count them at all and showed that he allowed twenty cents per duct foot for the conduit, and added $7500 for the excess cost of the iron pipe, and made the total cost of the underground conduit so much it didn't leave room for the other.
Q. He only mentioned the manholes as a part of the system, did he not?
A. Yes sir.
Q. And said he took that into consideration?
A. Yes?

1560 Q. He didn't give any specific item as the cost of the manholes, did he?
A. No sir.

Q. What do you say it cost to put in those 13,000 feet of laterals?
A. $6,760.09.

Redirect examination.

By Mr. Granbery, for Complainant:

Q. There is one question which I should have asked you and which I will ask you now with Mr. Blakey's permission. Did Mr. Polk estimate anything for trunks to the private branch exchanges?
A. I didn't see anything in any of the testimony.
Q. How many has the company, trunks to private branch exchanges?

A. 422 trunks, starting at the switchboard in our building and running to the branch exchanges.

Q. And that is to be added to the number of wires you were asked about in serving telephones?

A. Yes sir.

Further this deponent saith not.

J. E. JAGOE.

Sworn to when given, and subscribed to before me on this the 28th day of March, A. D. 1910.

BLUFORD DUKE,
Notary Public.

1561 In the United States Circuit Court for the Western District of Kentucky, at Louisville, Ky.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
vs.
CITY OF LOUISVILLE.

The Depositions of J. E. Jagoe, Leland Hume, H. Blair Smith and E. M. Fisher, Taken at Nashville, Tennessee, on the 18th day of March, 1910, to be Read as Evidence on Behalf of the Complainant in the Above-entitled Cause.

Present, Mr. W. L. Granbery, Counsel for the Complainant; Mr. C. B. Blakey, Counsel for defendant; taken before the Hon. Henry Burnett, Master Commissioner.

Caption, certificate and all formalities in the taking of said depositions, are expressly waived by counsel for both parties.

1562 LELAND HUME, called on behalf of Complainant, being first duly sworn, deposed and testified as follows:

Direct examination.

By Mr. GRANBERY, for Complainant:

Q. State your name, age, residence and occupation?

A. Leland Hume, forty-six years old, Nashville; General Manager of the Cumberland Telephone and Telegraph Co.

Q. How long have you been connected with the complainant company?

A. Since 1885.

Q. Just state your various positions with the company?

A. The first two years' connection with the company's service was in a clerical capacity. The last twenty-two years have been in the operating and executive departments.

Q. What positions have you held?

A. I held the position of treasurer in the beginning, and after that first two year period, I have been manager of the company's

local exchange at Memphis, Tenn., for three years, and in the Summer of 1890 I was elected assistant general manager and secretary, and about four or five years ago I was elected general manager.

Q. From the time you commenced as manager of the local exchange at Memphis, have you given your entire time and attention to the complainant company's business?

1563 A. I have.

Q. Are you familiar with its properties?

A. I am.

Q. Have many of these properties been built under your direction and supervision?

A. The most of them have.

Q. Have you had a great deal of experience in building, operating, maintaining and reconstructing telephone exchanges?

A. Since an early period of the telephone business I have devoted myself to that.

Q. Do you regard yourself as an expert and are you regarded by telephone people generally as an expert in the telephone business?

A. I think I am; I so regard myself at any rate.

Q. Are you so regarded by other telephone people?

A. Yes.

Q. How long have you been familiar with the Louisville plant of the complainant company?

A. It has been over ten years.

Q. It is ever since this company acquired the ownership of the Ohio Valley Telephone Co. is that so?

A. Yes sir.

Q. Has that plant been extended year by year and developed year by year, since the complainant company has owned and operated it?

1564 Mr. BLAKEY, for Defendant: I want to make the same objection, and the same reasons for it, that I made in connection with Mr. Jagoe's deposition. It seems in Mr. Jagoe's testimony, there were certain things in rebuttal of what Mr. Crum and Mr. Polk said, but there is no pretense here, it seems to me, that this is in rebuttal of anything. Here is the General Manager of the company, the man in direct charge of the plant, the man that ought to have known and ought to have testified on direct examination, if he was going to testify at all, and now at the close of our testimony, comes and brings this man here, who ought to have testified then, if at all, and asks him questions which call for testimony that cannot be claimed to be anything but direct testimony.

The MASTER: Mr. Granbery, what is the general purport of this testimony.

Mr. GRANBERY, for Complainant: I am merely laying out the ground to go over the ground Mr. Jagoe did, and to rebut various other things with reference to Mr. Farnham's statement, that

1565 the long distance business has been loaded over on the exchange, and the time of the employes have been used in other exchanges and a thousand of things brought out by the defendant that I never dreamed would be brought out.

The MASTER: Well, go ahead with this and Mr. Granbery has stated that he expects to take up the question of depreciation of the plant in connection with this witness, which I think is very important. I think it is all right.

Exception taken by defendant.

Mr. GRANBERY:

Q. Go ahead Mr. Hume?
A. What was the question.
Q. I asked if the plant had been extended and developed?
A. Very materially extended and developed since the Cumberland Telephone and Telegraph Co. acquired the ownership of the property.
Q. Has any part of that plant been constructed extravagantly or without due regard to the necessities of the business of the complainant company in the City of Louisville?
A. No, on the contrary, there has been the greatest care and economy practices in every extension of the plant that has been made.

Q. I will ask you to state whether or not the plant that
1566 exists today is the plant that has been built from time to time as the officials of the company believed the business of that community and city required?

A. It is.
Q. Is there any part of the plant now in existence that is not necessary and proper to be used in the business of the company in Louisville?
A. There is nothing connected with the plant at Louisville that was not put there only after a plain reason which impelled and called for such addition.
Q. I will ask you to state whether or not during any part of the time from the time the complainant company acquired this plant to the present time, you supervised and approved the vouchers and the distribution of the expenses, between the construction account, reconstruction account, maintenance, operating, local and long distance service?
A. The passing of all such vouchers and the approval of them was a part of my duties up to about two years ago, and up to that time I, of course, did go into all those items very carefully.
Q. I will ask you to state whether or not in the performance of those duties you did actually separate and distribute the expenses among all those items in the way you thought was right and proper, with reference to the Louisville plant?

1567 A. I actually went into each voucher and saw that the items composing the voucher were properly distributed and prepared for the proper entry on the company's distribution books.

Q. I will ask you to state whether or not you have looked over the quantities and the values used by Mr. Jagoe in his deposition in giving the values of the Louisville plant?
A. Yes, I went over it with him just as he was making a study and preparing his figures.

Q. Did you change any of his figures or suggest any figures for him to use?

A. No, I did not.

Q. I will ask you to state whether or not you approved those figures or what you have to say about them?

A. Well, I would say that the figures are very conservative and it would be very difficult to take any practical men and reproduce the amount of property that he shows by his inventory, for the money he has figured it out.

Q. Is it possible to ascertain all the different items of expense entering into the construction of a plant after it has been constructed?

A. No, that would only be possible in the case of each particular addition to the plant. After the work has been all what you might call completed and the plant taken just as you find it standing today, it would be impossible to include all the items and all the matters that would be an actual part of the making up of the plant and the construction cost of it.

1568 Q. What have you to say with respect to the estimates made by engineers and other people as to the cost of particular plants or particular pieces of work in telephone plants? Are they accurate?

A. They usually result in what contractors and builders know as extras, with extra good explanations as to why the extras are necessary.

Q. Do the actual costs exceed or fall below the estimates?

A. The actual cost usually exceeds the estimate and seldom, if ever, comes within it.

Q. Why is this so?

A. Well, I think, for the reason that there is such a vast difference between sitting down at a table and figuring out what a thing ought to cost and the actual carrying to completion of a particular job of work. The man at the table figures out that everything is exactly where it ought to be and we admit it ought to be there, but unfortunately when you get at it, there are always unavoidable delays, unavoidable misconnections, which simply mean unavoidable additional costs.

Q. Has a telephone plant any individuality, or are all telephone plants of the same size, the same?

A. I have never seen two telephone plants that were exactly alike, or approximately alike.

Q. I will ask you to state whether or not it is possible for anyone, however experienced, to estimate closely the cost or value of

1569 a telephone plant without familiarity and thorough knowledge of that particular plant?

A. To accomplish a result of that kind it would be necessary, in reaching an approximately correct result, for the engineer to know a great deal personally about the conditions existing in that particular city, with relation to sewers, pipes of all kinds already laid in the streets, the condition of the soil, whether rocky, sandy or alluvial, the physical conditions that must be met with and encountered and

overcome on the different streets, the things that get in your way at the time of building, that you can not see or figure on when you go over it to prepare your plans even, and to follow years afterwards and undertake, without going into all these questions in great detail, it would be impossible to get even a reasonably close figure. But, with all that information it would not be possible to get absolutely correct results.

Q. Does the location of your patrons in a city have anything to do with the cost of your plant?

A. The location of the customers has a very great deal to do with the cost of the plant, for the amount of construction in finding one thousand customers under one set of conditions, might be very much more, or very much less than the finding of one thousand customers under different conditions.

Q. Has the company developed the Louisville plant dur-
1570 ing the past year, say from March 1909 to the present time, materially. I mean, added to it or changed it?

A. During the past year or more, since the filing of these suits and the attacking of the franchise, the company has done very little, and in the matter of maturing any engineering plans calling for substantial broadening of the basis of the exchange, it has not done anything in twelve months past.

Q. Is the plant at the present time in substantially the condition it was in March 1909?

A. Yes, it has been during that time been very carefully maintained and looked after.

Q. Has it been changed materially?

A. No, it has not.

Q. I want you to state what per cent of the earnings of a telephone company, if any, must be set aside year by year to take care of what I shall call depreciation. I mean, now, in the City of Louisville, basing your opinion upon the experience you have had in building, operating, maintaining and rebuilding telephone plant in that city?

A. Well, that is a matter and a feature of the business that has called for the closest study and attention on the part of the best operating men and the best engineers that could be gotten hold of, I mean, that question of depreciation has applied to telephone prop-
erties generally. The same general conditions that govern
1571 one in reaching conclusions at one place enter into the consideration at another, but the same results are seldom found, because the conditions confronting a plant in one city are, for the most part, so radically different from the conditions that confront the same kind of a plant in a different city. In the Cumberland Telephone and Telegraph Co. system that has been markedly true, because our lines run from up in Indiana and Illinois clear on through to the Gulf Coast country, but speaking of our experience in Louisville a ten year term and during that time a great deal of the property having been put there as brand new property, you can only judge by your experience generally, and by the condition of the plant you had ten years ago and the relative condition of property that has been put in during the time, these succeeding nine,

eight or six years and on down to the present, but taking all of that into account, I am sure that the percentage we are working on is as small as we could dare take with any degree of safety, that is, seven or seven and one half per cent.

Q. Now Mr. Hume, what do you include in the term depreciation?

A. I include all of those things that at one time or another are going to actually wear out. If you will let me use the illustration, I will take a suit of clothes. During the time that suit of clothes is kept or worn, it is often brushed sometimes cleaned by
1572 a cleaner, and it is giving good service, but there does come a time notwithstanding the very best treatment that can be given that suit of clothes by a careful man, the most careful care a man can take of it, that it has to be cast aside, but, up to the day it is cast aside, it is giving, as far as wearing is concerned, one hundred per cent service. Now, during that time, using the suit of clothes in connection with the telephone plant, the plant is being maintained by a percentage or sum of money set apart from time to time as may be necessary to do that, but there comes a time, necessarily when that thing actually and in fact, goes out of commission and goes out of service, and must be taken out of the plant. Then comes in the question of falling back on this account which has been set apart for depreciation or defacto replacement of the property.

Q. Is there also an element of the city requiring changes in your plant, for instance, taking overhead wires and putting them under ground, changing pole routes from one side of the street to the other, changing location of poles and such things: Does that enter into this thing which we call depreciation?

A. Yes, that is met with, necessarily in all cities.

Q. Now, I will ask you whether or not there is anything embraced in that which grows out of the evolution of the telephone art, that is, the replacement of property or parts of a plant that have
1573 not worn out, but have served their usefulness on account of something better and more modern being invented or brought out, which must be substituted in that plant. Is that included in your estimate?

A. It is, and it is necessary to provide for that or, be like a flour mill undertaking to use machinery that was first class and up-to-date ten years ago, and is now good as far as working order is concerned, but absolutely antiquated and out of date and cast aside, because of something newer and more modern coming into use.

Q. I will ask you whether or not this seven and one half per cent must be used each and every year?

A. No, if it were used each and every year you would come to one of these periods when you would have to go to some larger renewal expense and you would not have the money set aside to do it with.

Q. Then how is that applied, this seven and one half per cent, per annum?

A. As I stated awhile ago, the study of a particular plant and

experience with plants of similar kind enable you to reach as near as you can a figure which you can stand by which you will denominate as your percentage of depreciation. You start to work and build a defacto new plant and that first year there is necessarily not apparent much depreciation. At the end of the first year, if you have spent much you can properly charge to depreciation, you
1574 have made a great mistake in the selection of your material. But, running the thing over a period of thirteen or fourteen years, as seven per cent does, you do reach a time then when by the process of decay and the processes of evolution of the business, you must have renewed in amount, a sum equal to what you had invested in your plant and not only the changes, but almost the certainty is, that the last of those years, the last half of those years will call for vastly more than seven and one half per cent of depreciation, whereas the first years will call for a small percentage, but, if you have not passed that depreciation to the depreciation account, that percentage, and put it where it would be available at the time you must have it, then the company would reach an embarrassing period in its history, and it is right there that so many telephone companies have gone on the shoals.

Q. Now you say seven and one half per cent on the average cost of plant, is the amount set aside for depreciation. After the plant has been in existence any period of time, I assume different parts are wearing out and different parts have different lives. For instance, an open wire will last much less than a cable, and——

Objected to by Defendant, because leading and suggestive.

Q. Mr. Hume, which is the longer lived, open iron wire, or cable?

1575 A. The cable has the longer life.

Q. Do all parts of the telephone plant wear out at same time?

A. No sir, they wear out at different times.

Q. Now then, if different parts of the plant have different lives, and different lengths of life, what is practically being done year by year, as time goes on, with reference to taking care of this depreciation?

A. When the life of a particular part of the plant has been reached and the period at hand when that particular part of the plant needs renewal, it is attended to at that time. To put it differently, here are poles, cross arms, insulators, wires, cables, all put up say at the same time. It is not all going to reach the period of renewal at the same time, for the simple reason that the elements and the natural life of the different materials that have entered into the construction of that plant or pole route, are reached at different periods and you have to renew each part when it wears out.

Q. When you renew any part of that, what do you call it?

A. You charge that to the depreciation account.

Q. Do you call it renewal or reconstruction?

A. It is reconstruction, I believe, is the way the auditing department handles it.

Q. Do you deduct that from your seven and one half per cent to get the net amount of depreciation for the year?

1576 A. Oh, yes.

Q. In other words you treat that as a part of your depreciation that you are caring for that year?

A. To be sure.

Q. And it is the remainder, between that and the seven and one half per cent?

A. Yes, if that particular year don't show more than seven and one half per cent, in which case you go over on the reserve account for depreciation.

Q. What has been the experience of the company say during 1909 and that part of the present year, which has already passed, with reference to the plant in Louisville: Has it been favorable or unfavorable?

A. During the past two years we have not been called upon to face any unusual plant conditions at Louisville. That is to say, cyclones or sleet storms or serious conflagrations, that do come at one time or another, have not come in or immediately around Louisville in the past fifteen months.

Q. Now, with reference to changes necessitated by a shifting of the customers of the city and the change of poles and things of that kind. What has been the experience over the fifteen months past?

A. I don't recall that during the past fifteen months we have had anything unusual along these lines.

Q. Things then have been quiet in Louisville for that

1577 period of time?

A. Quiet as far as plant is concerned.

Q. Mr. Hume it has been testified in this case by a man by the name of Settle, who seems to have been at one time a local cashier in the Louisville office, that a great many of the employés of the complainant company on the payroll at Louisville, were giving from a fourth to a half of their time to other exchanges. I will ask you to state whether or not that is true?

A. That is not true.

Q. Please explain the way that that exchange is officered and managed and the purpose of setting it up on the basis it is set up on?

A. The exchange, in addition to being under the general supervision of a district superintendent, has its local manager, its general foreman of plant or construction, its chief electrician, its chief operator, and the employés that work in these respective departments, and what is there is what would be found in the same size exchange, approximately the same size exchanges as at Nashville and Memphis, no more and no less. As to Mr. Settle's charge that there were men there who were giving one fourth of their time or any other material part of their time to outside matters, he has made the charge without personal knowledge and without fact. The matter that he has gotten on his mind in a twisted manner is

1578 simply this, that in the development of the business around what we term the metropolitan district of Louisville, we have put in a number of small switching exchanges in various sections of

the country, both in Kentucky and in Indiana, within a radius of twenty or twenty-five miles of the city of Louisville itself, and at each of those small exchanges we have employed to take care of the exchange and to give the service from the switchboard. In other words, at each of those switchboards, we have exactly the force we would be compelled to have and that would be found in other small exchanges, even though they might be a hundred miles from any large exchange, but, on account of the fact that to all those exchanges and from all those exchanges there are certain subscribers who have arranged for Louisville service, and the further fact, that all the subscribers of Louisville are given access to all these special subscribers in all these exchanges referred to and given this service without any charge whatever in the way of tolls or additional monthly rate in their exchange, in the interest of their exchange, in the interest of the Louisville service we allow the manager and the other supervising officers of the Louisville exchange to do whatever may be necessary in the way of supervising, in watching over the service, at these smaller exchanges, but whenever it comes to any actual work, the employment of any of our linemen or trouble men or electrical men or plant men or material shipped to Louis-
1579 ville for the use of Louisville, every item and every minute of time employed by such employés is reported and the proper credit given on the Louisville account and the proper charge made against these smaller exchanges that are not in every respect and in fact a part and parcel of the Louisville plant.

Q. Now, Mr. Hume, I will ask you whether or not during the past eight or nine years you have been in Louisville frequently or infrequently?

A. Very frequently.

Q. Is that a part of your duties as General Manager, and during the time you were assistant general manager, to go to Louisville, look over the results, etc.?

A. It has always been, since we purchased the Louisville property.

Q. During the time Mr. Settle was cashier, where was his office located?

A. In the front part of the Main Building on Jefferson Street.

Q. Where was Mr. Hall, the Superintendent and his force, located?

A. On the second floor, immediately above.

Q. Did the stairway leading from Mr. Hall's department come through the first floor in such a way that Mr. Settle could see anyone come in or go out of Mr. Hall's department?

A. No sir, not when Mr. Settle was Cashier.

Q. Would it have been possible for Mr. Settle to be look-
1580 ing after his duties and see what people came in and out of Mr. Hall's office, and what time they spent in his office?

A. No, at the time, it was arranged so it would have been impracticable.

Q. I will ask you, knowing the duties of the cashier, even if the cashier were in when any employé went out of the building, if the

cashier would know where he was going or what he was going to do, when he went, unless he told Mr. Settle?

A. Even then, and now, under the present arrangement of the office, the men that go out to do this work on the plant do not use for entrance purposes or egress, the portion of the building or the entrances that are used by the office force for coming in or going out; they come in on Green Street.

Q. I will ask you whether or not on any one of your visits to Louisville or during any time you have been in Louisville you ever discovered that the employés looking after the Louisville exchange, were giving a part of their time to other exchanges?

A. No, I have never found any such conditions.

Q. If it had existed, would you have known it?

A. I think I visit there often enough and go over the plant carefully enough when I am there, to have a personal knowledge, and I state that they didn't engage themselves in that way.

1581 Q. I will ask you whether or not the Louisville exchange has incurred one dollar of expense on account of the exchanges in what you call metropolitan district in Louisville that it would not have incurred if those exchanges were not in existence?

A. It has not.

Q. Now Mr. Hume, coming next to the toll and the exchange branch of the business, I will ask you to state what in your opinion is the proper amount of the toll to be allowed the local exchange for handling the toll business?

A. From twelve and a half to fifteen per cent.

Q. I will ask you to state how general is that opinion among telephone people?

A. A great majority, I believe of the companies, and certainly a majority of those I have knowledge of, consider fifteen per cent a liberal amount to allow the originating office on outgoing business.

Q. I will ask you whether or not the complainant company now, or in the past, has had the contracts with other companies under which a percentage of the toll business was divided on that basis?

A. This company has always, from the beginning of its toll business, had such contracts, and I doubt, when you take all of them, if they will average as much as fifteen per cent.

Q. Do you know of any higher than fifteen per cent?

1582 A. No, I do not.

Q. How many contracts of that kind would you say the complainant company has in existence at the present time?

A. A hundred, or maybe considerably more than that; we have a great many.

Q. Does the complainant company handle the toll business for other companies on that basis?

A. It handles it, as I say, for a large number of companies, conspicuous among the number being the American Telephone and Telegraph Co., the Southwestern Telephone and Telegraph Co. with headquarters at Dallas, Texas, Southern Bell Telephone and Telegraph Co. with headquarters at Atlanta; the Central Union Tele-

phone Co., with headquarters at Indianapolis; the Gainsboro Telephone Co., with headquarters at Cookeville, Tenn.

Q. Is that last an extensive system?

A. Yes, they operate thirty exchanges, I suppose. The Southern Telephone Co. with headquarters at Fordyce, Ark.

Q. Now I will ask you to state whether you have read the report of Mr. E. W. Farnham in this case?

A. I have.

Q. I will ask you to state whether or not his separation of the expenses of the toll business and exchange business is correct and fair?

A. It is not at all, either correct or fair.

Q. What occasions the expense of giving the toll service to the exchange subscribers at their individual stations?

1583 A. Well, a very great deal of the equipment and the expenses that are gone into in the handling of the toll business, are incurred entirely on account of the local subscriber and placing him where it will be convenient and practical for him to use these long distance lines on his desk, or on the wall in his home, instead of using the lines like the non-subscribers do, from the central station. You will bear in mind that we have for instance, in Louisville gone to the expense of preparing and fitting up and equipping a number of places in the different parts of the city where anyone can go and be waited upon by public station operators and if the equipment were stopped there, the charges against the business, the terminal charges, would be comparatively light, but the local exchange company, whether it is the company that owns the long distance lines or not, goes to the expense and a considerable expense at that, putting in facilities, switching facilities of the subscriber who gets service through the local board, to also get service from his local telephone and the long distance lines, and vice versa.

Q. Now, this expense incurred by the local exchange in giving the long distance connection to the local subscriber is paid for in what way?

A. That is figured in a part of the monthly charge, that is made against the subscriber.

The MASTER: How is that?

1584 A. The local charge that is made against the local subscriber for his monthly rate, it goes to make up one of the items that fixes the rate by the month for the subscriber's service.

Q. Part of the consideration which the subscriber gets?

A. Yes sir.

Mr. GRANBERY, for complainant:

Q. Is there a difference in expense in giving local subscribers access to the toll lines from the local station, from that above what it would incur if people had to come to the Public Station to use the toll lines?

A. There is a very decided difference in expense, as I have referred to just now.

Q. I will ask you to state whether or not placing the exchanges in

the metropolitan district of Louisville under the supervision of the Louisville employés is of any benefit to the Louisville subscribers?

A. That is the reason it is done; it is done on their account. It is a very material advantage and benefit to them to have these smaller exchanges supervised in such manner as to give to the Louisville subscribers and insure a prompt service.

Q. Is it necessary for employés to co-operate in giving service?

1585 A. Absolutely necessary, otherwise you would have chaos in those exchanges.

Q. Are there any less employés in any of these little exchanges, or their pay less than if not under the supervision of Louisville?

A. If the exchanges surrounding the Louisville exchange were entirely removed from it and not under the supervision in any form or sense of the Louisville officials, this company would not provide or be called upon to provide any more local help than is provided in each of those exchanges surrounding the Louisville exchange, and the salaries and compensation throughout would be just the same as is now paid. In fact, the mere presence of Louisville has an opposite effect in regard to salaries, than is indicated.

Q. Mr. Hume, I hand you a pamphlet which is entitled, Valuation of Public Service Corporations by W. H. Williams, which seems to have been read before the Joint Session of the American Economic Association and the American Political Science Association, Chamber of Commerce, New York, December 30th, 1909, and I will call your attention to what is stated on the bottom of page 21 and the first part of page 22, and ask you to read it to the stenographer, and what you say about it, whether you agree to it or disagree?

A. The cost of reproduction is a matter of individual opinion; no engineer in estimating on the several important items of construction work for the year, will come within ten per cent of

1586 the total aggregate cost. Many of the more important items are frequently underestimated from twenty-five to fifty per cent. If experienced engineers, knowing the local conditions, cannot estimate the exact cost, how can those without special knowledge be expected to do so. A very good illustration of this may be had by tracing the original estimate with the ultimate cost of postoffices and other public buildings, and an especially good illustration and one known to all readers of the daily press, is that of the Panama canal. The original estimate of the cost of engineering and construction work was $139,705,200, but the present estimate is $297,765,09-, and it is probable this cost will be greatly exceeded." I concur and agree to the statement made by that engineer. We meet it constantly in the results of our business.

Q. Is there any added value to a telephone plant from the fact that it has an established business?

A. Oh yes, a very decided value comes from that condition.

Q. Does it cost anything to get patronage and build up a business?

A. It costs very considerable to get a business established where you can term it an ongoing, established business.

Q. What would you say with respect to any depreciation in the

physical condition of the plant of the complainant company in the City of Louisville being less or more than the value added to
1587 the physical property on account of it having an established business in the City of Louisville, Mr. Humes?

A. I would say if you propose to make any discount in the first case, that whatever you did in the way of reason would be vastly more than overcome by the actual values on account of the ongoing established business.

Q. That leaves out of view any question of the franchise rights granted by the City of Louisville

A. Yes, we have never carried that on our books at any price at all.

Q. I will ask you to state whether or not rights of way, tree trimming privileges and things of that kind are valuable or not, in the City of Louisville?

A. They are, and they must be acquired in one way or the other.

Q. Is anything added to the physical value of the property on account of those things?

A. No, none of those things the company has had to do and that have been necessary to do, have been allowed for or figured on or given credit for in any of the estimates that have been prepared, either by the engineer that prepared the estimates for the City of Louisville or our own engineer Mr. Jagoe.

The MASTER:

Q. Is there any promotion expense carried on your books, with regard to the Louisville exchange?

1588 A. Not a dollar.

Q. No special profit or advantage to any individual or officer?

A. Not a bit, just exactly the trade that was made with Mr. Speed and associates is reflected on our books, nothing else in any manner, shape or form.

Mr. GRANBERY, for the defendant:

Q. And to that is added actual money expended on construction since?

A. Oh, to be sure, construction since.

Q. How were your branch exchanges constructed, by the company or under contract?

A. They have all been constructed by the company, through its own engineers.

Q. Have they been constructed as economically as possible?

A. They have, and I have reason to know they have been constructed as economically and in as standard condition as those of any other company.

Q. Has there been any intention or purpose or effort to do construction work at the expense of maintenance or reconstruction or operating, in Louisville?

A. There has not. On the contrary I have on several occasions had cause to believe that items that could most legitimately be charged into construction account, were given the benefit of any

doubt whatever and charged it the other way. To put it
1589 differently, I believe seriously and as solemnly as I believe anything, that a correct inventory a detailed inventory of the property at Louisville would show its intrinsic value as tangible property for more than we are carrying it on our books.

Cross-examination.

Mr. BLAKEY, for defendant:

Q. Now taking up first the question of depreciation, how much does the Cumberland Telephone and Telegraph Company set aside to take care of depreciation?

A. Seven and one half per cent.

Q. Of what?

A. Charge off seven and one half per cent each year of the cost of the plant for its reconstruction.

Q. What is done with that?

A. It is reinvested in running the business, if it is not consumed in that year's draft on the account.

Q. If money is needed to add to construction and there is a fund in the re-construction or depreciation fund, is that used for construction purposes?

A. It is. It is invested in the plant and employed along with the other monies of the company in producing its results. To put it differently, the eight per cent dividend we have been paying in the last few years to the stockholders is produced from a plant of twenty-
five million dollars, but paid to stockholders' interests of
1590 less than twenty million dollars. The company has not paid a dividend on the actual money employed and material employed, which the money represents, of six per cent. In other words the eight per cent is not six per cent on the actual cash employed in conducting the business. It is eight per cent on the capital stock, but not six per cent on the capital invested on the plant investment. Now, a part of that represents this money that has been put aside for reserve.

Q. Do you know how much of it is represented by this reserve fund?

A. I do not keep the accounts of the company at all, and I could only answer that by going to our monthly statements.

Q. You say you can answer it differently and get the exact amount. I will ask you to do so?

A. All right.

Q. Can you do it now, does it take any time?

A. Oh yes, I would have to leave and get Mr. Smith to give it to me.

Q. Never mind then if you can not give it yourself. Is seven and a half per cent of the value of the Louisville plant, or the cost of the Louisville plant, set aside each year to take care of depreciation?

A. It is.

Q. What becomes of that portion of the seven and one half per

cent so set aside which is not expended in reconstruction
1591 work in Louisville?

A. That is employed, as I stated awhile ago. We do not segregate each individual account of each individual exchange; we put aside seven and one half per cent each year for depreciation, and we charge to and draw from a general fund in which each exchange participates according to its requirements. To put it differently, if a period came, as it does in our experience every year, where a sum very much larger than seven and one half per cent depreciation on some particular plant is called for, to rehabilitate that plant, after a cyclone or some other calamity, we go and get that out of the company's general fund and put the plant in proper shape for the customers anyway. I know we put aside seven and a half per cent every year in this general fund, to take care of the item of general depreciation.

Q. And is that seven and one half per cent depreciation set aside because it is estimated that the plant will have to be reconstructed in a period of from thirteen to fourteen years?

A. Yes, that is the conclusion, and the reason for providing the seven and one half per cent depreciation.

Q. Will the plant, in your opinion, wear out in between thirteen and fifteen years and have to be reconstructed new throughout?

A. I will state that twenty-four years' actual experience in
1592 the business confirms amply that belief.

Q. Now, taking the Louisville plant and beginning with the underground conduit system there, when was that constructed?

A. The major portion of that plant was constructed under the old management of the Ohio Valley Telephone Co.

Q. At least ten years ago?

A. More than ten years ago, but then, within the last ten years we have had to do a good deal of work on that plant. The mere fact that it is buried under ground does not change at all the necessity from time to time of doing work on the plant. For instance, I know one section, I can not tell it by street, but I know one section where we passed quite an expense voucher, authorizing work which was necessitated on account of quicksand. The cables which were in there were working all right, but necessity arose for putting in additional cables, down that street and we could not pull it in, and when we dug up the street, we found in this particular place where there was quick sand, it had given away and the ducts had gotten into a curve that way, and then went on straight. That happened to be not enough of a curve to stretch the cables in there to a point where they were damaged, but made it impracticable and impossible to go through there with additional cables.

Q. Did you have to take that particular conduit out?

A. Had to take all the conduits out for that distance and press it
up. Didn't take actually the conduit and cables that were
1593 in there out, but had to build from underneath and force upward and back to its proper level, and there are a great many things that have come up in Louisville in the underground plant that have been in the nature of renewals. I remember an-

other case where in excavating for an office building, the sand came from under our ducts and we were forced to go back on that work.

Q. What was done in that instance?

A. We had to co-operate with the contractor until he got his foundation in shape, and then, of course, we filled in and put it back in its original position.

Q. Any of the conduits that were there when you purchased the Ohio Valley Telephone Company plant, that have been replaced?

A. No, the conduits have not been replaced, and we do not calculate they will be for a considerable length of time. This seven and one-half per cent depreciation don't mean by any means, every component part of the plant is to be replaced in that time. Some of it will have to be replaced in two years, some in three, a good deal in ten, some of it maybe not in twenty-five years, and our charge would have to be radically above seven and a half per cent if that does not work out in our experience.

Q. Now, take the cable system. Were there any cables used by the Ohio Valley Telephone Co.?

A. Yes, they had cables in there.

1594 Q. Are they still there?

A. Some are and some are not, some we put under ground are not there, because they have been eaten up by electrolysis, absolutely destroyed.

Q How about the switchboards?

A. The switchboards, the oldest sections of the switchboard was put in there about ten years ago, at the time of the fire in the Jefferson Street Building, which was the only exchange the Ohio Valley Company operated in Louisville.

Q. That was before you purchased it?

A. Yes, just before we purchased it.

Q. That has been substantially added to by additional sections in the last five or six years, or later.

A. Yes and we do not calculate that the renewal of those boards will come within the next few years, they ought not to.

Q. How long does a switchboard usually last?

A. Switchboards, as far as the experience of the past is concerned, have been replaced by the other process that was referred to in the examination awhile ago, that is, this process of evolution of the business. In Louisville, the first switchboards which were put in by the Ohio Valley Telephone Co., were very crude as were all similar boards over the country, they were taken out and were replaced by what is called a magnetic type of board with trunking system, which called for or necessitated the switching of a connection from

1595 one board to the other by means of a trunk line, in order that, this number for illustration is 26, and whose line is located on board No. 1, might get connection with a subscriber whose number is 407 and whose line terminates on board No. 4. Now, in that kind of connection it was necessary for the two operators to co-operate over this trunk line and make the connection out of this subscriber No. 407. In a case where No. 26 called for No. 27, that same operator waited on him, and as the exchange grew that type of switch-

board, though the best to be had at the time, was improved upon by experts working in the laboratories and manufacturing plants and it was replaced by what was called the multiple magneto switchboard, which was the same as this switchboard with the very marked advantage of expense and manipulation, so that while this operator on board No. 1 continued to answer the lines terminating on that board, being for illustration from one to one hundred, she had a duplicate or multiple in front of her of these other lines, by the use of what all telephone men understand and term switch jacks that would enable the operator on No. 1 without saying a word to any other operator, to connect up the subscribers in the exchange, and operators on down the board, having the same duplicate before them could accomplish the same result. That board was replaced I don't know the number of years, but several years prior to the installation of the present type of switchboard, and it was replaced by
1596 what is called the self-restoring drop type of switchboard. That was a decided improvement over the old magneto multiple board, but as the exchange grew and as other exchanges grew over the country this common battery flash-light multiple board, which is in use in Louisville, was evolved, and that company, along with other large companies, recognizing the superior advantages and benefits to the service by the introduction of this new type of board incurred the enormous expense, which was necessary and which they did incur, in putting in this new type of board and today there is not only a probability, but an almost certainty that that type of board is now on the verge of substitution. Our engineers spent quite a little time with the engineers of note in Chicago and New York both, during last December, consulting with them in regard to what I have just referred to as almost a certainty in the way of a radical change in the present type of switchboard equipment, and we have reason, and strong reason, to believe that within the next two years that type of board will come right into service, if it does, it will mean radical changes on our part, due not to the fact that the present board was worn out, but to the fact that it has become out-of-date and antiquated as a switchboard.

Q. Is that the automatic system you speak of?

A. No, it is not, we do not consider the automatic system an improvement, but, on the contrary, a step backward.

1597 Q. You don't mean to say in Louisville they had all those kinds you have mentioned?

A. I do.

Q. Do you know that yourself?

A. I know it just as I know anything that reliable people tell me. Of my personal knowledge I know only a portion of it because prior to our purchase of the properties I had no occasion to visit Louisville at frequent intervals, but I have seen two or three of those types of board in Louisville; I have referred to, before we had any interest in the property. I have seen the multiple magneto and self-restoring multiple board there.

Q. The same one is there now that was there when you purchased it?

A. No, we have added very materially to it; the original sections are still there; all they had is still there. We took part of the main exchange and incorporated it in one of the branch exchanges.

Q. Now, what do you say as to the life of an ordinary switchboard then?

A. I think if it was left to run its life, it might run fifteen years.

Q. Now as to the lines or poles that you erect in a city. How long do they last?

A. Well, the average life of a pole, the chestnut pole or white cedar, is from ten to twelve years; something like that.

1598 Q. What about the wire on them?

A. The local subscribers' wire has an average life in a city, of about four or five years, unless it is close to railroad tracks where the engines are constantly passing, when the life is very short, a couple of years, maybe.

Q. What about cables?

A. The life of cables ought to be quite extended, unless attacked by electrolysis. I should say twenty to twenty five years, and yet they are subject to the same conditions that were referred to awhile ago in connection with the switchboard, this question of evolution. The cables being made today are improvements over cables made ten years ago, and cables made twenty years ago could not be used in Louisville or any exchange that would be a part of or given connection with the long distance telephone system, for they were what telephone men termed straight-away cables, single line cables, as compared with the paired cables or double conductor cables, as some call them, which is necessary in connection with metalic telephone service and all the telephones working in Louisville and all these other large cities for that matter, are of that type of construction—two-wire system.

Q. What about the subscriber's equipment, what is the life of that?

A. Treated properly the life of a telephone instrument ought to be eight or nine or ten years, but the experience of the business is that few stay in longer than five years; they have to be

1599 very clever people to stay in any longer than that.

Q. Going back to these cables a moment. Of course any improvement on cables from now on, would be an improvement to extend the life of the cable?

A. No, that is not the plan that the engineers are working on, for they have used in the construction of the cables in the last ten years about as good material as it seems likely or certainly as good as is now in sight, but the improvements would come in the better arrangement of the wires in the cables, with reference to what electricians term induction and transmission. Under the present plans of manufacture, the very best that is known, the conductivity of a cable is vastly less than the conductivity of the wire outside of the cable, the same wire. There is a retardation, just like running water through an inch pipe for a distance of two miles, you have to put greater pressure to get that water through there, it meets with so much retardation, and the same difficulties are encountered in transmitting the human voice with the battery on the wire, through

these long cables. You meet with what I call retardation and induction retardation holding the voice back and induction, causing the voice to jump from one wire to the other so, when several people are talking through the same cable, and it is a very long one, they are apt to hear other voices than their own.

1600 The MASTER:

P. Mr. Hume, since the Ohio Valley Telephone Company plant was obtained, it has been about ten years?

A. Yes sir, about ten years.

Q. Now in that time, as I understand, you have constantly set aside as a depreciation fund, seven and one half per cent?

A. Yes sir.

Q. Which would make, of course, up to the present time, on the percent valuation, approximately, seventy-five per cent, wouldn't it?

A. No sir.

Q. If you set aside seven and one half per cent of the cost of the plant, in ten years you would set aside ten times that seven and a half per cent?

A. Yes, if you didn't touch it.

Q. Wouldn't that be seventy-five per cent, approximately. Of course, the plant has increased in value?

A. That is what we calculate, if you run that up to fourteen years you would have an amount equal to the first cost of the plant, it would be there if you could do that.

1601 Q. Are you able to state what part of that seventy-five per cent has been actually expended in the reproduction or repairs of the plant within the past ten years?

A. No, I cannot. Our books, of course, show it.

Mr. BLAKEY, for Defendants:

Q. Now of course if the plant simply wore out or any part of the plant wore out at one time and had to be replaced at one time, without any repairs having been made thereto, then the amount set aside would be kept in a fund and would simply be used at the end of the life of the particular part, to purchase a new part. That is true, isn't it?

A. I should say it is.

Q. In other words, if a switchboard needed no reproduction no portion of it to be reproduced for fourteen years and you were to set aside seven and one half per cent of the value of the switchboard each year, why, at the end of fourteen years you have the original cost of the switchboard set aside in a fund, which would be used to reproduce the switchboard, isn't that true?

A. Yes, if the switchboard bore that relation to the balance of the plant in depreciation that fixed it as fourteen years, but in setting aside the seven and one half per cent you set it aside as aver-

1602 age and not because any particular item of the plant is going to give out at that time.

Q. Do you know what the value of the plant was at the time it

was purchased by the Cumberland Telephone and Telegraph Company from the Ohio Valley Telephone Co.?

A. No, I do not.

Q. I believe you stated on direct examination, the first few years the amount expended in re-construction, would not be so large as the last years of the period?

A. That is right.

Q. Would you say, therefore, that the amount expended for re-construction the first years, after the purchase of the Ohio Valley Telephone Co. would be greater or less than the last half of the period since you purchased it?

A. Well, as far as the plant that the Cumberland Telephone and Telegraph Company has put there since it purchased it, the last part would be greater than the first, but as far as the plant it purchased from the Ohio Valley Company is concerned, the reverse might be true; I cannot say what the facts are.

Q. The depreciation fund is used to take care of re-construction, I believe?

A. Yes.

Q. Now, if the auditor of the company, Mr. Smith, says that the company had invested in its Louisville exchange on January 1st, 1905, $1,535,00- and expended in construction in the year
1603 1905, $60,000 how much was set aside or should have been set aside that year to take care of depreciation on the basis of seven and one half per cent?

A. There should have been set aside, seven and one half per cent.

Q. How much would that be and would you take into consideration the $60,000 which was added to the capital account that year?

A. No I would not take that into consideration, for the fact that the company is constantly furnishing money during the process, buying material during the process of construction and not charging interest up against the plant at all.

Q. You would only take seven and one half per cent to the $1,535,000?

A. Yes.

Q. What does that amount to?

A. $115,125.

Q. Now, if no part of that was expended during the year 1905, would you still take your seven and one half per cent for the year 1906, on the $1,535,000 or would you say the plant had depreciated during that year seven and one half per cent and was then worth $115,000 less than it was the year before?

A. I would add to it the amount that was expended that year.

1604 Q. What would you do with the amount that was set aside because the plant was depreciated?

A. I would not take it off that account for it has to be taken off at the time that you expend the money in reproducing it, you can not take it off twice.

Q. Why do you take it off unless it is because your plant has depreciated seven and one half per cent in value?

A. You are not taking it off, you are putting it aside, putting aside this fund to take care of it and does not reflect in the plant account until the last time, as it is carried there by its actual use.

Q. As I understand the plant depreciates in value seven and one half per cent every year?

A. To be sure it does on an average, but it does not necessarily depreciate that way each year.

Q. Isn't it seven and one half per cent less valuable than it was the year before?

A. Yes, in one sense. It may not be in fact, it would not be from the standpoint you put in figuring it, by following the whole of the accounts, but it is not in fact, necessarily.

Q. How is it possible to depreciate seven and one half per cent without being seven and one half per cent less valuable?

A. As I said while ago, we are not saying it did depreciate that year seven and one half per cent; but we are saying over
1605 a term of years, it will depreciate at the rate of seven and one half per cent, but if we actually took that seven and a half per cent off at the end of the seventh year, or the eighth year, or the tenth year, then we would come to a year when we might take off twenty-five per cent, and if we have not taken it off here, can not take it off there, twice.

Q. Now, going back to the switchboard proposition, if it was a fact the switchboard lasted fourteen years and had to be replaced and in the meantime no work of reconstruction had to be done on it and you were to set aside seven and one half per cent a year to take care of that depreciation and to purchase a new switchboard, and didn't so keep your books as to have them show that you had deducted each year seven and one half per cent from the value of the switchboard, is it not a fact that you, at the end of fourteen years would have your books showing you had a switchboard worth a hundred thousand dollars, and a thousand dollars in money besides?

A. Well, as an offset for that we would have to be able to show we had the money put aside for that purpose and that is what it is put aside for.

Q. But you would still have your books showing your switchboard was worth a hundred thousand dollars, would you not. In other words, how can you have the money representing the——

1606 A. Certainly we would have that, but we would have this explanation or offset to it available to make it good, that is what the depreciation is for.

Q. Is it a fact, as you have said, that the plant does depreciate on an average of seven and one half per cent a year?

A. Yes, I believe that it is.

Q. How is it possible to depreciate seven and one half per cent per year, unless it is seven and a half per cent less valuable at the end of the year, on an average, not any particular year, but on the average, how is it possible to depreciate seven and one half per cent per year unless at the end of each year it is seven and one half per cent less valuable?

A. I tried to explain to you this depreciation does not come exactly seven and one half per cent per year.

Q. But, if the plant depreciates seven and one half per cent a year, isn't it that much less valuable?

A. It does not depreciate seven and a half per cent a year, but at the rate of seven and one half per cent, and you have to put aside this fund to be available for renewal of plant when the time comes, when each particular part has depreciated, and that particular year may call for twenty per cent out of this depreciation fund
1607 instead of seven and one half per cent and the charge is made against the account not only by our company, but by every other company, when the money is actually spent. There is no such thing as keeping the account in such way as your question indicates, if I understand your question.

Q. The plant, as I understand your statement, actually depreciates at the rate of seven and one half per cent on the average?

A. That is true.

Q. And you have to set aside this amount each year in order to take care of the complete deterioration of the plant at the end of fourteen years, though it may deteriorate one per cent one year and ten per cent another year, is that correct?

A. Yes, I would say it is.

Q. And at the end of fourteen years, is completely deteriorated unless reproduced?

A. Experience has proven that telephone plants, as a plant has an average of from thirteen to fifteen years; say fourteen years. That does not mean, necessarily everything in the plant at the beginning has lived its life and passed its day of usefulness at the end of fourteen years, for during that time part of the original plant may have been renewed several times and other parts of it may not have been renewed at all and may not at the end of fourteen years, need to be renewed, but, there has been during that time, according to the experience of the past, enough money called for out
1608 of the treasury of the company and out of this fund set aside for that purpose, to equal an amount that represents the original cost of the plant, and therefore we say that in the run of thirteen to fifteen years that a plant must be renewed, as far as the money is concerned.

Q. Now taking the switchboard: You say that the life of the switchboard might be fifteen years if properly kept up?

A. Might be, but never has been.

Q. Well, we will say twelve years then, what would be the value of that switchboard after it had been in use eleven years.

A. If it had to be reproduced at the end of twelve years, why, you would be right where you were facing the necessity of duplicating your first cost on it.

Q. And your value would be not over ten or fifteen per cent of the original value of it, if you had to reproduce*d* it in another year?

A. Yes.

Q. So then isn't it a fact you would arrive at that conclusion by taking off seven and one half per cent each year until you reached

the twelfth year. We will say then you are down to where it was not worth over twelve or fifteen per cent of the original cost?

A. No, that would be a very poor undertaking as far as your book accounts are concerned, for as I said awhile ago, we are not
1609 saying that any one particular item or several different items are going to be renewed at the end of your thirteen or fifteen years. You say that the plant as a plant, with all its component parts, equipment inside and outside, has this average life, but to take and dissect the plant and undertake to keep account on the books and keep them with any intelligence whatever and charge them off each particular item of poles and wire and cables and switchboards and one thousand other materials that go into a telephone exchange, and say you are charging seven and one half per cent each year against each of those things and undertake to keep a renewal switchboard account, and a renewal cable account, it would be absolutely impossible and misleading and impossible of accurate results. You only take it on the average.

Q. You said awhile ago, I believe, a switchboard, whose life was twelve years and which had been in use eleven years would depreciate to about ninety per cent?

A. Yes, I was answering what I supposed you asked as a theoretical question.

Q. If you were to take off seven and one half per cent each year, you would come down to ninety per cent at the end of twelve years, wouldn't you?

A. If you would be guilty of that kind of book-keeping you would, and that would be neither good book keeping or good practice.

1610 Q. Wouldn't that keep your accounts square?

A. No sir.

Q. Wouldn't that show if the switch board cost you a hundred thousand dollars, you had ninety thousand dollars in bank, and ten thousand dollars in plant?

A. No, that would be very poor, that would be all right to have it on the plant, but to reduce that to the switchboard and the multitude of items that compose a plant, there has nobody ever suggested such a thing as that, for it is impracticable.

Q. Do you know anything about book-keeping?

A. I don't know very much about book-keeping.

Q. Take a simple matter of a wagon. We will say a wagon's life is five years and it costs a hundred dollars. Then, how much ought to be set aside each year to take care of depreciation?

A. You set it aside for the wagon, not for the tongue and wheels and fifth wheel, and nuts and bolts, washers and rims. You set that depreciation aside for the wagon.

Q. How much ought you to set aside for the life of five years and costing a hundred dollars?

A. Set aside for the wagon twenty per cent each year, but that could not be carried to the analysis that you are attempting in this interrogation.

Q. If you set aside twenty per cent in the instance I have mentioned, you would set aside $20.00 per year?

1611 A. Yes.

Q. If you wanted to keep your books so as to show your actual investment, would you continue each year when you put down an inventory, to put down your wagon as a hundred dollars, or would you put down your wagon at the end of the year as eighty dollars, and depreciation on account of the wagon, twenty dollars?

A. You had better carry your wagon on your assets side and the other as a reserve, until you come to it, for the wagon might get run away with at the end of the third years and you would have a valuation a/d book credit that would not come together:

Q. Assuming that it would not be run away with, would you inventory your wagon at the end of the first year at a hundred dollars or eighty dollars?

A. No, I would keep that wagon at what it cost and hope and trust and try to make it go longer, but if it did not go longer, but did wear out at the end of five years, I would have done what prudent business men do, take the experience of other people and my own and put aside each year in a separate account, a renewal or depreciation fund and I would not undertake to do the other, because there would be no point gained and no reflection of fact revealed.

Q. Would not it be a true reflection if you showed the actual value?

A. No, you would not be doing it, for the wagon up to

1612 fourth year or four and a half years, might be a good wagon, and then might give away.

Q. If your wagon had actually depreciated twenty per cent. wouldn't be worth but eighty dollars, would it?

A. If it actually depreciated twenty per cent., it would not be worth eighty dollars, for it had too much depreciation the first year.

Q. And if it depreciated twenty per cent., would not be worth but sixty dollars at the end of the second year.

The MASTER: That is argumentative. I think we all understand the principle.

Mr. GRANBERY, for Complainant: As we are about to adjourn for the day, I wish to bring up a matter. The deposition of Mr. Webb was taken for the purpose of showing that away back probably in 1902 or 1903, Mr. Webb, the Treasurer, gave some figures showing the value of the plant in Louisville, and the receipts and disbursements. Now Mr. Webb stated that he had not made up those figures, and that they came to him from the auditing department. I am prepared to show, and will show by the auditor, that those figures were made up by a clerk in his office, and the working papers of

1613 that clerk have been found and they are not correct. Mr. Smith, the auditor, had nothing to do with it and didn't know of it. Now, in view of the fact that the joint report states the cost of the plant year by year for the years under inquiry, it seems to me it was unnecessary to do that, but if that Webb deposition is to

be used, I want to introduce Mr. Smith to rebut it, but it seems to me that the deposition of Mr. Webb is simply refuting or contradicting the joint report of the accountants, and in taking Mr. Smith's deposition, it will simply be explaining Mr. Webb's deposition or statement which would bring it right back to where the joint report of the accountants are now.

Now, I want to know whether I shall take that deposition or whether the deposition of Mr. Webb is going to be excluded on the ground that it is undertaking to vary or disprove the report of the joint accountants.

Mr. BLAKEY, for Defendant: The reason I took Mr. Webb's deposition on that was that Mr. Smith—I think there were three separate and distinct petitions filed against the City of Louisville,
1614 in which different statements had been made about what the books showed. Mr. Smith made another statement when he gave his deposition, and the accountants found another statement to be correct, and I ran across this deposition, which showed entirely a different proposition mainly about the cost of the plant and my contention is going to be that the books of the company are absolutely unreliable in telling about the cost of the plant, for as we went over it in Mr. Smith's deposition, I tried to bring out that the items were not charged up against the proper accounts.

Mr. GRINBERY for Complainant: In view of that fact, I will take the deposition of Mr. Smith and let it go.

Now, one other thing: This case has been pending now for a year. The financial statement of receipts and disbursements was only up to the first of January 1909. If you wish me to take proof and show the result of the operations in the City of Louisville or the Louisville plant for 1909, I am prepared to do it and go into it, if you wish it done, and I tender that if the Master wishes it, or the representative of the city wishes it.

1615 The MASTER: Right now I am not able to say whether that would be important or not. When we get through with the proof if we want it, I will take it myself. I will just order that myself.

Mr. GRINBERY for Complainant: I merely make the tender, so it cannot be said later that we did not bring these things down to date.

The MASTER: I think we had better defer that for the present.

The further taking of these depositions was thereupon adjourned until tomorrow morning at nine o'clock at the same place.

1616 SATURDAY, *March* 19, 1910.

Leland Hume.

Cross-examination resumed.

By Mr. BLAKEY for defendant:

Q. Mr. Hume, when does the depreciation in a telephone plant begin?

A. Well, it is apt to begin as soon as the plant is put into commission; as soon as the material is used in the plant.

Q. When does it reach its maximum degree of depreciation? In other words, when does it require—at what period of the fifteen years does it require the greatest amount of reconstruction work, or the greatest expenditure to reproduce the parts that have depreciated?

A. It depends entirely and absolutely upon the different materials that are used, and the different conditions that they meet with, and there is no fixed times or periods when that takes place.

Q. Well, take the Louisville plant for an example; a plant such as the Louisville plant, when would that period be reached?

A. Just as I said yesterday, the various kinds of material that are used have varying periods of life, and it is impossible to tell when that takes place, when it is going to take place. We just simply know by experience that within that fifteen years you are going to meet with those conditions in that plant, and if you do not
1617 provide for them, you are in a very bad financial condition otherwise.

Q. What is the theory on which business men claim that a fund should be set aside for depreciation?

A. The theory is one of practical experience in business, and no matter whether it be telephone plant, or manufacturing concern, or what not, if that fund is not set aside, there will surely come a period in the history of the business when calamity will stare it in the face; and all lines of business are conducted, recognize, and act upon that principle, provided the results of the business enable them to set aside the fund. There are frequently cases where concerns conduct a business and when it winds up its yearly periods it finds it has not the funds to set aside and therefore it must not do so, but that does not change the principle at all, or the fact that the fund should be available, and that that must be provided for in the run of the business, or else calamity is the result.

Q. In other words, it is with the idea of preserving the capital account intact, the plant account intact, is it not, so that at the end of any one period the plant account will be the same as it was at the outset?

A. Well, from the accounting standpoint, if that is what you mean, I cannot answer; but if you mean from the practical standpoint of maintaining the property or the plant, then I can answer, that that policy is imperatively necessary.

Q. In other words, if you had a plant which cost you a
1618 hundred thousand dollars, that was going to wear out in fifteen years and have to be reproduced, unless the managers set aside a sufficient sum out of the earnings to take care and reproduce the plant as it was required to be reproduced, then your capital would be impaired, wouldn't it?

A. Oh yes, just to the extent that you should fail to do that.

Q. And it is not for the purpose of adding to your capital?

A. Not at all; it is to be sure——

Q. That you have always got a hundred thousand dollars' worth

of property, either in money or in plant or in material or in something representing the plant, is it not?

A. It is to be sure that your values are not misleading as reflected on your books, or that the condition of your plant is what it should be.

Q. Now it is immaterial to the managers of that plant whether they have this money which they deduct from their earnings and set aside to take care of the depreciation, it is immaterial to the managers whether that remains in the treasury of the company as money, or whether it is invested in material, or whether it is invested in bonds, or what becomes of it, it still represents the hundred thousand dollars capital or plant account, isn't that true?

A. I don't know how it would be carried into the books, but I know that it would be very material that this fund as set
1619 aside should be available in some form of quick asset that could be realized upon in order that the replacements called for from time to time might be secured. Just how the book keeping would be done I do not know.

Q. Do you know how much cable there is in the Louisville plant that was there when it was purchased from the Ohio Valley Company?

A. No, I do not.

Q. What would be your estimate of the present percentage of cable now in the plant that was there when you purchased the plant?

A. Without having any actual statistics or figures before me, I would say that there was not a great deal of it.

Q. How about the conduits, what percentage?

A. In all my experience in conduit building, I don't think that I have ever seen a conduit system built more substantially and with more care than that plant was constructed; the Ohio Valley Company, that built the major portion of the underground plant, used large amounts of iron pipe, and laid that pipe in Portland cement, and even when the pipe rusts out, the Portland cement around it will still provide, for a good long while, protection almost the equivalent of the original conduits; and on that feature of the Louisville plant the company stands a chance of getting good long life. What that will be we cannot possibly tell at this time.

Q. Is any of the wire other than cable wire in the plant
1620 now that was there when it was purchased from the Ohio Valley?

A. I don't believe that there is a single foot of it; in fact, I have good reason to state that there is none of the wire left that was there ten years ago.

Q. Has the amount of money expended in reproduction work been audited or gone over by you, and assigned to the item of Reconstruction?

A. Only reviewed in a general way. That work is left to the Auditor and the Plant Department, to follow out understood and usually recognized methods of making their distribution.

Q. Was there as much or more reconstruction work in 1909 than there was in 1908.

A. I cannot answer that.

Q. I believe you said there had been no attempt to do otherwise than maintain the property in its present condition for the last two years?

A. That is true.

Q. What is your opinion about the amount of reconstruction work for the year 1909 as compared with the year 1908?

A. I know that during the year 1909, pending all this litigation staring us in the face, we have only done the things that were felt necessary to do in properly maintaining the plant. Just how much has been done as compared to 1908, I could only state by surmise. I think that we very likely did some more in 1908
1621 than we did in 1909, but I cannot state that as a fact, without getting information from the Auditor.

Q. I believe you said you thought the plant was now worth over a million seven hundred thousand dollars?

A. I feel sure that it is.

Q. Mr. Blair Smith's deposition shows that for four years 1905, 1906, 1907 and 1908, the average amount of reconstruction was about $35,000.00 per year; if that was the average for the year 1909, then for the last five years the reconstruction work has amounted to only about $160,000 or $170,000, would you say then that a very large portion of the plant has been there in its present condition for more than five years?

A. The major portion of it has been.

Q. And practically all the conduit system, I believe you say, has been there for more than ten years?

A. That connected with the main exchange, by far the major portion of that connected with the main exchange has been there ten years and over. The other exchanges were builded by the Cumberland Company.

Q. Do you know how much there has been builded by the present company?

A. No, I cannot tell that; I know that there is a considerable amount of underground in the South Exchange, that was builded by the Cumberland Company, and some additions to the Main exchange; what the amounts are I could not tell, but the books
1622 of the Auditor will show that in figures.

Q. I show you what purports to be a photograph of your underground system in Louisville, and will ask you to state, from examining that photograph, how much underground or conduit work appears on that which was not purchased from the Ohio Valley Company?

A. I cannot take this map and tell you that. It would be necessary to get the plant men to do that. As I said awhile ago, this South exchange underground was builded mostly by the Cumberland Company, as it was the company that put the South exchange into service. There was at the time we took over the Ohio Valley Company some underground ducts leading from the main exchange

down into the section that is now served by the South exchange, but how much of that, and how far it extended I cannot tell from memory. Our records are in possession of the plant men.

Q. Well, would you say that your company had constructed ten per cent. of the conduit system, as it appears there now?

A. I should think so, yes.

Q. Fifteen per cent?

A. Perhaps that amount, but I couldn't tell that without getting the information from the Plant Department. The major portion, by far, of the plant, as I said awhile ago, was constructed by the Ohio Valley Company.

Q. I do not recall whether you said what was the life of the average pole in your system at Louisville?

1623 A. About ten years.

Q. Now as I understand the difference between you and Mr. Settle, Mr. Settle says that certain employees and the Cashier, Mr. Metzger, and certain trouble men, and others devote a certain portion of their time, or did during the period covered by his deposition, to work connected with the districts surrounding Louisville, and outside of the city of Louisville, and not in connection with the Louisville exchange proper. Now as I understand it, you do not say that that is not true, but you simply contend that the work these men do, or the work these men did was subordinate to their work in connection with the Louisville exchange, and their services would have been required whether or not there had been any district surrounding Louisville operated by the Cumberland Telephone Company?

A. My statement in regard to that was this, that outside of the supervisory work, which by comparison with the attention to the Louisville exchanges is almost nothing, the supervisory work on the part of the Manager, the Chief Operator, the Chief Electrician, and the General Foreman, that all work done by Louisville employees on outside and surrounding exchanges was done at the expense of those exchanges, and without expense to the Louisville exchange. To put it differently, whenever Louisville men worked on these outside exchanges, their time was charged to the outside exchanges, and not to the Louisville exchange. And the

1624 difference between Mr. Settle and I is this, that Mr. Settle has made statements that he knew he had no right or authority to make, and that he could not have made if seeking to make a statement that he knew anything about personally. And a further difference is that Mr. Settle left the company's employ, it seems, as a defaulter, and has gone out of his way to further show his dislike for the company by making statements that he had a right to know were false when he made them.

Q. Do you mean to say that a part of Mr. Boardman's salary was, during the years 1905 and '06 charged to the Districts?

A. I do not. I have twice tried to make it plain that Mr. Boardman and the Chief Operator and the General Foreman and the Chief Electrician gave such supervisory attention to these branch exchanges as they thought necessary in connection with the service

of the Louisville exchange, which service is very closely related on account of the fact that there are people in all of those exchanges that we allow the Louisville Manager to supervise who arranged for Louisville service, and to whom the Louisville subscribers are granted service without additional charge. In other words, you could say that by reason of this supervision of the Louisville manager, that the Louisville customers, all of them, get free service to those subscribers referred to in the surrounding exchanges. And we have the feeling that whatever Mr. Boardman and these other
1625 heads of departments have done was more than compensated for in additional facilities and additional service to the Louisville exchange subscribers.

Q. You don't mean to say, then, if you did say it, that their salaries were not charged up to Louisville Exchange?

A. I did not mean to say it, and I think that I said just the opposite. Their entire salary is charged to the Louisville Exchange, where we think it should be charged.

Q. And you didn't mean to say that the toll trouble man's salary, for instance, was charged up anywhere except against the Louisville Exchange?

A. I state that if the toll trouble man has done any work at any time for any of those exchanges, that his time and his material used was charged to those exchanges and not to Louisville.

Q. Do you mean to say that his salary is not paid and charged up as a part of Operating Louisville Exchange?

A. I state that if he has at any time done any work for any exchange except for the Louisville exchange, that such time and such work were charged to the exchange and credited to the Louisville exchange. He of course draws his salary each month from Louisville, but the entries would be made, and have been made according to the fact of whether or not his entire time was devoted to Louisville. If it was not devoted entirely to Louisville, Louisville has only been charged for the time that was devoted to it.

Q. You do not keep the books of the Company, do you?

1626 A. I do not keep any of the books of the Company.

Q. You don't know where his salary is charged up, then, do you?

A. I know that the statement that I have made is correct.

Q. Well, you don't know where his salary is charged up if you don't keep the books, do you?

A. I know that my statement is correct.

Q. Well, please answer my question.

A. I cannot answer it any differently from what I have. I have answered it as clearly, as plainly and as directly as I could.

Q. They have a number of toll operators there, haven't they?

A. Quite a number.

Q. Do you know where their salary is charged?

A. It is charged at Louisville.

Q. Against the Louisville Exchange?

A. Yes sir.

Q. Now coming to this question of charging the Louisville sub-

scriber for the privilege of being connected with the Long Distance Exchange, is it any advantage to the Company for the subscriber to be connected with the Long Distance exchange?

A. It is an advantage to the company to furnish, in each exchange, all the facilities that it can that will make the service more attractive and more pleasing, and save all the time of the sub-
1627 scribers that it is possible, and in that sense, it is desirable, to accomplish that result.

Q. When the subscriber wants to telephone over the long distance lines, he pays the same rate that he would pay if he were to go to the company's office or to the Seelbach Hotel, or any other such place, does he not?

A. He is not charged any more for the service than he would pay if he went to the public station.

Q. The public stations are all connected with the exchange proper, are they not?

A. They are connected, through the long distance board, with the exchange proper, yes.

Q. Do you mean to say that a public pay station in a drug store is not connected with the exchange proper and trunked from there with the long distance lines, just like the subscriber's station is?

A. That is an entirely different kind of pay station from the one we refer to as Long Distance Public Pay Stations like we maintain in our different offices in Louisville. That is a Local Pay Station, that is connected with Long Distance through extra equipment, just like the extra equipment employed in connecting other local telephones of an exchange with the long distance lines.

Q. Each one of your operators in your exchange can connect with the long distance operators, can they not?

A. Yes, they have been provided with facilities that enable them to do that.

Q. When you say your offices, do you mean your offices
1628 on Jefferson Street, in Louisville?

A. No, I mean all the telephones connected with the various exchanges that we operate in Louisville.

Q. Well, take the Willard Hotel; some one wants to telephone from the Willard Hotel over the long distance: is he connected with the exchange proper and then trunked to the long distance, just as a subscriber would be?

A. The telephones in the Willard Hotel are just exactly as the other subscribers' telephones, and are connected the same way, yes.

Q. How about the telephones in the office of the Cumberland Telephone Company, in Louisville, with what exchange are they connected, with the Long Distance, or the Local exchange?

A. We have thought it well there to provide dual connections, some trunks going direct to the local exchange, other trunks going direct to the long distance exchange.

Q. If I go into one of the booths that you have in your Jefferson Street office in Louisville, and take down the receiver, who answers the call, the local exchange operator, or the long distance operator?

A. Neither one; the public station operator that is on duty at the time in the office, right by the side of the booths.

Q. You have a private branch exchange there, then, have you?

A. Yes sir.

1629 Q. And if you want long distance, she gives you long distance, does she?

A. Yes, she makes the connection between the booth that is being used for a long distance message and the long distance switch-board.

Q. What other stations have you in the town of Louisville from which the exchange operator, or private branch exchange operator can connect you direct with the long distance, if any?

A. Well, we have the South Exchange, the East Exchange, the West Exchange, the Public Station switchboard in Seelbach's Hotel. If there are other of the semi-public station or private branch exchanges with direct trunks to the toll board, I do not recall it just now. I think those I have named are a full list.

Q. Are you a telephone engineer?

A. I have been working along that line for twenty-two years. I think I am considered by the Telephone Engineers as in good standing.

Q. What did I understand you to say about the value of your entire plant at the present time?

A. In Louisville?

Q. All over your system?

A. About twenty-five million dollars is invested in plant.

Q. Now do I understand you to say that seven and a half per cent. of that amount should be set aside for depreci-

1630 ation, or seven and a half per cent. of your capital investment?

A. I have tried to state that as the years come and go that an average of seven and a half per cent. should be set aside to insure the integrity of the property and its proper rebuild and replacement of plant, as part by part gives way; of course if seven and a half per cent. is not available from earnings to set apart it cannot be set apart, and is not set apart, and unfortunately this has been the condition at Louisville.

Q. What I wanted to know is whether your position is that seven and a half per cent. of the twenty-five million representing the value of your plant, or seven and a half of the twenty million representing the value of your investment from a capital stock standpoint, should be set aside?

A. I do not figure it from the dollars and cents standpoint at all, as a telephone engineer and construction and maintenance man; I figure it through the period of years which I stated was the experience of this and other companies that have been operating for a long time, that from thirteen to fifteen years was considered the safe and about the time that we were warned the plant would have to be renewed, no matter from which standpoint you figure, if you figure it from the capital issued standpoint or from the amount invested, that is immaterial, as far as my statements are concerned,

that you have got to renew your plant about every thirteen
1631 to fifteen years, and the seven and one-half per cent. is simply the relationship of that number of years to a hundred.

Q. Well, if it cost your company $1,600,000.00 to build its plant in Louisville, and it is now worth $1,790,000.00, do you think the seven and a half per cent ought to be calculated on the $1,790,000.00 or the $1,600,000.00?

A. Well, I have no opinion about that. I just think that no matter what the plant has cost, that is immaterial from my standpoint, it has got to be renewed within the periods mentioned, irrespective of what it cost or what it might cost now. The plant, for illustration, might have cost the amount that you say, and by reason of a radical increase in the cost of material, it would be possible for the renewed plant to cost a great deal more than it cost in the beginning; but that would not change the period or the year or the day when the plant would have to be renewed.

Q. But it would change the amount on which you would calculate your seven and a half per cent. What I want to know from you, as a telephone engineer, is whether, in your opinion, the seven and a half per cent. should be calculated on the basis of $1,600,000.00 or a $1,796,000.00?

A. As nearly as possible, I should say that it should be calculated on the basis of what the plant would cost to rebuild.

Q. That would be $1,796,000.00?

A. Whatever it would cost to rebuild, that proportionate basis should be provided for each year.

1632 Q. You say it would cost to rebuild it $1,796,000, I believe?

A. I have never made that statement.

Q. What do you say it would cost to rebuild it?

A. I have not made any estimate on that. I have seen and gone over very carefully the estimate recently made by our engineer, Mr. Jagoe, which in round figures would show $1,700,000.00.

Q. And is that the figure you think the seven and a half per cent. should be based on, Mr. Jagoe's figures?

A. I think that would be safe, yes.

Redirect examination.

By Mr. GRANBERY, for the plaintiff:

Q. Mr. Hume, I should have asked you, on direct examination, that which I shall now ask you: Mr. Farnham has stated in his report that if the Rate Ordinance should be put into effect it would result in an increase in patronage, and if not a decrease certainly no increase in expense. What have you to say to that statement?

A. I would say that no man who had any practical experience or any reasonable information about the business would be guilty of such a mis-statement, for it is not a fact, and could not be.

Q. Mr. Hume, would an increase in the number of subscribers in Louisville entail an increase in the expense of conducting the business?

1633 A. Of necessity it would.

Q. Would it decrease expenses in any way per subscriber?

A. An increase in patronage would cause and bring about a proportionate increase in the cost of operating the telephone per subscriber.

Q. Well now, would putting the ordinance rates into effect decrease your expenses in conducting the Louisville exchange in any way?

A. It would be impossible for it to have that effect.

Q. What has been the experience of the company with respect to rates in Louisville, has there been any change in the rates, or effort to ascertain what rates the public would pay, or what rates were fair?

A. When we purchased the Ohio Valley Telephone Company, we found what we considered a very small development of the telephone business in Louisville; we promptly set about to provide facilities that would enable us to take on business very rapidly, believing that by providing the facilities that we could then secure the business, and we set about it with the best traffic men that we could procure, men who had established themselves as good traffic men, and solicited business. The rates that the Ohio Valley Telephone Company had formerly charged were not increased, notwithstanding the fact that we proposed to add largely to the exchange if we could, but as the business did not respond except very slowly, we retained those rates, but at the same time added a schedule of rates

1634 that were considered very attractive, offering various kinds of service, including the metered service, and measured service, and pay station service, following plans that had been successful in other large cities. Those rates brought about some increase in business, but nothing phenomenal, or nothing that we thought was in accord with what should be accomplished, and as a consequence, we have, from time to time, put out schedules of rates with attractive features, and we have offered, at Louisville, all the features that were attractive and that were taken hold of by other communities, and I can state that we have never conducted our business in any place where more study has been given to the question of placing before the public various types of service and plans for service than has been done by us in the city of Louisville.

Q. Have you had any competition in the business?

A. Yes, for the major portion of our business career in Louisville, we have conducted the business in the face of competition.

Q. Does that competitive condition exist now?

A. It does.

Q. How long has it existed?

A. Seven or eight years, I think.

Further this deponent saith not.

LELAND HUME.

Subscribed and sworn to before me this 28th day of March, 1910.

BUFORD DUKE,
Notary Public.

1635 The deposition of H. BLAIR SMITH, taken at the same place, on Saturday, the 19th day of March, 1910. Said witness testified as follows:—

Direct examination.

By Mr. GRANBERY, for the Plaintiff:

Q. You are the gentleman whose deposition has heretofore been taken in this case?

A. I am.

Q. Have you read the deposition of Mr. T. D. Webb, in this case?

A. Yes.

Q. You observed what he stated with respect to a statement of receipts and disbursements and capital account in a deposition in the Weller case, in Louisville?

A. Yes sir.

Q. Do you know anything about those statements?

A. Yes sir.

Q. Please state what you know about that.

A. The Construction account, which he gave in the statements referred to, was made up at a time when the records had not been compiled in the condition which they are now in. It was in 1902, I think, that we determined to summarize the records and get them in ship shape. It required a considerable amount of work to do this, and I took the general book-keeper in the office from
1636 his work, giving it to some one else, and put him in charge of this work.

Q. Which work did you put him in charge of?

A. Put him in charge of the work of getting order out of the records which had been compiled from time to time but had never been put together. He was given only a very short time to get up this information, which was needed in a great hurry, and he did the very best he could from the many records which it was necessary for him to refer to. He spent more than a year in the work that was turned over to him, that is, summarizing the Construction accounts of the different exchanges and of the toll lines. The financial statement that was made up for the City of Louisville at the time——

Q. Just there, do you mean that he spent a year in getting up this statement that Mr. Webb used in his deposition?

A. I do not. I mean that he spent more than a year in getting up and tabulating the Construction accounts at the various exchanges. He was given only a few days to get up the statement to be used by Mr. Webb.

Q. Was that statement correct or accurate?

A. It was not.

Q. Have you any memoranda or records of the figures that he made at the time, showing that it is not correct?

A. Yes sir.

Q. What papers have you?

A. I have some memoranda that he pasted on a cover of a
1637 construction book at the time, and I find that in getting this up there were a number of errors made in it, and a very large one in addition.

Q. Well, now, about the receipts and disbursements that he gave in that statement?

A. The receipts and disbursements that he gave were actual for eleven months. The statement, as I remember it, was asked for in January, and at the time when we had not completed the figures for the month of December, and it was necessary to estimate this as closely as possible. We did this, and I think the statement shows only a few dollars difference from the correct statement.

Q. Well now, in this Construction account, did you prepare that?

A. I did not.

Q. Or verify it?

A. The Construction account that was filed by the Treasurer, I did not.

Cross-examination.

By Mr. BLAKEY, for the Defendant:

Q. Do you know from what source he got the data furnished Mr. Webb?

A. I think—in fact I am sure, he made an effort to get it from the many records of the company, which were not in a tabulated form enabling him to get it accurately in the little time which he had at his disposal.

1638 Q. After the purchase of the Ohio Valley by the Cumberland, were the records kept in such a manner as to show how much was expended for construction each year?

A. Yes sir.

Q. Then any errors were in connection with the data prior to the time of your purchase, I suppose?

A. No.

Q. Where were the other errors?

A. The records were kept, Mr. Blakey, showing month by month the classification of Expenses and Construction, but those months were only added, they were not tabulated, and the credits coming from the Journal and from the Auditor's Bill Book were not tabulated in connection with the charges from the vouchers; so that in getting his information it was necessary for him to refer to a great many different records. It was not all assembled in the nice shape in which we at the present time keep them.

Q. Will you let me see that statement which you speak of, or data, from which this clerk made up this statement for Mr. Webb?

A. I will. Mr. Haden was the clerk, who usually preserved the record of everything he did, even his scratch memorandum papers in regard to it.

Q. This memorandum shown me is headed "Construction for Louisville, Ky., by Months, from June, 1899 to Nov. 1st, 1901, I believe?

A. Yes sir.

1639 Q. What does that show for the aerial construction, the equipment construction, the underground construction, and the total of those three?

A. It shows:

Aerial	$203,442.12
Equipment	84,197.51
Underground	59,442.78
Total	$247,082.41

But you will notice that the total should be one hundred thousand greater.

Q. Have you added up each of the items, Aerial, Equipment and Underground, to see that the totals are correct?

A. I have not. This memorandum is only a memorandum; it has never entered into the records of the Company.

Further this deponent saith not.

H. BLAIR SMITH.

Subscribed and sworn to before me this 28th day of March, 1910.

BUFORD DUKE.
Notary Public.

1640 E. M. FISHER the next witness called, testified as follows:

Direct examination.

By Mr. GRANBERY, for the Plaintiff:

Q. Where do you reside?
A. Nashville.
Q. Do you know Mr. E. W. Farnham?
A. Yes sir.
Q. The General Manager of the Mutual Audit Company, who made the investigation of the records of the Cumberland Telephone and Telegraph Company in the summer of 1909?
A. Yes sir.
Q. What has Mr. Farnham been engaged in during his business career?
A. Locomotive engineer, telegraph operator, train dispatcher, construction work, electrician, a detective, express business, and, finally, General Manager of some railroad companies.
Q. Was he ever a telephone man?
A. No sir.
Q. Was he ever an expert accountant?
A. No sir.

1641 Cross-examination.

By Mr. BLAKEY, for the Defendant:

Q. Did you know Mr. Farnham when he was a locomotive engineer?
A. No sir.
Q. You don't know that, then, of your own personal knowledge?
A. Only what he told me.

Q. Did you know him when he was a telegraph operator?
A. No sir.
Q. You don't know he was a telegraph operator, then, of your own personal knowledge?
A. No sir.
Q. Did you know him when he was in the express business?
A. No sir.
Q. You don't know that he was in that business of your own personal knowledge?
A. No sir, my knowledge of Mr. Farnham is what he told me of his past.
Q. What is your business?
A. I am Superintendent of Traffic of the Cumberland Telephone and Telegraph Company.
Q. How did you learn that business? Are you an expert in that line?
A. Yes sir.
Q. How have you learned that business?
1642 A. I have been studying it for the past twenty-seven years.
Q. Actual experience?
A. Actual experience, telegraph and telephone combined.
Q. Do you think that is the best way to learn a business?
A. In connection with that I have taken courses of study, etc.
Q. Which do you think is actually the better way to learn a business, to practice it, or to study it?
A. Actual practice, you become familiar with more features of the business.
Q. You don't know how much practice Mr. Farnham has had in the matter of book keeping, do you?
A. No sir.
Q. Or accounting?
A. No sir, I accept what he told me.
Q. Well, did he tell you he had never had experience in book keeping or accounting?
A. He told me he was not an expert accountant.
Q. Did he tell you that while he was here?
A. Yes.
Q. What was the occasion for him telling you that?
A. I went out to dinner with him one day, and we were at the Wautauga Club, we were old telegraph men, so he claimed, that he was an old telegraph man, and we talked over our life and history, etc.
Q. Just a friendly chat?
1643 A. Yes sir.
Q. You don't know of your own knowledge that he is not an expert accountant?
A. No sir.

Redirect examination.

By Mr. GRANBERY, for the Plaintiff:

Q. You have no reason to believe that Mr. Farnham was misstating any facts to you in telling you of his life, have you?

A. He was giving me his life with the idea that I was to write it up for the Telegraph Age, and was supposed to be giving me facts that could not be controverted.

Further this deponent saith not.

E. M. FISHER.

Subscribed and sworn to before me this 28th day of March, 1910.

BUFORD DUKE,
Notary Public.

1644 CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
v.
THE CITY OF LOUISVILLE KENTUCKY.

Deposition of George Wilkinson, Taken March 23, 1910, in the City of New York, to be Used as Evidence on Behalf of the Complainant in the Above Entitled Cause.

This deposition is taken by consent, and all formalities are waived. The defendant objects to the deposition of George Wilkinson because the evidence proposed to be brought out is evidence in chief, and is not in rebuttal, and his deposition should have been taken before the defendant rested his case.

The said GEORGE WILKINSON, being duly sworn, deposes as follows:

Direct examination by Mr. W. L. GRANBERY:

Q. What is your occupation?

A. Certified Public Accountant.

Q. How long have you been engaged in that work?

A. As a Certified Public Accountant, since the passage of the law establishing that in 1903; as an Accountant, for 23 years.

Q. Were you employed to make an examination in connection with the Mutual Audit Company of the records of the complainant company during the year 1909, in the City of Nashville, Tennessee?

A. Yes.

Q. Did you make that examination?

A. I made that examination personally.

Q. Did you and Mr. E. W. Farnham, representing the Mutual Audit Company, agree on a joint report to the Master Commissioner?

1645 A. We did, on July 7, 1909.

Q. I will ask you to file a copy of that joint report as Exhibit 1.

A. I will do so.

(It is agreed that the joint report and the other reports hereinafter referred to as Exhibits 2 and 3, are now in the possession of the Master Commissioner, and may be treated as Exhibits to this deposition.)

Q. Did you make a separate report to the Master Commissioner in that matter?

A. I did.

Q. Will you file that separate report as Exhibit 2?

A. I will do so.

Q. Did you make a reply report to the individual report of the Mutual Audit Company?

A. I did.

Q. Will you attach it to your deposition as Exhibit 3?

A. Yes.

Q. Are the statements made in those three reports correct, Mr. Wilkinson?

A. They are.

Q. Mr. Wilkinson, was ther- any difficulty on the part of the employees of the Mutual Audit Company, or yourself, or your assistants, in getting access to all the books, records, vouchers and papers of the complainant company during this investigation?

A. None whatever.

Q. Was every facility offered the accountants to make this examination?

A. There certainly was.

Q. What condition were the books and records of the complainant company in, those which were examined by you and the Mutual Audit Company? I mean as to the standard of efficiency—

1646 were they in bad shape, good shape, or how?

A. The books and records we examined were posted up to date; were in balance; were agreed and were in good form.

Q. Were they above or below the standard of the records of other public service companies?

A. They were up to the standard that we meet with in our practice elsewhere.

Q. Is there such a thing as standard forms of telephone accounting in this country?

A. There is a standard form promulgated by the Bell Telephone Company, of Boston, for all telephone companies acting under their leases.

Q. Were the records of the complainant company in accordance with these forms?

A. The form provides for the distribution of accounts, all purchases and all credits arising in the telephone business; but the standard distribution, I should call it, promulgated by the Bell Company, does not stipulate as to the forms of the books and the interior workings of the office.

Q. What I am getting at is,—do the records of the complainant company conform to the standard prescribed by the Bell Company

interests of Boston with respect to the receipts and disbursements and distribution?

A. They do. The books of account of the Company are so arranged and so kept as to provide the information that is needed to meet these requirements and to comply with this standard.

Q. You know Mr. E. W. Farnham, who represented the Mutual Audit Company?

A. Only as meeting him in the City of Nashville.

Q. Is he an expert accountant?

A. He is not qualified as an expert accountant, in my opinion.

Q. Did he make any statement to you in that respect?

A. In conversing with me Mr. Farnham rather disclaimed
1647 being an expert accountant; he told me he regarded himself not as an expert accountant, but as an expert business systematizer, if I remember correctly.

Q. Did the Mutual Audit Company and yourselves examine the original vouchers and records of the company with reference to receipts and disbursements, as well as the books of the Company?

A. The employees of the Mutual Audit Company and myself did so examine the papers you refer to.

Q. The order of the Commissioner to the examiners directed that wherever they disagreed in making their report they were to refer the matter to him for advice and consideration. Why was that not done?

A. It was done to a certain extent. In the first place, in starting the examination we drew up a memorandum of the scope of the examination; that was dated, I think, May 6, 1909; a copy of that memorandum covering the proposed scope of the examination was sent to the Master Commissioner on that date; it was signed by both E. W. Farnham and Wilkinson, Reckitt, Williams & Co.; thereafter we again referred certain matter to the Master in July 1909.

Q. Now, when your joint report was made, it only covered certain matters that had been referred to you, and did not cover other matters concerning which you and Mr. Farnham disagreed. Why were not those matters referred to the Master for advice and instruction after the joint report was signed?

A. For the reason that right after the joint report was signed, namely, on July 7th, on the next day, July 8th, Mr. Farnham went away from Nashville unexpectedly, without any warning to me, without saying a word to me, and did not return. Of that fact the Master was duly advised on the following day, namely, July 9th.

Q. Have you seen Mr. Farnham since, or had any communication from him since?

A. I have not seen Mr. Farnham since. We had one communication from Mr. Farnham, a telegram, I think, asking us to send back to him a certain statement over which his employees
1648 had labored industriously for a long time, and which he had inadvertently left behind in our keeping.

Q. Mr. Wilkinson, in auditing the Construction Account of the complainant company, was that checked over by both sides, yourself and the Mutual Audit Company, and agreed to by both?

A. It was.

Q. Was that done with respect to the receipts and disbursements of the various years under consideration?

A. It was, for the reason that those were covered in the joint report.

Cross-examination:

By Mr. BLAKEY:

Q. What does Certified Public Accountant mean?

A. A Certified Public Accountant is one who has received from the Governor of the State in which his principal place of business is located a certificate authorizing him to style himself a Certified Public Accountant.

Q. That is, under some particular law of some of the States, as I understand it.

A. Under the laws of about twenty of the States. This little map would tell you, if you would care to look at it, to what extent it is the law of the United States or of the several States in the Union.

Q. What State authorized you to style yourself Certified Public Accountant?

A. In the order of date, the States of Illinois, New Jersey, New York, Pennsylvania and Colorado.

Q. Did you take an examination in any of those States?

A. As required under the law.

Q. What sort of an examination did you take?

A. The examination to which I was submitted was one which established the length of time that I had been practicing as an accountant, and covered my business and professional career for
1649 the ten years preceding the date of the examination. I think that applies to each such certificate.

Q. Any one who has practiced accounting is required under the law of those States to take an examination as to the efficiency?

A. Yes.

Q. You did some work for the Railroad Commission of Louisiana on the books of the Cumberland Telephone Company, did you not?

A. I did.

Q. What was the occasion for that examination, if you remember?

A. That examination was undertaken by consent of the parties to the litigation that was had in the State of Louisiana in 1900, an agreement having been arrived at between the Railroad Commission and the Cumberland Telephone Company, that an accountant mutually acceptable to both sides should be employed to make an examination of that Company's books at their head office at Nashville, Tennessee.

Q. Who paid for that service?

A. The cost of that work and the amount of our remuneration was, if I remember rightly, paid half by the State and half by the Company.

Q. Didn't the State refuse to pay you anything, and didn't the Telephone Company pay you the entire amount of your fees?

A. My recollection of it is, that the State paid half. I would have to refresh my memory from records that are not here at present to determine that, but there was never the slightest word about it. My recollection is, that it was an even split.

Q. Do you mean to say that the State or the Railroad Commission made no objection to paying a part of your fees in that case?

A. Not to me.

Q. You testified for the Telephone Company in that case, did you not?

A. I did not testify at all, if I remember rightly; the report was the extent of my work.

1650 I am now ready to answer and particular question. May I embody this in my answer? I have here copy of a debit note:

"CHICAGO, *1st November*, 1900.

The Railroad Commission of the State of Louisiana to George Wilkinson, Dr.

For services rendered making an examination of the books and accounts and business affairs generally of the Cumberland Telephone & Telegraph Company in so far as they relate to the State of Louisiana, and reporting fully thereupon to the Railroad Commission, in accordance with instructions received from you, dated July 12, 1900.

Time expended:

Principal, 457 hours, 65 days at $25.00	$1,625.00
Clerks, 670¾ hours, 96 days at $10.00	960.00
Traveling expenses incurred	476.70
Total	$3,061.70
Half	1,530.85

Next, is a copy of a similar debit note reading "To the Cumberland Telephone & Telegraph Company," and arriving at the same figures; and here is a copy of a letter to Mr. Sims, who was the Chairman of the Railroad Commission at that time, enclosing debit note.

Q. The Telephone Company advanced you some $700.00, didn't they?

A. They advanced me $810.00 for my expenses and my assistant's expenses from Chicago, where I was practicing, to Nashville, Tennessee.

Q. What did you say about giving a deposition in that case?

A. I do not remember having given any deposition at all. The report was accepted by both sides in accordance with the previously made agreement that it would be accepted. I am only speaking from my memory.

Q. I hand you pamphlet transcript of the record of the Supreme

Court of the United States, October Term, 1908, No. 182, and call your attention to pages 262-3-4-5-6-7-8. The particular part to which I call your attention is: "Deposition of George Wil-
1651 kinson filed August 15, 1907. United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division, Numbers 61 and 66, Consolidated. Cumberland Telephone and Telegraph Co. v. Railroad Commission of Louisiana. State of New York, County of New York, ss.

Interrogatories propounded to George Wilkinson and his answers thereto. Transmitted by George Wilkinson to the Clerk of the United States Circuit Court at New Orleans, to be used as evidence on behalf of the plaintiff in the above entitled causes;" signed by George Wilkinson, and sworn to before Henry Bennett Leary, Notary Public, New York County; and ask you if you gave that deposition in that case.

A. This deposition is dated 15th August, 1907. The examination was made in the Summer of 1900. In answering your previous question as to whether I gave any testimony in regard to that report, I had not in mind this subsequent deposition which came up seven years afterward. I repeat what I said before, that in connection with the examination made by myself on behalf of the Railroad Commission and the Telephone Company jointly, in the summer of 1900, I gave no evidence at the time. I did answer these interrogatories and these cross-interrogatories in this pleading, and I did so swear to them before Henry Bennett Leary, Notary Public of the State of New York, and no doubt that is a correct transcript of it.

Q. That was the deposition, then, you gave for the Telephone Company dealing with your examination of the books of the Company, was it?

A. I did not say it was given for the Cumberland Telephone Company. It was given here in the City of New York, before a Notary Public, and in connection with that examination.

Q. I call your attention to the caption which reads in part "to be used as evidence on behalf of the plaintiff in the above entitled causes;" also, to the fact that the Cumberland Telephone and Telegraph Company was the plaintiff.

A. I see that you are right.

1652 Q. You have made investigations of other telephone companies, I presume?

A. I have.

Q. For whom, telephone companies or the rate making bodies?

A. I have made personally one examination that I call to mind now; that of the Wisconsin Telephone Company, in connection with a rate case at Marionette, Wisconsin. In addition to that, I have arranged for the audits of some other companies and examinations, and have planned the lines on which these examinations should be conducted, but I have made no personal examination of the books of the companies in any other case that I call to mind now than the Cumberland and the Wisconsin Telephone Companies.

Q. In the other instances you mention, were you representing the telephone company?

A. Do you mean in the Wisconsin case?

Q. In the others besides the Wisconsin and the Cumberland.

A. My recollection is, that the examinations were made on behalf of the companies at the direction of the Board of Directors.

Q. Were they Bell Companies or independent companies?

A. They were Bell Companies. I would like to elucidate that if I may. These matters occurred in our Western field; they were handled by our Chicago office and when the matter came up they sent to me here in New York certain papers and preliminary instructions and asked me to lay out a program for the conduct of the work, which I proceeded to do, and returned them, with the papers, to our Chicago office, and I cannot even tell you the exact name of the companies at this time. The matter was dismissed after a day's work probably in each case.

Q. Was that a rate case in which you examined the Wisconsin Company?

A. It was a rate case.

Q. You represented the Bell Company?

A. We were engaged by the Wisconsin Telephone Com-
1653 pany, which is one of the Bell Companies.

Q. I believe you say you do not consider Mr. E. W. Farnham an expert accountant?

A. I do not consider Mr. Farnham an expert accountant, based on what I have seen and what he says of himself.

Q. And you do consider yourself an expert accountant?

A. I am a Certified Public Accountant, irrespective of what I consider myself.

Q. Do you consider yourself an expert accountant?

A. I do not like the word "expert;" we will not allow the word to be applied to us because it is used by so many who are not Certified Public Accountants.

Q. You say you do not like, for reasons of policy, to have the word "expert" applied to you. Do you know whether Mr. Farnham has the same reasons?

A. I do not know what reasons are in Mr. Farnham's mind for saying he is not an expert accountant; he does not pose as an expert accountant. You will excuse me if I say to you that the certificate of the State of New York, for instance, says: "George Wilkinson has given satisfactory evidence that for more than one year before the passage of the Act creating the title of Certified Public Accountant he had practiced in this State on his own account as a public accountant and had met all other requirements prescribed by law or by the University ordinances for an expert public accountant." The University of Illinois says that "George Wilkinson has passed all examinations and met all other requirements prescribed by law or by the University ordinances for an expert public accountant." So, as these two Universities say I am an expert, I suppose I shall have to plead guilty, but I do not like the word on account of the abuse it has been submitted to.

Q. I call your attention to a paragraph on page 22 of your separate report, to the matter which reads as follows:

"By mutual consent of the Accountants, the employés of the Mutual Audit Company, acting under the direction of Mr. E. W. Farnham, expert accountant selected by the City of Louisville,
1654 made the abstract above referred to, exactly as agreed on May 6th, 1909." Now, I want to ask you to explain your use of the words "expert accountant" in connection with Mr. Farnham at that place.

A. The term there applied to Mr. E. W. Farnham, "expert accountant selected by the City of Louisville," was quoted from a letter of instructions sent to me by Judge Burnett, of Louisville, when this matter was started. He was introduced to me as an expert public accountant and I have done my best to so regard him ever since. I think I could find the letter of instructions. I think it was addressed in the first place to Mr. Granbery, and handed to me on my arrival on May 4th, 1909. I have the letter before me; it is dated 3rd May, 1909, and it reads as follows:

"This will be handed to you by Mr. E. W. Farnham, expert accountant appointed by the City of Louisville, in pursuance of the agreement made between you and Mr. Blakey.

"I have written Mr. Farnham a letter of instructions, carbon copy of which I herein enclose. Please hand this copy to the accountant selected by you."

This is signed by Henry Burnett, Special Master. That letter was handed to me as the accountant selected. The wording I have used in my report is copied from that letter.

Q. What was the first work that was taken up by you and Mr. Farnham when you begun to make this examination of the Cumberland Company's books?

A. The first work which we did together was the preparation of a memorandum, of which I have a copy here, and which reads "Memorandum for the Guidance of Accountants."

Q. I am not asking you anything except what work you did on the books of the Cumberland Telephone & Telegraph Company.

A. I understand your quetsion to be "What was the first work you did," and as this itself was quite a piece of work, I brought this in as an answer to your question. You now make your question what, please?

1655 Q. What was the first work done on the books of the Cumberland Telephone & Telegraph Company?

A. The first work we did was to prepare a continuous statement of the construction account of the Louisville Exchange from January 1, 1900, with dates and voucher numbers and other references in detail.

Q. Did you or any of your assistants do any of that work?

A. We did not do any of that.

Q. What assistance did you have during the progress of this work?

A. Mr. George W. Myer, Jr., Certified Public Accountant, and Mr. Arthur D. Hammond, both of my New York office. Also, later on, in the preparation of reports, I had the assistance of one of my stenographers, Mr. William Klein.

Q. Were these two gentlemen, Myer and Hammond, there at the same time or at different times?

A. At different times. Mr. Hammond succeeded Mr. Myer when Mr. Myer's previously made engagement to marry a young lady necessitated his returning to New Jersey.

Q. How long were you in Nashville yourself working on these books?

A. I was in Nashville, on and off, from May 4th, to about July 12th, but intermittently at different times. I could figure up, if you wish; if you wish the dates, I will have it prepared and answer you later.

Q. I wish you would; also, how long Mr. Myer and Mr. Hammond were working on these books.

A. This is a record of the actual time spent in Nashville exclusive of traveling to and from Nashville:

1656

Mr. George Wilkinson.	Mr. G. W. Myer.	Mr. A. D. Hammond.
May 3rd	May 7th	May 27th
4th	8th	28th
5th	10th	29th
6th	11th	31st
7th	12th	June 1st
24th	13th	2nd
25th	14th	3rd
26th	15th	4th
27th	17th	5th
28th	18th	6th
29th	19th	7th
31st	20th	8th
June 1st	21st	9th
2nd	22nd	10th
3rd	24th	11th
4th	25th	12th
5th	26th	14th
6th	27th	15th
7th	28th	16th
8th		17th
9th		18th
10th		19th
11th		21st
22nd		22nd
23rd		23rd
24th		24th
25th		25th
26th		26th
28th		28th
29th		29th
30th		30th
July 1st		July 1st
2nd		2nd

3rd		3rd
6th		6th
7th		7th
8th		8th
9th		9th
10th		10th
11th		11th
		12th
40 days	19 days	41 days

Q. Were there certain exceptions from the Construction Account which the Accountants agreed were not the proper charge against the Louisville Exchange? I will ask you whether those exceptions were made at the instance of yourself, or the instance of the Mutual Audit Company.

A. It was agreed between the accountants that the work should be divided in a certain way, and part of the work that fell to the
1657 employees of the Mutual Audit Company was, in the first place, to make the copy which we had agreed should be made of the Construction Account, and thereafter that they should go through all the vouchers. In doing so they examined all the vouchers entering into the Construction Account of the Louisville Exchange, and in doing so took certain exceptions on the ground, in most cases, that the proportions of the amount so charged should not have been charged to the Louisville Exchange but should have been charged to the other Exchanges. These vouchers were then carefully gone over by myself and my assistant, and we found that the employees of the Mutual Audit Company were right; in almost every instance we allowed the exceptions that they claimed from the Construction Account, which amounted to $2,502.39. These were parts of vouchers. Some cases were small portions: the second item on a list I have before me was $7.00 out of $1,700.00.

Q. The only vouchers you examined, then, were the ones the Mutual Audit Company especially called your attention to and made exception to?

A. In that connection, yes.

Q. Did you or your assistants examine the vouchers to which exceptions were taken by the Mutual Audit Company?

A. We did. I will say that my assistant examined those vouchers and agreed that the Mutual Audit Company was right, showed me his working papers; showed me that they were right in their claim, whereupon their claim was allowed.

Q. You have a copy of these items?

A. Yes.

Q. I will ask you to examine your papers, especially # 325, April 25, 1900, and let me know whether any exception was taken by the Mutual Audit Company to any part of that voucher.

A. Yes, the total of the voucher was $3,460.71; the amount objected to was $156.00 even.

Q. Do you know what the objection to that particular item
1658 was?

A. The objection was, that it was not properly chargeable against the Exchange in Kentucky in respect of aerial construction.

Q. Did you examine that yourself personally?

A. I did not examine that voucher myself; my assistant, Mr. A. D. Hammond, examined that voucher and found that they were right.

Q. I will ask you whether your assistant made any report on the portion of that voucher representing shipment of poles aggregating in value $127.15; freight, $26.76, which appeared in the voucher to have been shipped from Nashville, Tennessee, to O'Bannon, Kentucky, and which was charged to the Construction Account, Kentucky.

A. He did not. The amount to which our attention was called by the employees of the Mutual Audit Company was to the sum of $156. These two amounts that you have given me would come to $154.00 of it, and the paper I have before me indicates that it was properly charged to Anchorage, Kentucky. If there was a further sum of $154.00 chargeable to O'Bannon, Kentucky, on that voucher, our attention was not called to the matter by the employees of the Mutual Audit Company.

Q. Have you any item on your working paper showing what the Anchorage amount was made up of?

A. We did not take any particulars of it because we agreed that it was not chargeable to the Louisville Exchange, and we did not care whether it was for poles or wires or cross arms.

Q. I will ask you to examine your papers and see if there was not an item representing a total of $156.00 for poles shipped from Sulphur Springs to Anchorage, Kentucky, and will ask you if that was not the item the accountants agreed upon should be taken out of the Construction Account.

A. No doubt it was. Wait and I will try to get posted as to that. My answer would be, Mr. Blakey, that I have not got before me the particulars that you have named. I have only before me the num-
ber, month and the amount of the voucher, together with the
1659 amount objected to, and the name of the Exchange to which
it appeared the items should be charged. As your question indicates that the goods were shipped from Sulphur Springs to Anchorage, and as my memorandum shows that the item should be charged to Anchorage, I have no doubt the items you have enumerated to me were those that were covered by our allowance of $156.00.

Q. Well, if your attention had been called to the fact that another item in that voucher was for $127.15, representing poles shipped from Nashville to O'Bannon, and freight $96.25, would you have considered that was not a part of the Construction Account in the Louisville Exchange?

A. We would.

Q. I will ask you if you examined any of the pay-roll vouchers which were chargeable to the Construction Account of the Louisville Exchange.

A. My assistant, A. D. Hammond, acting under my instructions, examined all of the pay-roll vouchers for construction work in the City of Louisville, covering all of the period from April, 1900, to December, 1908.

Q. What do your records show, if anything, in regard to voucher 109 for April, 1900?

A. In respect of aerial construction there was a sum of $1,132.73; in respect of under ground $135.75, expended in pay-roll and charged to the Louisville Construction Account.

Q. Anything else? Does it show what the total of the voucher was?

A. No. The total pay-roll voucher would be for a large sum of money that would cover all the pay-roll made at that time, including the other Exchanges for which construction work was then done, I think. We have no further particulars than that.

Q. Have you any record showing whether or not all of the employees whose salaries appear on that pay-roll were charged to Construction Account, nothing to Maintenance?

A. We have not. The only particulars we have here be-
1660 fore me are the two amounts I have mentioned, which were charged to Construction Account, Louisville Exchange.

Q. Did you accept the vouchers as they appeared, or did you make any attempt to see whether they were properly charged to Construction?

A. We examined the vouchers and the attached papers to see that the voucher had been distributed properly as regards this construction. The pay-rolls from which this amount was distributed were attached to the vouchers that we examined.

Q. Do you remember seeing any of these pay-rolls yourself?

A. Yes, I saw several of them.

Q. Just examined what they consisted of?

A. Well, I did not give them much attention. I indicated what they were and how the work should be done, and my assistant went ahead and did it. My recollection of those pay-rolls was, that they were very bulky vouchers to which were attached the pay-rolls which had been approved and used at the Exchange locally, and on which the men had each signed for their wages, but I would not swear that was the form of the pay-roll. This is my recollection of how they were made. I have not before me such a pay-roll.

Q. Did you accept them as they appeared, or did you make any changes in them as to the allotment to Construction or Maintenance?

A. Having satisfied ourselves that the responsible officers and employees of the complainant company had certified on the face of that voucher that a proper distribution had been made, accepted the evidence therein contained that the charge was the right and proper one to make against the Construction Account.

Q. So that, if those pay-rolls for the year 1900 were charged by the Telephone Company against Construction, though a large part of it should have been charged to reconstruction, you made no note of that at all?

A. On most, if not all of the vouchers a certain amount of the

pay-roll was charged to Construction, a certain amount to
1661 Maintenance, and a certain amount to Reconstruction. The amount which was certified by the employees of the Company to have been expended on construction was necessarily accepted by us as correct. We had no means of going behind the voucher and the pay-roll to determine what those men had been working on nine years before.

Q. So you do not know, then, that the amount of money appearing in those pay-rolls charged to Construction was actually expended in construction work at all?

A. We have no personal knowledge of the work that was done for which that money was paid.

Q. I believe you said that the Company's books were kept in accordance with the books kept by the Bell system of telephones over the country generally?

A. I did not say that. I said the books of account of the Cumberland Telephone and Telegraph Company are kept so as to provide the information that is necessary to meet the requirements of a standard distribution of telephone accounts authorized and promulgated by the Bell Company at Boston.

Q. What is their plan, if you know, as to disposition of junk, material which is displaced by new material?

A. At this time I have not in my mind what instructions have been issued by the Company in respect of the crediting of junk.

Q. Did you examine any vouchers dealing with the credits to Construction Account?

A. We examined the credits given to Construction Account in respect to material taken out, especially of instruments removed from subscribers' stations and the relative papers from which these credits have been given, the original papers.

Q. Did you find that the original cost of the article disposed of was credited to Construction, or that the sale price of the article disposed of credited to Construction?

A. My recollection of it, and I have only my recollection to go by at this time and in the City of New York, is, that the cost of the
articles taken out of construction was credited to the Con-
1662 struction Account.

Q. Was that the proper course to pursue?

A. It was.

Q. Now, I will ask you to say if you examined voucher of Auditor's bill 9197 for the year 1903.

A. Before proceeding any further in answering that question I will say this: That it was agreed between the accountants that the work should be divided; that the employees of the Mutual Audit Company should examine the vouchers of the Company, and that they should take exception to any that they did not consider right; that they should draw our attention to any vouchers they considered to be wrong in any way. Therefore, if any voucher was right, our attention was not drawn to it. If any credit was right, our attention was not drawn to it. If any voucher was wrong, we depended on them to draw our attention to it, and if our attention

was not so drawn to the voucher, we have no memorandum concerning it. Unless you can give me the month in which that Auditor's bill was credited, I can not answer your question.

Q. Have you any memorandum of any Auditor's bills examined?

A. Not with numbers attached so that I could identify them.

Q. What memorandum have you at all on the subject of Auditor's bills?

A. I would like to explain this in answering that question: The employees of the Mutual Audit Company made a complete transcript of the Louisville Exchange, Construction Account, as it was recorded on the books of the Complainant company from the beginning of 1900 up to the end of 1908, as arranged between the accountants, in a memorandum which was submitted to the Master, under whose instructions this examination was made. The object of dividing the work was to curtail expense and to arrive at the result sought as early as possible. That memorandum was the basis of our examination of Construction Account. On that memorandum were shown in detail the voucher numbers, the voucher dates, and the accountants; on that memorandum were also shown the num-
1663 ber of the Auditor's bills and the amounts credited to the Louisville Exchange from each such bill. That memorandum was left behind by Mr. Farnham when he hastily left Nashville on July 8th, and was brought away with us and on our files for some weeks, and was returned to Mr. Farnham at his request. Without that copy, which was a part of our working papers, I have no copies of the Auditor's bills as applied to Construction Account.

Q. Now, if these Auditor's bills which are part of the records of the Company, which show credits to Construction, show that the sale of articles such as mules, horses, wagons, wire, poles, etc. was credited to Construction on the basis for which such article was sold, then you do not know anything about it, I assume.

A. My answer to this is: Beginning in 1904, a separate account was opened on the books of the complainant company for tools and teams. Prior to that time mules, horses, wagons and the like, part of what you speak of in your question, had been carried in Construction Account. Beginning 1904 they were carried in a separate account so that any credits that were given in respect of the sale of horses, mules and the like were not made to Construction Account, but were made to Tools and Teams Account. In the absence of the papers referred to, I have no means of refreshing my memory as to what basis credits were given to Construction Account in respect of construction material taken out.

Q. You examined the books of the Cumberland Telephone Company for the Railroad Commission of Louisiana. Did you audit the books and ascertain what they showed, or did you ascertain whether the facts were borne out by the representations appearing on the books? Did you audit the books and find whether the items appearing on the books footed up properly, or did you dissect the accounts and find whether the items appearing on the books were properly placed on the books?

A. In making the examination jointly on behalf of the Rail-

road Commission of the State of Louisiana and the Cumberland Telephone Company, which examination was made in the Summer of 1900, I personally was the only accountant on the work.

1664 Prior to that time no separate account had been kept of construction cost in any particular State or Territory. It was, therefore, necessary for me to examine the books, vouchers, pay-rolls and other sources of information and to construct from these an accounting which showed what amount had been expended in the State of Louisiana in respect of construction, and particularly what amounts had been expended in the City of New Orleans in respect of, first aerial construction; second, underground construction, third, equipment; and this was done.

Q. How long did you spend working on those books at that time?

A. Personally I spent 457 hours on the examination of the books and the construction of my exhibits and report.

Q. How long did you spend working on the books at Nashville?

A. About two months, if my recollection is right.

Q. Did you examine all the vouchers pertaining to construction in New Orleans?

A. I did. To the best of my knowledge and belief, I examined all the vouchers.

Q. Did you accept them as you found them and charge them to construction on your report?

A. I examined the vouchers to see what portions had been charged to Construction, and I accepted the evidence contained on those vouchers and on the papers thereto attached as conclusive evidence that the work had been done, and that it had all been done for the purpose of construction as indicated. Those were the records of the Company that I examined.

Q. I believe you say that the Cumberland Telephone Company keeps a standard form of bookkeeping such as is generally kept by the Bell Company?

A. I will call upon the stenographer to read my answer to your question.

(Stenographer reads answer referred to.)

1665 Q. Now, in your examination of other Bell Companies do they charge up any sum to Reconstruction Accounts?

A. They do keep a Reconstruction Account.

Q. Did the Cumberland Telephone Company, during the year 1908, keep a Reconstruction Account?

A. During the years 1905, 1906 and 1907 a Reconstruction Account was kept, but during the year 1908 no separate account was kept for Reconstruction.

Q. Did these companies about which you testified keep a Depreciation Fund, a fund to take care of depreciation?

A. I testified only as to my personal examination of one such Bell Telephone Company, namely, the Wisconsin Telephone Company. My recollection of it is, that they did not keep a specific account on their books for depreciation.

Q. Is it proper bookkeeping for a company of this kind to have a Depreciation Fund and keep an account of it?

A. That is a question for the Board of Directors of the company to determine, whether an account should be maintained for depreciation.

Q. Does the Cumberland Telephone Company keep an account of a depreciation fund, or set aside a fund for depreciation?

A. It does not.

Q. Would you say that a company's books were properly kept when an Auditor makes three separate and distinct statements in one year of the previous year's operations, expenses, income and plant account, each of which is materially different from the other?

A. I would say that it was quite proper for an auditor of such a company to prepare from the books of account any statement that the Board of Directors or President of the company might instruct them to make.

Q. Whether the books showed the facts contained on the statement or not?

A. The matter of setting aside a portion of the earnings of a company to provide for depreciation of its plant being a
1666 matter entirely at the discretion of the Board of Directors, it is within their province to say whether or not such a provision shall be made. In the absence of any action taken by the Board of Directors of a company, no entries of this nature can be made on its books, but it is quite proper for the Board of Directors or for the executive management of a company to require a statement to be drawn up which would show what the result of the company's business would be after certain allowances had been made in respect of depreciation. It would be quite proper, in my opinion, for a series of statements to be so drawn up which would show varying results of the company's business, based on varying charges for depreciation.

Q. Would that apply to other items as well as depreciation?

A. That would not apply to any items that had to be paid out in cash, but it would apply to such items as uncollectible accounts, reserves for contingent expenses, reserves for expenses in pending litigation and similar items.

Q. As to items of operation and plant account, if an auditor of a company should make three distinct statements in one year concerning the business of the preceding year, and each of them showed separate and different figures as compared with the other two, then you would say that was not good bookkeeping, would you not?

A. I would say that the preparation of statements of account are not an essential and necessary part of the bookkeeping of a corporation. Statements of account can be made out according to varying conditions and each be true, and yet be dissimilar.

Q. Now, you don't know anything about the standard form of bookkeeping so far as the independent companies are concerned?

A. I am not aware that there is any standard form of bookkeeping in any telephone company, independent or Bell.

Q. Are you aware of the fact that the American Telephone and Telegraph Company has prepared a pamphlet to be sent to each of

its subsidiary companies in which is contained a brief outline of how the books should be kept?

A. I have before me their Circular #6, dated Boston,
1667 November 15, 1909, which begins "The following accounts are established as standard for the Bell Telephone system beginning January 1, 1910.

Q. Would you say, then, that was the standard?

A. That is standard now.

Q. They have issued pamphlets of a similar nature prior to this, haven't they?

A. I have not seen any such similar pamphlets.

Q. Do you know whether any have been issued?

A. I do not know, other than that this is #6. I should suppose that others have been previously issued. May I correct that last answer? I would like to say that this circular distinctly sets forth "This circular supercedes and cancels accounting circulars No. 1, No. 2, No. 3, No. 4 and No. 5."

Q. When you come to make up your construction account as it appears in the joint report, and as it appears in your separate report, did you place any figures in that report, in either of those reports, representing the cost to the Cumberland Company of the Ohio Valley plant?

A. At the beginning of the Construction Account, namely, on January 1, 1900, we found an entry charging to the Construction Account of Louisville Exchange, the sum of $678,354.69.

Q. Did you examine the books of the Ohio Valley Telephone Company?

A. I did examine the books of the Ohio Valley Telephone Company.

Q. Did they have a balance sheet showing their plant account, capital account and their assets and liabilities?

A. They did have such a balance sheet.

Q. Have you that before you?

A. I have before me what is virtually a copy of that balance sheet. It is not an exact copy in words. I cannot seem to put my hand on the exact copy, but I have here a substantial copy of that balance sheet, namely, the balance sheet of the Ohio Valley Telephone Company on the 31st December, 1899, taken from
1668 its Ledger, which, at the time of our examination, was in the keeping of the complainant company.

Q. I saw you Exhibit No. 1, filed with Mr. Farnham's report to the Master, which purports to be the account about which I have asked you. Will you examine that and see if it is correct?

A. I have before me a copy of Exhibit 1, made by E. W. Farnham, and, having examined same, I believe that it is a facsimile copy of a paper I prepared when at Nashville, and I further say that it agrees with the books of the Ohio Valley Telephone Company.

Q. What does that paper show to be the assets of the Ohio Valley Telephone Company at that time?

A. The total of all assets of the Ohio Valley Telephone Company

at that time, taking as such the total debit footings, which include franchise of $100,000.00, is $932,532.08.

Q. What appear on that statement as the liabilities?

A. The liabilities of the Company, including $549,400.00 for capital stock, and including bonds outstanding, including also an amount of surplus $12,322.08, amounts to the sum total of $932,-532.08.

Q. Is it proper bookkeeping for a company to have its liabilities side and its assets side balance?

A. It is.

Q. And if a company having a balance sheet such as the one before you were to issue $100,000.00 of bonds, that item would appear on the liabilities side, would it?

A. It should.

Q. And that would then make the liabilities side $1,032,532.08?

A. It would.

Q. And if it placed that money in the bank it would appear on the asset side as so much cash in bank?

A. It would.

Q. If placed in its plant it would appear as so much additional plant, would it?

A. It would.

1669 Q. If a company having a balance sheet such as the Ohio Valley Telephone Company were to sell its plant entire, the new company assuming all liabilities and paying $145,135.00 premium on the stock, then what would be the proper method for it to pursue in placing the accounts on its books, I mean the books of the purchasing company?

A. I call your attention to the fact, Mr. Blakey, that your last three or four words in your sentence contradict the rest of it. I want to know which company's books you are dealing with?

A. I mean, if such a transaction were to take place, how would the purchasing company make up its balance sheet?

A. Then I under-stand your question to be this: If a property represented by a balance sheet such as is shown on Exhibit 1, which I have identified as the balance sheet of the Ohio Valley Telephone Company, were to be sold to another company, and that other company paid $145,135.00 more for the property than the property showed on the books of the Ohio Valley Telephone Company, what entries would it be proper to make on that purchasing company's books? My answer is this: That it would be proper to include on the books of the purchasing company the additional cost of the property to the purchasing company in respect of the cash premium paid, namely, $145,135.00, this being a direct additional cost of the purchased property.

Q. And that amount would appear on the liabilities side, would it, as that much additional liabilities?

A. Your question now brings us back to the bookkeeping that should arise on the books of the Ohio Valley Telephone Company.

Q. No. If the new company desires, under such circumstances, to transfer this account to its own books, would it not have its own

books show that the liabilities were $145,135.00 in excess of what the Ohio Valley Telephone Company's books show them to be?

A. Mr. Blakey, that was not your question.

Q. It is now my question.

A. As I understand your question, it is the outcome of the same previous question, which was, "What entries would be made
1670 on the books of the purchasing company in respect of this $145,135.00 additional cost," and I have answered that it would be right and proper for the purchasing company to add that to the cost of the property, for the reason that it represents actual added cost.

Q. Then, what would they do on the liabilities side to make the two columns balance?

A. On the liabilities side of the purchasing company's balance sheet, you are speaking of?

Q. Yes.

A. In the conditions covered by the question, and answers previously given, the sum of $145,135.00 was paid in actual cash. The credit for this amount is then given to cash account.

Q. You mean they would place their accounts on the new books just as they appeared on the old books?

A. Plus the added cost.

Q. That would make the assets $145,135.00 in excess of the $932,532.08 which appear on the assets side of the Ohio Valley Telephone Company's books, would it not?

A. It would, for the reason that that added sum of $145,135.00 was paid out in cash.

Q. What would they do to make the liabilities column balance with the assets column?

A. That is a repetition, in a slightly different form, of your previous question which I have answered by saying that the $145,135.00 having been paid out in cash, has already been deducted from the assets side of the balance sheet under the item of cash.

Q. Would it be proper to place the capital stock at $694,535.11 instead of $549,400.00, and issue stock, $145,135.00, additional stock, to represent the $145,135.00 cash that was paid for the stock of the Ohio Valley Telephone Company?

A. Mr. Blakey, I understand your question to be, would it be proper for the purchasing company to issue $145,135.00 worth of capital stock to cover the purchase of this property? I would say that it would be proper for a company to issue its capital
1671 stock in payment for a property, or in exchange for money raised to buy a property.

Q. In case such method was pursued, would the liabilities then balance, each being $932,532.08, plus $145,135.00?

A. Mr. Blakey, you have now brought the question back to the balance sheet of the Ohio Valley Telephone Company, which is not the purchasing company. The Ohio Valley Telephone Company are not concerned with the source from which the purchasing company raised this sum of $145,135.00. Your question to me is, what would be the proper entries to be made on the books of the pur-

chasing company when it is found that the purchasing company has paid $145,135.00 in cash more than the assets appear to be worth on the face of the balance sheet of the vendor company.

Q. What I should like to have you to do is to eliminate from your mind the Ohio Valley Telephone Company, or any selling company at all, except in so far as the balance sheet of the selling company is concerned. The selling company has assets of $932,532.08, and liabilities of $932,532.08, part of which is capital stock. The selling company transfers all of its property to the purchasing company just as it appears on the selling company's books and balance sheets, except that the selling company pays the purchasing company a premium of $145,135.00 for its capital stock, and the selling company wants to place on its books a record of what it has purchased, and of what it has assumed; in other words, of its assets and liabilities. It has paid $932,532.08 for the purchase, plus $145,135. Now, in order to make its liabilities represent what it actually paid it issues $145,135.00 worth of its stock to its stockholders, who have furnished the money, and places its capital stock on its libilities side at $694,535.00, which makes a total liability of $1,077,767.08. Now, it wants its assets to balance with its liabilities, and my question is, whether it would be proper for the purchasing company to say that its plant which it has purchased at a value of $145,135.00 in excess of what the plant was valued at on the books of the selling company, thereby making the plant appear on the asset side of the balance
1672 sheet as being of the value of $783,304.74, instead of $638,-196.74, which difference would make the asset side of the balance sheet appear as $1,077,767.08. I want to know whether, if a purchasing company were to pursue such a course, that would be proper book-keeping.

A. Mr. Blakey, I have followed your question with all the attention I can concentrate upon it, and I am sorry to say I have failed entirely to get your meaning. You begin by making what is practically a hypothetical question, and ask me to put out of consideration the question of the Ohio Valley Telephone Company, and part of your question relates to what bookkeeping should be done on the books of the purchasing company assumed to have purchased a property for $145,135.00 more than the books of the vendor company show. Now, if that much expresses your question, I am ready to answer it.

Q. I cannot express it other than I have already expressed it.

A. Then I will have to answer the question in my own way, and I shall answer it as follows: In the event that a company purchasing a telephone property from another company, which latter company is going out of business, pays in cash $145,135.00 more than the par value of the stock of that company, such purchasing company is entirely right in adding such sum of premium to the cost of the purchased telephone property. That is my answer. Is that responsive to your question?

Q. I have spent all the time I can trying to get what I wanted.

A. I should be glad to hear your question with the hope of an-

swering it "yes" or "no" if you will read it, or if you care to have it read.

Q. Never mind; we will go ahead. If a company with balance sheet as appears on Exhibit 1 should find that $70,000.00 of the items appearing under the head of libilities were not real liabilities, and wanted to eliminate them from its books, what course would it pursue?

1673 A. If a company finds that certain accounts with credit balances outstanding on their books amounting to $70,000.00, or any other sum, do not represent actual liabilities, that is, amounts which that company will have to pay, it is quite proper for them to drop such items, to close such accounts, and to write off such credit balances to any other accounts that the Directors of that company may see fit to direct.

Q. You mean, by writing off to reduce the plant account that much?

A. If the Directors so advise, to write them off to any other account, to credit them to surplus account, or to write them off franchise account, or to write them off real estate account. In my opinion as an accountant, it would be well within the province of the Director to so advise, and it would be correct book-keeping for the accountant to do as the Directors so instructed.

Q. If a company desires to write off $70,000.00 from its liabilities side because they were not liabilities, and add $145,135.00 to its liabilities side, and to add the difference, which is $75,000.00, to its assets side, in orde- to make the two columns then balance, and desire to add the entire $75,000.00 to plant account, adding to exchange construction and toll line construction the proportionate amount of the $75,000.00 in accordance with the amounts appearing on this balance sheet before you, as being the cost of exchange construction and toll line construction, how much would they add to exchange construction and how much would they add to toll line construction?

A. In the foregoing questions, Mr. Blakey, you have asked me what would it be proper to do on the books of the purchasing company which pays $145,135.00 more in cash for a property than the property stands for on the books of the previous owners. Your question now is, as I understand it, what would be done with the difference between this sum of $145,135.00 so paid by the purchasing company and the credit balance to certain accounts, amounting in an aggregate to $70,049.75, outstanding on the books

1674 of the vendor company, in the case we have before us, the Ohio Valley Telephone Company. Now, we have two distinct and separate factors to deal with in two distinct and separate ways, $145,135.00 being on the books of the purchasing company, and $70,049.75 being on the books of the vendor company.

Q. I do not think you understand my question: My question was, not to give a dissertation on whether I was right or whether I was wrong, but simply make a calculation and tell me what proportion of the $75,000.00 should be credited to exchange construction and what proportion should be credited to toll line construction, as they

appear on Exhibit 1 before you, giving each its proportion according to the amount invested in exchange construction and toll line construction.

A. I did not so understand your question. In fact, your question was not that. As I understand your question now it is, you wish me to make a calculation right here showing you how much should be added to each class of construction with respect to this hypothetical difference, this difference you have indicated by your hypothetical question. I shall have pleasure in doing that for you.

(Recess for lunch.)

After recess (2:45 P. M.).

Q. Mr. Wilkinson, have you that calculation?

A. The amount you asked me to divide, that is to say, $75,086.00, arrived at by deducting $75,086.00 from $145,135.00, when divided pro rata between $125,406.00 and $512,789.00, results in the division of approximately $14,700.00 and $60,300.00 respectively.

Q. Adding the $14,700.00 to $125,406.00 makes how much?

A. $140,106.00.

Q. And adding the $60,309 and $512,789 makes how much?

A. $573,089.00.

Q. On this Exhibit 1 the exchange construction which makes a total sum of $512,000.00 represents the plant account for eight exchanges, including Louisville Exchange, does it not?

1675 A. Nine exchanges including the Louisville Exchange.

Q. And on what basis does your report show that the Cumberland Telephone Company distributed among those exchanges the amounts which it placed on its books as representing the construction account—I mean as to the division, and how did they arrive at the figures which they placed on their books as the value of those exchanges?

A. The total cost of the entire property was divided between the different exchanges on the basis of the number of stations at each of the exchanges, excepting that in dealing with the Louisville Exchange the number of stations was doubled.

Q. And dealing with this $573,000.00 on that basis, what percentage of that $573,000.00 would represent the Louisville Exchange Construction Account?

A. I do not know.

Q. Do you remember whether the Cumberland Telephone Company's books represent about 80% chargeable to the Louisville Exchange?

A. About 68% of the total amount was chargeable to the Louisville Exchange, the total amount being the total cost to the complainant company of all the property purchased.

Q. You mean, on the basis of giving Louisville twice as many stations as it had, that 68% should be charged to the Louisville Exchange?

A. I say that on the basis of giving the Louisville Exchange

3,536 stations, and all the other exchanges an aggregate of 1,724 stations, taking also into consideration the toll line construction, that the amount charged on the complainant company's books against the Louisville Exchange, amounted to $678,354.00 out of a total of $998,817.00, which is approximately 68%.

Q. What ratio does 1,724 bear to 3,536?

A. It is nearly one half.

Q. And if you doubled 3,536.

A. 7,072.

1676 Q. Is the 7,072 the basis on which the Louisville Exchange was charged?

A. Yes.

Q. What ratio does 1,724 bear to 7,072?

A. 27%.

Q. On the basis of those figures, what portion of the total cost should be charged to the Louisville Exchange, what percentage?

A. 68%.

Q. What is 68% of the item you mentioned, $573,144.00?

A. Your question is, what is 68% of $573,144.00? If my figures are correct, Mr. Blakey, the sum of $369,737.92.

Q. I call your attention to the paragraph on page five of your separate report to the Master, in which you say "Negotiations looking to a consolidation of the two companies had been in progress for six months, leading up to meetings of the respective Boards of Directors of the two telephone companies in 1899," and ask what knowledge you have of any such fact as stated in that paragraph.

A. At a meeting of the Directors of the Ohio Valley Telephone Company held in the City of Nashville, on December 28, 1899, as recorded in the Minute Book of the Ohio Valley Telephone Company, the following resolution was unanimously passed:

"Be it resolved that whereas negotiations looking to a consolidation of this—The Ohio Valley Telephone Company, a corporation existing under the laws of the State of Kentucky, and doing a telephone business in this State, but not in the same territory, or in competition with their company, have reached a satisfactory conclusion, and are believed to be to the interest of this Company and its stockholders—a consolidation of the two companies be effected."

In relation to that matter I had an interview with Mr. James E. Caldwell, in the course of which interview Mr. Caldwell told me

1677 that negotiations looking to the consolidation of the two telephone companies had been in progress for six months prior to that time, and the action then taken, namely, December 28th, 1899, was the result of those arrangements.

Q. Your statement, then, on page 5 of your report is based on what Mr. Caldwell said to you, is it?

A. My statement on page 5 is based on the entire conversation we had at that time with Mr. Caldwell and the sundry questions which I addressed to him at that time.

Q. Now, are you able to tell anything about the economical and business management of the affairs of the Cumberland Telephone Company?

A. I think so. I think that the experience I have had at Nashville in examining the books of the company at that time and on two previous occasions, and the very many conversations I have had with the executive officers of the company, including the President, the General Manager, Assistant General Manager, General Counsel, Secretary, Auditor and various employees, have given me, as an experienced accountant, pretty good opportunity to form a judgment as to whether their business is economically administered or not.

Q. What is your opinion on the subject?

A. My opinion on the subject is, that it is economically administered.

Q. You think they have an efficient and business-like corps of managers and employees?

A. I do.

Q. You think the business is run in a business-like, up-to-date manner?

A. I certainly do.

Q. Now, I call your attention to page 56 of your report, in which you show the net earnings of the company at the Louisville Exchange, and ask you to state what were the net earnings for the year 1905 as shown by the result of your examination.

A. The result of the examination made of the books of the
1678 complainant company, as set forth in the individual report made by myself, shows that for the year 1905 they made a loss on its business at Louisville, including the operation of its plant and property in the City of Louisville, amounting to $12,158.21.

Q. What about 1906?

A. In 1906 the net earnings of the complainant upon its plant and property employed in its business were $2,536.30.

Q. What about 1907?

A. In like manner, the net earnings were $10,111.09.

Q. 1908.

A. And in 1908, were $32,162.79.

Q. And what percentage were the net earnings to the capital?

A. The percentage of net earnings to the amount of capital employed in the City of Louisville by the complainant for 1906 is .136%.

Q. What does that mean?

A. That means a little over 1/10th of 1%.

Q. What about 1907?

A. The percentage for 1907 is .522%.

Q. What does that mean?

A. That means a shaving over 1%.

Q. What about 1908?

A. The net earnings of the complainant on its business in Louisville in 1908 were 1.656% of the amount of capital employed in conducting such business.

Q. And what does that mean?

A. That means a bit over 1½%.

Q. Now, how many stations did the telephone company have in connection with its Louisville Exchange in 1908?

A. The average number of stations in service in 1908 was 10,006.

Q. How many in 1907?

A. 10,830.

Q. 1906?

1679 A. 9,857.

Mr. GRANBERY: I object to this questioning on the ground that it has already been shown in the typewritten reports, and I object to its being put in the second time.

Mr. BLAKEY: I believe I have the right to ask the witness about the things that occur in his Exhibits; that is what the Exhibit is filed for.

Judge BURNETT: I understand the objection is not that you have no right to ask questions regarding the Exhibits; but I suggest that you ask him "Is so and so in your report?"

Mr. BLAKEY: I must do this to get at the point I wish to make.

Judge BURNETT: I would suggest, then, that you say, "I notice in your report so and so; is that correct?" Of course, I cannot anticipate what you are going to ask.

Mr. GRANBERY: I do not want to object, but I do not want the same thing put in a couple of times.

Q. I believe your report shows that on January 1, 1900, the Ohio Valley Telephone Company had 3,536 stations installed in the City of Louisville; is that correct?

A. Yes. At the time the property was acquired from the Ohio Valley there were installed 3,536 stations in Louisville.

Q. Do you know how many stations were in use by the Ohio Valley in 1895?

A. I believe I could tell you. I do not seem to have it.

Q. Do you know whether it was less or more than it was in 1900?

A. The books of the Ohio Valley Telephone Company show that in 1895 the cost of the plant up to the end of 1895 was the sum of $462,092.00, while the cost of the plant at the end of 1899 was $771,402.00. From that I should judge that there were considerably less in 1895 than there were in 1899, but I have not got the number of stations.

1680 Q. I call your attention to page 12 of your report, in which this language appears: "In all, from 1890 to 1899, inclusive, the shareholders received $291,575.00 in dividends, these being at the uniform rate of 7% per annum." That is correct, is it?

A. It is correct.

Q. You are now speaking of the Ohio Valley Telephone Company, and does that mean that from 1890 to 1899, the Ohio Valley Telephone Company paid 7% per annum to its stockholders?

A. Absolutely; it is exactly what it means.

Q. I also call your attention to the paragraph which says: "After paying these dividends, there remained a considerable surplus of

undivided net profit. This surplus was written off to plant account, as shown in the next preceding statement. In full to date, 12/31/94, $94,505.70; in part to 12/31/98, $41,000.00; together, $135,505.70." That is correct, is it?

A. It is.

Q. Now, does that mean that in addition to the 7% earned for that period of time, the company earned a surplus of $135,505.70?

A. It does.

Q. I also call your attention to paragraph on page 8 of your individual report which reads, "In addition to the lands, buildings and constructed telephone plants thus acquired, the complainant secured the sole ownership of a prosperous, dividend paying business, and the good will attaching to telephone plants in actual operation in nine cities, with a total of 5,260 stations." That is correct, is it?

A. It is.

Q. Do you mean to say that it is good management for a telephone company to take charge of a business which had accomplished the things you say the Ohio Valley Telephone Company's management accomplished during those ten years, and increase the number of telephones from 3,500 to practically 11,000 within six years, and at the sixth year lose $12,000.00 on its business, at the same
1681 time the rates having been increased over the entire period at different times?

A. In arriving at the opinion that the Cumberland Telephone Company had conducted its business in an economical manner, I had not in mind the Louisville Exchange only, but the entire field of several different States that the Company's operations cover. The Company's operations, as you know, cover several States, and their transactions, taken as a whole, are very well managed. They have been, as you know, up against a very hard proposition in Louisville, and while the result of their business in Louisville has been most disastrous, the business conducted by the Company elsewhere has made a substantial sum of money. Taken as a whole, the Directors of the Company have, in my opinion as an accountant, conducted their business in a very economical way.

Q. What do you know about the difficulties they have had in Louisville

A. I think you know more about that than I do.

Q. Well, do you know that they have had any difficulties at all?

Mr. GRANBERY: I object on the ground that it is incompetent and immaterial, and is simply an argument with the witness.

Mr. BLAKEY: Well, he has stated that they labored under difficulties in Louisville, and I want to know what they were, and what he knows about it.

Judge BURNETT: Obviously speaking, from general information and his examination of the books. His opinion about it would cut no figure.

Mr. BLAKEY: No, but he has said that the company has labored under difficulties in Louisville. Now, I want to know what he knows about it.

A. I would like to answer your question in this way: From general observation of what I learned at the time I was exam-
1682 ining the Company's books, from the officers and servants of the Company, I have formed the opinion that the Company has been strictly up against it in Louisville. If that opinion is worth while, it is yours.

Q. It is merely an opinion?

A. Yes, you are right. My statement that the Company has conducted its business in an economical manner is only an opinion, too.

Q. I notice on page 13 of your individual report a statement to the effect that from 1890 to 1899 the Ohio Valley Telephone Company spent a total of $511,675.66 on repairs, maintenance, reconstruction and new aerial construction, and that you say in regard to this the following: "This actual expenditure, which was all charged against earnings, is equal to 10.39% per annum of the cost of the plant, as shown by the books. Do I understand by that statement that that amount of money was earned by the Ohio Valley Telephone Company and expended in addition to the dividends and the $135,000.00 about which you testified a while ago?

A. From 1890 to 1899, inclusive, the Ohio Valley Telephone Company earned in respect of services rendered in the City of Louisville a sum of money of which they paid——

Q. I asked you a question about this $511,675.66, that is all.

A. Well, I will say to you that they paid, in that time $511,676.66 for repairs and reconstruction.

Q. You say also "new aerial construction," do you not?

A. I did.

Q. Is that true?

A. It is.

Q. And that was in addition to the dividends paid and the $135,000.00 charged off about which you testified awhile ago?

A. It was in addition to the dividends.

Q. I notice on page 20 of your report this statement: "Nothing whatever has been added to this, the actual cost of materials,
1683 labor, and direct expenses of construction. No charge has been made in respect of executive management expenses, interest on capital while construction was in progress, or other overhead charges." Please explain what that means.

A. Mr. Blakey, I certainly thought when I wrote it it was explanatory. I might add the further verbiage that no amount has been added to the cost of construction in respect of executive officers' salaries, office rent, traveling expenses, office expenses, stationery, postage, a whole lot of things I could take up the time to enumerate, nor for interest on capital while in the course of construction, which is sometimes charged to construction work, nor has anything been added to this construction account in respect of any kind of overhead expenses. I mean by that, expenses of management, expenses incurred at Nashville.

Q. Were any such expenses incurred?

A. The management of a large company like this is a constant

source of very heavy expense, and a portion of that expense should be, and very properly could be, added to the cost of their property, as that cost is built up in respect of the work done at headquarters in managing the Company, and that part on page 20 which you have read in my individual report, states for a fact that no charge was made to construction account in respect to this expense.

Q. What was my question?

(Stenographer reads question to witness). Will you answer that?

A. I have.

Q. I gather from that that you intended to say such expenses were incurred—is that correct?

A. I think you are correct in gathering that.

Q. Were they paid by the Cumberland Telephone Company?

A. They were paid: the President's salary was paid; the Assistant General Manager's salary was paid; the General Counsel's salary was paid; traveling expenses and other expenses they incurred during all that time, were paid.

1684 Q. Out of what?

A. Out of the earnings acquired in other territory or out of the general earnings.

Q. The proceeds of the sale of stock usually furnishes the capital account, does it not?

A. Yes.

Q. These expenses of conducting the Company's business were paid out of earnings, I believe you said?

A. I believe they were.

Q. On page 28 of your report you repeat substantially the same statement I read to you from page 20, do you not?

A. What part do you refer to, please?

Q. To the second paragraph on page 28.

A. On page 28 the part I have before me is in regard to the amount expended in cash for the purchase of land and buildings. Is that the part to which you refer?

Q. The part to which I refer reads as follows:

"All of this sum had been expended in actual cash, not a dollar being added in any shape or way in respect of executive management expenses, interest, or any other overhead charges." Is that correct?

A. That is correct. It applies to the sum paid for the purchase of land and buildings in the City of Louisville, the other having applied to the cost of construction.

Q. When we were on the construction account this morning I believe you said the extent of your examination of the items and vouchers making up the construction account was the checking over such of them as the Mutual Audit Company objected to—is that correct?

A. No, I did not say that; if I did, I was mistaken. I said that in regard to the Auditor's bills we were speaking of. I say we did examine the vouchers for construction account. I told you my assistant, Mr. A. D. Hammond, had examined the construction

vouchers; or if I did not say so this morning, I will say so now.

1685 Q. Have you any record of his showing such examination?

A. I have.

Q. I would like to see it.

A. Answering your question, Mr. Blakey, I have before me ten sheets of working papers showing the amounts and vouchers and distribution of those vouchers examined by my assistant, Mr. A. D. Hammond.

(Working papers are handed to Mr. Blakey for examination.)

Q. What does the first page show?

A. The first of these ten sheets show the recapitulation of the other nine sheets.

Q. In whose handwriting?

A. Mr. A. D. Hammond's.

Q. Do you know where he took it from?

A. From the other nine sheets.

Q. Do you know where he took the other nine sheets from?

A. He copied the other nine sheets from the abstract of construction account prepared by the employees of the Mutual Audit Company.

Q. Did he prepare it after the examination was closed, or while it was in progress?

A. He prepared this memorandum while the examination was in progress, on that date or after the employees of the Mutual Audit Company had withdrawn from the offices of the Company.

Q. That was after July 7th, 1909, was it?

A. No, I don't think it was; it was in July, 1909.

Q. Did his examination include looking at the vouchers themselves, or simply looking over the working papers of the Mutual Audit Company?

A. It included the examination of the vouchers themselves, for which purpose he spent two or three days, if I recollect right, at the office of the Company, going over the vouchers the Mutual Audit people had already gone over.

Q. Merely over those they had objected to, or all of them?

1686 A. He went over a total of $944,667.00 out of a total of $1,023,545.00.

Q. Did all that in two or three days?

A. In three days, if I recollect right. He was assisted in the handling of the vouchers by the employees of the Company.

Q. Did you see him do it?

A. I did not.

Q. Did he examine any vouchers the Mutual Audit Company did not examine, so far as you know?

A. So far as I know, he did not for the simple reason that the Mutual Audit Company examined all the vouchers except one little one that was missing.

Q. Do you know that to be true?

A. Yes.

Q. How do you know it?

A. Because he told me so.
Q. He told you. Who told you so?
A. Mr. Hammond.
Q. Was he with the Mutual Audit Company representatives when they examined these vouchers?
A. He was in the same room.
Q. Did any one else representing you or your Company or firm examine any vouchers?
A. Yes.
Q. Who else?
A. Mr. G. W. Myer.
Q. What vouchers did he examine?
A. A great many in connection with charges against the earnings.
Q. Did he examine any in connection with the construction account?
A. Not to my knowledge. He was not instructed by me so to do, outside of those vouchers which had been objected to by the
1687 Mutual Audit Company during the time Mr. Myer was there, and to which they may have invited Mr. Myer's attention.
Q. Did Mr. Hammond examine any vouchers in the Supply Department?
A. Mr. Hammond did examine 105 monthly vouchers of the Supply Department.
Q. Are those the vouchers that were filed by the Supply Department with the Auditor of the Company?
A. Yes.
Q. Did he go into the Supply Department and examine any of the records from which these vouchers were made up?
A. He did.
Q. When did he do that?
A. During the progress of our examination.
Q. How long did it take him to do that?
A. Between two days and a week; I am not quite sure.
Q. Do you know whether the Mutual Audit Company examined any of the vouchers in the Supply Department?
A. To my knowledge, the employees of the Mutual Audit Company did not visit the Supply Department, but I do not know that they did not.
Q. Then your assistant did examine vouchers that they did not examine; is that correct?
A. No. The employees of the Mutual Audit Company did examine the supply vouchers because they are on file in the Auditor's office, but it is not within my knowledge that the employees of the Mutual Audit Company visited the Supply Department. They spoke about doing so, but they did not do so as far as I know.
Q. And you know your man did?
A. He did examine all of them. We examined all of the Supply Vouchers, 105.
Q. In the Supply Department?

A. With the Supply Department, but made to the Audi-
1688 tor's Department. It is expressed on page 64 of my separate report exactly what we did.

Q. Have you any record showing what he found to be the state of the case regarding those supply vouchers?

A. These same sheets that I have before referred to show the number of each month's supply voucher, and the amount distributed against the Louisville Exchange Construction Account divided into three headings—aerial, underground and equipment. The total amount of those supply vouchers that we examined is the sum of $447,260.76.

Q. Have you any data showing what those vouchers contained or represented, or what their condition was?

A. Our data does not show what they were, such as the number of poles and the length of the poles, or any such thing; it shows simply the amount of money and the number of vouchers, and the date on which that voucher was put through the accounts.

Q. Was that item copied from the papers of the Mutual Audit Company also?

A. The items contained on the nine pages of this statement were in the first place copied from the transcript the employees of the Mutual Audit Company had made of the Construction Account of the complainant company in the City of Louisville; afterwards they were checked to the books so as to see that they were exactly right. Then they were checked with the vouchers.

Q. You do not know how those papers are kept in the Supply Department, I suppose. You have no record showing the number, or distribution or anything?

A. The vouchers here referred to on this statement are the vouchers filed in the Auditor's office of the complainant company; attached to those vouchers are papers made up in the Supply Department which show the name of each Exchange and the value of materials and supplies issued to each Exchange, and the amounts showing separately for construction, maintenance and reconstruc-
1689 tion. In the Supply Department are books of account in which are recorded the details making up these items; in the Auditor's office the totals only are dealt with, that is to say, the monthly totals for each branch of the Construction Account.

Q. Have you any record showing the number of the vouchers or paper that appears, in the Supply Department? In other words, as I understand it, the number of the voucher you have on these nine sheets is the number as appears in the Auditor's office. Have you any papers identifying or indicating how the papers could be found in the Supply Department from which these vouchers in the Auditor's Department were made up?

A. In the Supply Department, the Louisville Exchange has an account which shows all the detail, each particular charge being therein posted. The account runs probably several pages in that book in an active month, and the amounts on the papers shown you are the totals for each month. The detail is part of the records of the complainant company which are in the Nashville Supply Department.

Q. On pages 29 and 30 you say that $69,919.92 is proportioned to the Louisville Exchange as its pro rata proportion of the supplies necessary for the Louisville Exchange. That is correct, is it?

A. It is. It is the result of my calculation on this subject.

Q. In arriving at this figure, did you proportion any amount to the toll business of this Company?

A. The basis of the proportionment was by number of stations.

Q. Well, did you proportion any amount to the toll or long distance business of the Company?

A. It does not appear so.

Q. I notice on page 34 of your individual report that you say in substance, that 15% of the long distance messages originating at Louisville is credited to the Louisville Exchange, and that, in your opinion, this is sufficient for all purposes. I assume that is

1690 your opinion?

A. It is.

Q. I ask you how much is credited to the Louisville Exchange by the Cumberland Telephone Company for the long distance business; what percentage of the receipts?

A. We have stated in this individual report that, for convenience of book-keeping, the entire receipts from long distance business originating at Louisville is credited on the books of account in the first place to Louisville Exchange. The books of account of the complainant company, as they stand, show that credit. In the accounting that has been drawn up here, as shown by the joint report, signed by both accountants, we have included 15% of the total receipts as the compensation to be allotted to the Louisville Exchange in respect of its services in that direction.

Q. Is that ample compensation, in your opinion?

A. In regard to whether that is adequate compensation or not, we submit in our individual report that it is the amount of compensation which the complainant company gets from other companies for like business.

Q. And you consider it ample, I suppose?

A. On pages 38 and 39 of our report we submit some particulars with the purpose of showing that this 15% commission is ample.

Q. Where does the other 85% go?

A. The other 85% of those earnings goes to the Company.

Q. How does the Company keep its real estate so far as any rental therefrom or income therefrom is concerned?

A. The Company carries on its general books of account an income account to which is credited an estimated amount representing the rental value of its premises, which amount is charged to operating expenses. In our individual report we include that account as part of the income. The Company treats it on its books of account as income.

Q. It is credited to the general income of the Company?

1691 A. It is.

Q. I notice on page 27 of your individual report the following language: "The amount expended for actual reconstruction of plant, replacing equipment and rebuilding aerial or underground

construction, has been charged to Reconstruction; it equals 2.38% of the average cost of the plant in service." Was the amount expended for reconstruction prior to 1905 charged to reconstruction?

A. No. The Reconstruction prior to 1905 was charged to Maintenance.

Q. Was the amount expended for Reconstruction in 1908 charged to Reconstruction?

A. No, there was no separate account for Reconstruction in 1908.

Q. And do your figures, 2.38%, represent the average per year on the cost of the plant which has been expended in reconstruction?

A. The figures given represent the percentage covering the four years, 1905 to 1908, inclusive.

Q. And that is the average per year?

A. Yes.

Q. What do you say in your individual report as to the amount that should be set aside each year for depreciation? What percentage of the value of the plant, the cost of the plant?

A. In our individual report we submit for the consideration of the Special Master four plans of calculating the depreciation; one we call "Plan A," the Chicago plan; another "Plan B," the diminishing value plan; another we call "Plan C," complainant's plan; and the fourth we call "Plan D," the plan recommended. The plan we recommend for favorable consideration contemplates charging a flat rate on the cost of the plant, calculated at 7%.

Q. You think that is ample to take care of depreciation?

A. I believe that it is sufficient to take care of the depreciation on that plan for those years.

1692 Q. I call your attention to the transcript of the record of the Supreme Court of the United States in the case of the Cumberland Telephone and Telegraph Company vs. Railroad Commission of Louisiana, and to your deposition which was referred to this morning, and ask you whether the question regarding your examination of the records relating to the State of Louisiana was asked you, and whether you answered it in that way.

(Transcript of the record is handed to witness.)

A. I believe that is correct. I assume that is a correct copy of the transcript.

Q. What do you mean by "depreciation"?

A. I mean by depreciation—"depreciation may be defined as the loss in value of some destructible property over and above current repairs." Quoted from a lecture by deponent delivered 1st May, 1905, to the Evening School of Accounts and Finance at the University of Pennsylvania, Philadelphia.

Q. What do you mean by "loss of value of destructible property"? Do you mean less valuable?

A. I do. I mean there is a constant loss going on in any destructible property through its use, through time, through various causes, which press particularly heavy upon a telephone plant.

Q. You mean, then, that a plant gets less valuable year by year until it di-integrates, do you?

A. I mean to say that if a plant is not constantly reconstructed,

rebuilt, renewed, as it goes along, in the course of time it will all go to pieces and drop down in a state of decay.

Q. And you think 7% a year should be set aside to take care of that?

A. I do.

Q. Is that because the plant depreciates 7% each year in value?

A. Not necessarily.

Q. Does it mean that it depreciates 7% each year, plus
1693 such an amount as may be expended during the year in reconstruction?

A. It does not. I mean, that the average rate of depreciation of the property should be calculated at 7% per annum on the cost of the property, and that any unexpended portion of the sum so arrived at, should be set aside by the owner of the property to be expended at some future time on the reconstruction of that property.

Q. Well, should the value of the plant be placed on the books at any less year by year to make the books balance when you put aside a sum of that kind to take care of depreciation in the future?

A. In order to take care of depreciation to be made in future years by replacements, a charge should be made against the earnings at the rate of 7% per annum on the cost of the property. An amount of those earnings should be taken and set aside to expend in future years. It may be that a larger sum than 7% on the cost of the plant is expended in one year. In the case of the Wisconsin Telephone Company, at their Marionette Exchange, which has been brought into evidence here, there were two years in which the plant was largely reconstructed, so largely reconstructed that the amount expended on reconstruction exceeded the provision made for that reconstruction. In the case of the complainant company's accounts, that has not been the case. The amount which should be reserved, calculated on the basis of 7%, comes to the sum, for the four years under consideration, of $456,662.00. The amount actually expended for reconstruction during the like period comes to $155,022.00, leaving a sum unexpended of $301,640.00.

Q. Take a simple proposition: a man had a shoe shop with one machine for making shoes which would last five years. There was no reconstruction during the five years; at the end of five years it would be of no value at all, and that the machine cost $100.00. How much should be set aside for depreciation?

A. On a machine that cost $100.00, and that is going to last five years, the cobbler chap should set aside 20% each year out of his earnings to provide for a new machine at the end of five years.

1694 Q. And if he was going to keep a plant account, what would he have his books show at the end of the first year that he had set aside for depreciation?

A. He could have his books show two separate ways to suit himself. Either his machine would stand on his books at a value of $80.00, or his machine would stand at a value of $100.00 and he would have a liability expressed on his books for $20.00, represent-

ing the sum he had put aside out of his earnings to replace his machine.

Q. If he had spent $5.00 during the year on reconstruction, would it be proper for him to put down his machine at $85.00 and $15.00 into his depreciation fund?

A. It would be proper for him to charge this $5.00 to his depreciattion fund, reducing it from $20.00 to $15.00, provided that the expenditure of $5.00 prolonged the life of his machine,—if it was, in other words, really a replacement.

Q. If he loaned his $20.00 out at interest, the next year he would not have to set 20% aside, would he?

A. If the cobbler's business was of such an unprofitable nature that he could better afford to put his $20.00 in the savings bank, and draw 3% interest rather than employ it in his business, it would be a good plan to set it aside in the savings bank.

Q. Then, it would not be necessary for him to set aside the 20% each year?

A. It would not. In the meantime, he would have lost the profit on his business which he could derive from the use of $100.00 in in his business for a part of five years.

1695 Redirect examination by Mr. GRANBERY:

Q. Mr. Wilkinson, who employed you to make the examination of the complainant company's affairs in 1900?

A. Mr. R. N. Sims, then Chairman of the Louisiana Railroad Commission.

Q. How did Mr. Sims happen to know you?

A. I was introduced to Mr. Sims at the office of one of the insurance companies in New Orleans by the Hon. Eugene J. McGivney, Assistant Secretary of the State of Louisiana, and ex-officio Commissioner of Insurance under the then recently enacted law creating that office.

Q. Had you been doing any work for the Insurance Commissioner?

A. At that time I was examining the accounts of the fire insurance companies domiciled in the State of Louisiana, on behalf of the State Insurance Commission.

Q. At that time were you acquainted with anybody connected with the complainant company?

A. I was not.

Q. Did Mr. Sims state to you when he employed you that it had been agreed that your compensation would be divided equally between the Company and the Railroad Commission?

A. I do not think so.

Q. When did you first learn that that expense was to be divided between the two parties?

A. I learned that later when I was in Nashville, and I wanted some money. I asked Mr. Sims for an advance on account of expenses, and he said he would let me know later, and when he did let me know he at that time advised me in Nashville that he had ar-

ranged that half of my remuneration would be borne by the Company. That is my recollection.

Q. There was no law suit about that investigation?

A. Not to my knowledge.

Q. This deposition you have given in 1907, was that in
1696 connection with this same matter or another matter?

A. I believe it was seven years later; my recollection of it is, that this deposition was made in regard to proceedings that were had in connection with another matter.

Q. In this same deposition where you speak of 10% being the proper charge for depreciation, I will ask you to quote your answer to the question "State any fact within your knowledge which will add to or elucidate any of the foregoing interrogatories."

A. In writing off 10% per annum on the diminishing value for depreciation, the plant account is not written off entirely in ten years, as some suppose, but it is gradually reduced by the same which diminishes each year, thus the charge for the first year is 10%; that for the third year is 8 1-10%; for the seventh year, 5.314%; for the tenth year, 3.874%, and for the fourteenth year, 2.542% of the original principal; thus, at the end of the fourteenth year there remains 22.9% of the original principal. In making the above answer I referred to the so-called "Plan B," diminishing value plan, referred to on page 61 of my individual report.

Q. Now, Mr. Wilkinson, you have had a simple proposition of a machine which wears out all at the same time, and has to be replaced again—can that be compared or likened to a telephone plant?

A. The illustration used is about as far removed from a telephone plant as I can conceive one.

GEORGE WILKINSON.

Sworn to and subscribed before me this 23rd day of March, 1910.

CLINTON D. GANSE,
[SEAL.] *Notary Public.*

1697 EXHIBIT #1, WITH DEPOSITION OF WILKINSON.

Incorporated.

Accountants-Auditors.

E. W. Farnham, General Manager.
Cable Address, Muauco.

PAUL JONES BUILDING,
LOUISVILLE, KY., *July* 9, 1909.

Honorable Henry Burnett, Special Master, Cumberland Tel. & Tel. Co. vs. City of Louisville, Ky., Louisville, Ky.

DEAR SIR: Enclosed herewith I have the honor to hand to you for your information, copy of Joint Report of comparisons of figures as between the accountant for complainant and accountant for the defendant in the above entitled action, having attached thereto state-

ment of reference to the Joint Report as it was understood during the conference.

We are now compiling our individual or separate report to meet the conditions of the Joint Report and as contemplated therein, which we will present to you at the earliest possible moment with full explanation of variations and our reasons therefor.

Very truly yours,

(Sgd.) E. W. FARNHAM,
Representing Defendant.

Copy.

1698 THE CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
CITY OF LOUISVILLE.

To the Honorable Henry Burnett, Special Master, Louisville, Ky.

DEAR SIR: Acting in accordance with your instructions to us, given in conformity of order dated April 2nd, 1909, by the United States Circuit Court, for the Western district of Kentucky, at Louisville (Hon. Walter Evans, Judge), we the undersigned Accountants, for the Complainant, and for the Defendant respectively, have made an examination of the books and account of records of the Cumberland Telephone & Telegraph Company, kept in the principal office of that Company at Nashville, Tennessee, for the purpose of determining the cost to the complainant of its plant and property in the City of Louisville, Kentucky, to date of March 6th, 1909, and the Income derived from the operation of said property for the years 1905, 1906, 1907 and 1908.

The Examination.

Said examination was begun on May 4th, 1909, and has been in progress ever since that date. We now beg to report as follows:

Said examination involved a close enquiry into all matters relating to the business of the Complainant in the City of Louisville, including the books of account, vouchers, payrolls, agents' reports and other original sources of information, kept at the principal office of the Complainant in the City of Nashville, Tennessee.

Answering each of the several paragraphs of the Order of Court, dated April 2nd, 1909, by a separate section, we beg to report as follows:

Section #1.

The Accountants have drawn off an abstract from a subsidiary book of account, kept for the purpose, which shows the cost to the Complainant, of its telephone plant in Louisville, as of record and as indicated by the Vouchers and Payrolls.

1699 The total cost thus recorded, up to March 6th, 1909, is the sum of $1,700,536.91: to this has been added the sum of $4,707.16 (Voucher #2588—April 17th, 1902, for Switchboard

Equipment which should have been charged to Louisville, but was improperly charged to Nashville).

From these amounts we have deducted a total of $2,852.39, in respect of certain items improperly distributed against "Construction Account—Louisville."

Synopsis of the Above.

Shown by the books	$1,700,536.91
Add Equipment	4,707.16
	$1,705,244.07
Deduct Sundry Items	2,852.39
Corrected Total	$1,702,391.68

Expended on Construction, 1900 to 1908.

The Accountants agree that the books of account of the Complainant shows that the amount expended on Construction from 1900 to 1904 was the sum of	$857,310.39
and the amount similarly expended from 1905 to 1908, was the sum of	166,234.95
Making a Grand Total for the 9 yrs. of	$1,023,545.34

Stated by years, the amount so expended was as follows:

Expended in 1900	$166,775.23	
do. do. 1901	178,549.14	
do. do. 1902	217,128.05	
do. do. 1903	163,486.84	
do. do. 1904	131,371.13	
Total 1900 to 1904		$857,310.39
Expended in 1905	$60,691.21	
do. do. 1906	89,125.15	
do. do. 1907	20,770.42	
Taken out during 1908, net	4,351.83	
Total 1905 to 1908		166,234.95
Total		1,023,545.34

1700 Section #2.

We have discussed the method to be followed in arriving at an estimate of the present value of the telephone plant of the complainant in the City of Louisville, and we find that we cannot agree as to said method.

Section #3.

We agree that the Gross Earnings of the Complainant, during the four years 1905, 1906, 1907 and 1908, as shown by the books of the Complainant, and as classified therein, and placed to the credit of Louisville Exchange, including 15% of the Toll Earnings, were as follows:

1905	$269,823.38
1906	294,498.44
1907	319,758.51
1908	325,838.30

The Gross Earnings are classified as follows:

	1905	1906	1907	1908
1. Exchange Service	$264,675.13	$280,076.12	$297,501.14	$307,431.85
2. Proportion of Toll Earnings	6,539.92	7,064.91	8,030.15	7,632.11
3. From Telegraph Companies	983.88	1,018.12	939.48	761.79
4. From American Telephone & Telegraph Company	2,865.29	3,427.09	3,864.17	3,272.37
5. Private Line Rentals	1,342.01	1,079.92	1,153.91	.....
6. Poll Service and Attachments	953.11	1,096.28	1,177.75	1,229.99
7. List Advertisements	751.83	2,497.25	2,984.22	3,151.59
8. Telegraph Drops	215.49	976.40	2,110.61	2,130.55
9. Messenger Fees	862.02	812.40	769.15	658.30
10. Removals and Miscellaneous	1,001.12	680.53	3,278.70	2,682.97
Gross Total	$280.189.80	298,729.02	$321,809.28	$328,951.52
Deduct bad debts	10,366.42	4,230.58	2,050.77	3,113.22

Total Gross Earnings of the Complainant as Placed to the Credit of Louisville Exchange.

1701	Year 1905	$269,823.38
	Year 1906	294,498.44
	Year 1907	319,758.51
	Year 1908	325,838.30

In 1908 "Private Line Rentals" were reported from the Exchange and included in $307,431.85 "Exchange Service."

PAGE BO

Operating Expenses of the Complainant in Conducting its Business in the City of Louisville During 1905, 1906, 1907, *and* 1908.

	1905	1906	1907	1908
1. General Expenses prorated	$11,205.34	$11,270.15	$11,226.76	$9,331.29
2. General Expenses (direct)	29,271.49	35,948.37	34,826.91	32,545.46
	$40,476.83	$47,218.52	$46,053.67	42,076.75
3. Operating Expenses	84,264.54	80,738.06	79,661.04	75,440.28
4. Maintenance	49,819.14	52,796.93	65,616.31	54,705.91
5. Reconstruction	41,051.02	40,626.07	41,895.10	31,450.07
6. Instrument Expense	11,559.76	12,518.70	13,372.49	13,722.52

Total Operating Expenses.

Year 1905	$227,171.29
Year 1906	233,898.28
Year 1908	217,395.53
Year 1907	246,598.61

Section #4, Probable Result for 1910.

We have made a calculation showing the amount in which the Complainant's Gross Earnings will probably be cut down by the enforcement of the rates fixed by the Ordinance adopted by the Legislative body of the City of Louisville and approved by the Mayor March 6th, 1909. We have used as the basis for this calculation, a typewritten list of the names of the Subscribers to the Louisville Exchange on April 1st, 1909, copies from the records of the Company kept at Louisville Exchange, the correct amount chargeable to Subscribers for the month of April (face of contracts) is the sum of $27,270.31.

1702 To this list we have applied the maximum rates fixed by the Ordinance and we find that the total gross earnings on this same list of Subscribers for the same month of April, 1909, at the Ordinance rate, would be only $20,486.92 net.

The terms of all telephone rentals provide for an allowance in the form of cash discount of fifty cents a month on all rental contracts that are paid three months in advance.

The actual cash discounts allowed to the Louisville Subscribers during the three months, March, April and May, 1909, in respect of quarterly payments made in advance, came to $7,919.74. One-third of this sum—$2,639.91—would be a fair deduction to make from the Gross Earnings for the one month of April (face of contracts).

This would, leave the sum of $24,630.40 to represent the measure of the Earnings actually collectible for April, 1909, under the contracts in force on April 1st, 1909.

Thus we have this calculation:

Gross Earnings for April, 1909.

At Contract Rate (after deducting Discounts)	$24,630.40
At Rates Fixed by Ordinance (which are net)	20,486.92
Loss of Gross Earnings for one month	$4,143.48

This is equal to a loss of $49,721.76 a year.

Against this probable loss of $49,721.76 a year there will probably be an increase in gross earnings in respect of the natural growth of the business and the increased number of subscribers and to the lowering of the rates upon the enforcement of the Ordinance. What this increase will amount to we cannot definitely determine.

The foregoing joint report shows the money charged as the cost of the plant at Louisville: the Gross amount credited to the Louisville Exchange as Earnings, and the Operating Expenses charged

as appertaining thereto; as recorded on the books of the Cumberland Telephone and Telegraph Company. It is not an agreement that the said accounts are properly distributed or charged as we believe they should be, therefore, the right is reserved by each
1703 of the undersigned to make such individual report and statements relative thereto, as each may feel justified in doing.

Section #5, Charge for Depreciation.

Having discussed the matter of Depreciation, we find we cannot agree in regard thereto.

Section #6 to Section #11.

We agree that the remaining paragraphs, from #6 to 11 inclusive, of the Order of Court dated April 2nd, 1909, do not call for any report from us.

Respectfully submitted.

On behalf of the Complainant:

WILKINSON, RECKITT, WILLIAMS CO.,
Certified Public Accountants.

Witness:

A. D. HAMMOND.

On behalf of the Defendant:

E. W. FARNHAM.

Witness:

H. B. WARREN.

Dated at Nashville, Tennessee, 7th day of July, 1909.

1704 E. W. Farnham signed the above joint report because ordered by the Master to make a joint report with the Complainants' accountant, if any facts could be agreed on between them and for no other reason.

The facts agreed to in the above report go to the extent only that, as the books are kept, they show the figures named in this report. A proper charge and allocation of the true cost of its plant in the city of Louisville; a true statement of its gross and net earnings and a true statement of the operating expenses of its Louisville plant and business as shown by actual records of the company, will show results different from those stated in the foregoing report, which results—with the reasons therefor—will be fully set out in a separate report which will be filed by said Farnham as a supplement to and as a part of the foregoing report and as contemplated therein.

(Sgd.) E. W. FARNHAM,
Representing Defendant.

1705 The Mutual Audit Company, Incorporated.
Accountants-Auditors.

E. W. Farnham, General Manager.
Cable Address, Muauco.

PAUL JONES BUILDING,
LOUISVILLE, KY., *July* 9, 1909.

Mr. Geo. Wilkinson, C. P. A., Maxwell House, Nashville, Tenn.

DEAR SIR: I enclose herewith copy of memorandum signed by me and attached to executed copy of Joint Report and by me turned over to the Master to-day, same being in substance the notation which I requested you to attach to copy of the report which you have.

Please attach this copy to your executed copy, in order that the Joint Reports may be uniform to all intents and purposes.

I have notified the Master that my separate report is in process of compilation and will be filed as soon as same shall have been completed, with such or any exhibits found expedient.

Yours truly,
(Sgd.) E. W. FARNHAM,
Representing Defendant.

Copy.

1706 EXHIBIT #2 WITH DEPOSITION OF WILKINSON.

United States Circuit Court, Western District of Kentucky.

Hon. Walter Evans, Judge.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
vs.
THE CITY OF LOUISVILLE, KENTUCKY.

Report upon the Examination of the Books of Account, Records and Documents of the Complainant.

Made by Wilkinson, Reckitt, Williams & Company, Certified Public Accountants, New York, Philadelphia, Chicago.

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CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
vs.
THE CITY OF LOUISVILLE, KENTUCKY.

NASHVILLE, TENNESSEE, *July 12th*, 1909.

To the Honorable Henry Burnett, Master Commissioner, Louisville, Kentucky.

DEAR SIR: We now beg to make our individual report to you, on behalf of the Cumberland Telephone and Telegraph Company, the Complainants in the above entitled case.

Under date of Nashville, Tenn., 7th July 1909, we signed a Joint Report upon the examination we have made of the books and records of the Complainant, said Joint Report being also signed by Mr. E. W. Farnham, expert accountant, selected by the City of Louisville, defendant in the above entitled case.

Said Joint Report was, in accordance with your instructions (Order dated the 12th day of June 1909), transmitted by registered mail, to yourself, as Master Commissioner, from Nashville on July 9th 1909.

It will be necessary, in making this individual report, to refer repeatedly to said Joint Report and to quote extensively
1709 therefrom. To facilitate the reading of this report in conjunction with said Joint Report, the latter is reproduced herein, in full, section by section—in purple.

The examination of the books and records of the complainant, made in accordance with your instructions, was begun on May 4th 1909, at the head office of the complainant. There were then present, on behalf of the defendant, Mr. Edwin Wilson Farnham, General Manager of The Mutual Audit Company, of Louisville, and a member of his staff, Mr. Henry B. Warren; also, on behalf of the complainants, George Wilkinson, C. P. A., Senior member of the Firm of Wilkinson, Reckitt, Williams & Company, Certified Public Accountants, of New York City.

A conference was held between the above named to determine the scope of the examination of the complainant's books and records, and the methods to be pursued in making the same. As a result of this conference, and for the purpose of expediting said examination, a typewritten memorandum of four sheets was drawn up, dated and signed thus:—

Nashville, Tenn. E. W. Farnham.
May 6th, 1909. Wilkinson, Reckitt, Williams & Co.

A copy of this Accountants' Agreement or "Memorandum" was mailed to you by Mr. E. W. Farnham, under date Nashville, Tenn., May 6th 1909, "for your information and approval or otherwise."

It will be necessary, in making this individual report, to refer repeatedly to said Accountants' Agreement and to quote extensively therefrom. To facilitate the reading of this report, such quotations are made—in green.

1710 *Quotation from Joint Report.*

Acting in accordance with your instructions to us, given in conformity with Order dated April 2nd 1909, by United States Circuit Court for the Western District of Kentucky, at Louisville (Honorable Walter Evans, Judge), we, the undersigned, Accountants for the complainant and for the defendant, respectively, have made an examination of the books of account and records of the Cumberland Telephone and Telegraph Company kept at the principal offices of that company, at Nashville, Tennessee, for the purpose of determining the cost to the complainant of its plant and property in the City of Louisville, Kentucky, to date of March 6th 1909, and the income derived from the operation of said property for the years 1905, 1906, 1907 and 1908.

The Examination.

Said examination was begun on May 4th 1909, and has been in progress ever since that date. We now beg to report as follows:—

Said examination involved a close inquiry into all matters relating to the business of the complainant in the City of Louisville, including the books of account, vouchers, payrolls, agents' reports and other original sources of information, kept at the principal office of the complainant in the City of Nashville, Tenn.

Answering each of the several paragraphs of the Order of Court, dated April 2nd 1909, by a separate section, we beg to report as follows:—

(Joint report continued on page #16.)

Section #1.

Cost of the Plant.

Order of Court dated April 2nd 1909, calls for:—"The cost to " the complainant of its plant and property in the City of Louisville, " Kentucky * * *."

1711 The permanent plant and property of the complainant, in the City of Louisville, consists of a modern telephone plant, together with a Main Exchange and three subordinate Exchanges, known respectively as "South," "East" and "West" Exchanges; a Warehouse; a Stable; and the lands whereon these buildings stand; also a pole storage yard.

Cost to March 6th, 1909.

Up to date of March 6th 1909, this plant and property had cost the complainant the sum of $1,864,583.10, made up as follows:

Telephone Plant.

Aerial Construction	$831,067.48	
Equipment	571,750.86	
Underground Construction	287,910.91	
Tools, Teams and Furniture	11,662.43	
Total Plant		$1,702,391.68

Land and Buildings.

Main Exchange	$103,769.20	
South Exchange	15,195.00	
East Exchange	17,734.11	
West Exchange	15,964.10	
Warehouse	8,025.27	
Stable	1,503.74	
Total Buildings		162,191.42
Total Cost to the complainant of its plant and property in the City of Louisville, Ky., up to March 6th, 1909		$1,864,583.10

1712 In order to satisfy ourselves that the figures shown in the books of the Company truly represent the cost to the com-

plainant of its plant and property in the City of Louisville, we have examined carefully (First) the manner in which the complainant acquired said property; (Second) the initial cost to the complainant of said property at that time; (Third) the expenditures made by the complainant, from 1900 up to 1909, in the form of new construction.

Sub-Section #1 (*a*)—How the Property was Acquired.

The complainant acquired possession of its plant and property in the City of Louisville, as it then stood (December 1899), by making a consolidation with The Ohio Valley Telephone Company.

Negotiations looking to a consolidation of the two companies had been in progress for six months, leading up to meetings of the respective boards of directors of the two telephone companies in December 1899.

Consolidation of Companies.

At these meetings the officers of the respective telephone companies were authorized and directed to effect the consolidation of the two existing companies, under the name of the Cumberland Telephone and Telegraph Company.

The consolidation of the two telephone companies was duly approved by the Stockholders of the Cumberland Telephone and Telegraph Company on January 25th 1900, and by the Stockholders of The Ohio Valley Telephone Company on January 26th 1900,
1713 after all legal formalities had been complied with and duly recorded.

As a necessary part of the consolidation, the entire property and assets of The Ohio Valley Telephone Company were taken over by the new Cumberland Telephone and Telegraph Company, and with them, all the liabilities of the old company were assumed. It then and there became necessary to consolidate the books of account of the two telephone companies, and this was done as of date January first 1900.

Accordingly, all the current assets, consisting of supplies, accounts receivable and cash, and all the current liabilities, consisting of notes and accounts payable, were taken over and entered upon the books of account of the Cumberland Telephone and Telegraph Company, as of date January 1st 1900. These current assets and current liabilities have since been liquidated.

The real and personal property, up to that time, belonging to The Ohio Valley Telephone Company, was taken onto the books of the complainant at cost, which included the then existing premium on the company's shares, as established in the open market, as hereinafter set forth.

Purchase of Shares in Ohio Valley Co.

Acting in accordance with instructions from the Directors of the complainant company, the President and one of the Directors had, from time to time, from June to December 1899, purchased an aggregate of 3557 shares of the capital stock of The Ohio Valley Telephone Company.

702 shares bought at $140	$98,280.
2855 shares bought at $141	402,555.
Total—3557 shares for	$500,835.

1714 Some of these shares were purchased by the President and some through the First National Bank of Louisville. All these shares were bought in the open market and paid for in money, which established a market price, at that time, for the shares of The Ohio Valley Telephone Company of $140. and $141. per share.

The stock of the Cumberland Telephone and Telegraph Company was first quoted on the Boston Stock Exchange in 1901, and therefore, no official quotation is available for 31st December 1899. The value of the Cumberland stock appears to be satisfactorily established at $140. by the fact that the holders of The Ohio Valley Telephone Company stock accepted shares of the Cumberland Company on an even exchange, and at a time when The Ohio Valley stock had just sold, in large blocks, at $140.

After the above described purchase of 3557 shares had been made, there remained outstanding 1937 shares of The Ohio Valley Telephone Company's capital stock, of which the American Telephone and Telegraph Company held 1920 shares.

In pursuance of an agreement so to do—1937 shares of the Capital Stock of the Cumberland Telephone and Telegraph Company were issued in exchange for the 1937 shares of The Ohio Valley stock, (an even exchange).

The Articles of Consolidation were drawn, approved by the respective boards of directors, and consented to, in writing, by more than two-thirds of the shareholders of the two companies. The basis of consolidation was one share of the consolidated company's stock for each share of the old companies' stock.

1715 *Sub-section* #1 (*b*).

Property Acquired.

The plant and property thus acquired by the complainant in 1900, consisted of lands and buildings in Louisville, Ky., and in New Albany, Ind., also Aerial Construction, Underground Conduits, Underground Cables, Exchange Equipment and Subscribers' Stations at Louisville and at other points in Kentucky and Southern Indiana; also Toll Line Construction. These telephone plants were located at:—

Louisville, (Ky.) with 3536 stations.
New Albany, (Ind.) with 614 stations.
Jeffersonville, (Ind.) with 383 stations.
Six other Exchanges, with 727 stations.

In addition to the lands, buildings and constructed telephone plants thus acquired, the complainant secured the sole ownership of a prosperous, dividend paying business, and the goodwill attach-

ing to telephone plants in actual operation in nine cities, with a total of 5260 stations.

Sub-section #1 (*c*).

Initial Cost to Complainant.

The properties thus acquired were taken onto the books of the Cumberland Telephone and Telegraph Company at cost to the Complainant—made up as follows:—

(A) Lands and Buildings	$115,765.46
(B) Telephone Plants	$998,817.55

Should be 1,077,667.08 (see No. 1-A).

1716 (A) Land and Buildings Made up of Louisville Property.

Main Exchange:	
Land and three-story brick building 44′ by 210′ on Jefferson Street, in the City of Louisville. This property had been purchased, on June 3rd 1899, by The Ohio Valley Telephone Company, from James B. Speed and others, for the sum of	$100,000.00
South Exchange:	
Lot 50′ by 200′ on Ormsby Street, in the City of Louisville, with a cottage, purchased in April 1898, for	4,500.00
Warehouse:	
Lot on Green Street, in the City of Louisville, with a building, used as a warehouse (afterwards—March 12th 1904—sold for $3,500.)	3,534.50
Total	$108,034.50
New Albany Property:	
Land and Building used as a telephone Exchange at New Albany	7,730.96
Total Land and Buildings acquired by the Complainant from The Ohio Valley Telephone Company, on January 1st 1900	$115,765.46

(B) Telephone Plants.

We have made certain enquiries from the President of the Cumberland Telephone and Telegraph Company, who conducted the negotiations for the consolidation of the two telephone companies in 1899, and from the Auditor of the Company, as to the terms and conditions of said consolidation, and as to the way in which the

cost of the telephone plants ($998,817.35) was made up. We have also perused the minute book, kept by the Secretary of The Ohio Valley Telephone Company, in which are recorded the proceedings of Directors' meetings and of the Shareholders' meetings.

1717 We have also examined the books of account of The Ohio Valley Telephone Company, which are in the possession of the complainant, and we find that the actual cost of construction of these several telephone exchanges and of the toll lines, built by that company, as recorded in its books of account, up to 31st December 1899, was the sum of $773,702.44, made up as follows:—

Balance of the Actual Cost of Construction, left standing on the books of The Ohio Valley Telephone Company, on 31st December 1899, (see "Ledger C," page #77) as follows:—

Aerial Construction	$149,740.64	
Underground Conduits	108,313.61	
Underground Cables	126,512.24	
Equipment	128,223.45	
Toll Line Construction	125,406.80	
Balance of Account, 12/31/99		$638,196.74
Portion of the Actual Cost of Construction, written off the account to dispose of the profits (see page #11 for explanation)		135,505.70
Total Cost to The Ohio Valley Telephone Company of its telephone plant and equipment, up to December 31st 1899, as recorded on the books of that Co.		$773,702.44
Add		
Additional Cost of the Plant and Property to the Complainant, in respect of the Cash premium paid on the purchase of 3557 shares of The Ohio Valley Telephone Company Stock, at a cost of $500,835		145,135.00
Carried forward		$918,837.44
1718 Brought forward		$918,837.44
Add		
Additional Cost of the Plant and Property to the Complainant, in respect of equal premium (approximately) on the 1937 shares of the Cumberland Telephone and Telegraph Company Stock, issued in exchange for Ohio Valley Stock;—computed at		79,979.91
Total Cost to the Complainant of the telephone plants acquired from The Ohio Valley Telephone Company, in December 1899		$998,817.35

Explanation Regarding $135,505.70. it is Portion of the Actual Cost of Construction.

The following amounts, being part of the actual cost of the telephone plant at Louisville, were written off Construction Account, on the books of The Ohio Valley Telephone Company, on the dates named, by order of the Directors of the Company.

December 31st 1891	$15,000.00	
December 31st 1892	25,000.00	
December 31st 1893	25,000.00	
December 31st 1894	29,505.70	
Total to Date, 12/31/94		$94,505.70

Please note at this point that the last named entry (12/31/94—$29,505.70) was made in accordance with the resolution of the Directors at a meeting held February 13, 1895, and that it disposed of the entire credit to Surplus Account.

Carried forward		$94,505.70
1719 Brought forward		$94,505.70
December 31st 1895	$12,000.00	
December 31st 1896	14,000.00	
December 31st 1897	9,000.00	
December 31st 1898	6,000.00	
Total 1895 to 1898		41,000.00
Total written off		$135,505.70

Ostensibly these sums were written off Construction Account to provide for "Depreciation," but as a matter of fact, we are informed that it had been the fixed policy of the Board of Directors of The Ohio Valley Telephone Company to dispose of the surplus net profits of the business, after paying 7% per annum, in just this way.

Dividends Paid (Ohio Valley).

From 1890 to 1898, inclusive, The Ohio Valley Telephone Company paid to its Shareholders regular quarterly dividends of $31,500, every year, except in 1894, when the fourth quarterly dividend was passed making only $23,625, paid for that year.

In 1899, two quarterly dividends of $7,875, each, were paid, making $15,750, for that year.

In all, from 1890 to 1899, inclusive, the Shareholders received $291,375, in dividends, these being at the uniform rate of 7% per annum.

After paying these dividends, there remained a considerable surplus of Undivided Net Profit. This surplus was written off to "Plant Account," as shown in the next preceding statement.

In full to date 12/31/94	$94,505.70
In part to 12/31/98	41,000.00
Together	$135,505.70

1720 No Such Depreciation.

No such charge for Depreciation was called for at all. The amount actually expended by The Ohio Valley Telephone Company upon the up-keep of its telephone plant, was ample to provide for all reconstruction.

Cost of Maintenance and Reconstruction to the Ohio Valley Paid Out of Earnings, Also Entire Plant.

During the ten years immediately preceding the consolidation with the Cumberland Telephone and Telegraph Company, namely from 1890 to 1899 inclusive, The Ohio Valley Telephone Company had expended upon its telephone plant, a total sum of $511,675.66, or equal to an average of $51,167.56 a year. This sum of $511,675.66 included all repairs, maintenance and reconstruction, and, in addition, it included almost all new aerial construction. Not one dollar was added to "Aerial Construction Account" on the books from 1890 to 1897. This actual expenditure, which was all charged against Earnings, is equal to 10.39% per annum of the cost of the plant, as shown by the books.

Cost of Maintenance and Reconstruction to the Complainant.

We wish now to compare the large expenditures of The Ohio Valley Telephone Company for Maintenance and Reconstruction (10.39% of the cost), with the amounts expended for the same purpose by the complainant.

During the four years for which we have examined the accounts of the complainant, namely from 1905 to 1908, inclusive, the complainant has expended in actual repairs, reconstruction and replacement of its telephone plant at Louisville, the total sum of $377,960.55, or equal to an average of $94,490.14 a year.

This actual expenditure was equal to 5.79% per annum on the cost of construction.

1721 As stated elsewhere in this report, a further charge is made against the earnings of the complainant's Louisville plant, to provide for reconstruction of plant and replacement of equipment (see under heading of "Depreciation"). For the four years under review, namely 1905, to 1908 inclusive, this charge amounts to the sum of $301,640.45, or equal to an average of $75,410.11 a year.

It is calculated that the two above-stated amounts taken together ($377,960.55 expended, and $301,640.45 set aside), will provide for

the proper maintenance and complete reconstruction of the property. These two sums taken together make an aggregate of $679,601.00, or equal to $169,900.25 a year. This is equal to a little over ten percent (10%) of the cost of the plant at Louisville.

This provision was ample in 1905 to 1908 for the maintenance and reconstruction of the Louisville telephone plant, while under the control of the complainant, and it goes to show that the amount actually expended by The Ohio Valley Telephone Company for repairing and reconstructing its telephone plant in the City of Louisville (namely $51,167.56 a year, or 10.39% on the cost of construction) was enough to provide for the proper maintenance and complete reconstruction of the property during 1890 to 1899.

We are therefore justified in saying that the amounts written off the "Plant Account" by order of the Directors of The Ohio Valley Telephone Company, from time to time, as detailed on page #11., amounting to a total of $135,505.70, were not a necessary and proper charge for Depreciation or Reconstruction reserve; but rather, as we are in fact informed they were, simply a disposition of the balance of Net Earnings on the business.

It was, we are informed, in view of the facts and considerations above stated, that, in taking the plant and property acquired from The Ohio Valley Telephone Company on 1st January, 1900 onto its books, the complainant disregarded these charges for "Depreciation", and restored the amounts written off "Plant Account" to the cost of the property.

1722 We have shown (on page #11) that the Total Cost to the Complainant of the telephone plants acquired from The Ohio Valley Telephone Company, in December 1899, was the sum of $998,817.35.

This sum was originally entered upon the books of the complainant, on January 1st, 1900, at page #331 of the General Journal, thus:

Exchange Aerial	$469,444.15
Equipment	329,609.73
Toll Line Construction	199,763.47
Total	$998,817.35

Later on, namely on November 4th 1903, when a more definite system of bookkeeping was established, it was found necessary to have a separate construction account for each exchange in the complainant's entire system. At that time, a re-distribution of the cost of the plant acquired from The Ohio Valley Telephone Company, was made on the books of the complainant, resulting in this re-division:

Louisville Exchange (3536 stations):

Aerial	$264,127.37	
Equipment	189,245.37	
Underground	224,981.95	
		$678,354.69

(See note as to apportionment.)

New Albany Exchange (614 stations):		
Aerial	$22,934.13	
Equipment	16,451.51	
Underground	9,843.90	
		49,229.54
Jeffersonville Exchange (383 stations):		
Aerial	$14,305.81	
Equipment	10,262.10	
		24,567.91
Carried forward		$752,152.14
1723 Brought forward		752,152.14
Four Other Kentucky Exchanges (503 stations): Two Other Indiana Exchanges (224 stations):		
Aerial	$27,181.31	
Equipment	19,720.43	
		46,901.74
Total Plant at nine Exchanges		$799,053.88
Toll Line Construction		199,763.47
Total		$998,817.35

Note.—The above reapportionment of the cost of the plant was made on the basis of the number of subscribers at each exchange; except in the case of Louisville. To meet the fact that the cost of construction was very much greater in the City of Louisville, owing to its large number of subscribers, its underground system and multiple switchboard, and the greater cost of construction in a large city; the calculation of cost of that portion of the plant, was made in the ratio of two subscribers to one elsewhere.

So that the number of subscribers, upon which the proportion of initial cost allotted to Louisville, was computed, was taken at 7072.

Cost of the Telephone Plant.

What the Books Show:

The general books of account of the complainant contain one account called "Construction Account", representing the cost to the complainant of all its telephone plants, Louisville included.

The Accountants have drawn off an abstract from a subsidiary book of account, kept for the purpose, which shows the cost to the complainant, of its telephone plant in Louisville, as of record, and as indicated by the vouchers and payrolls. The total cost thus
1724 recorded, up to March 6th 1909, is the sum of $1,700,536.91; to this has been added the sum of $4,707.16 (Voucher #2588 —April 17th, 1902, for switchhboard equipment, which should have been charged to Louisville, but was improperly charged to Nashville).

From these amounts we have deducted a total of $2,852.39, in respect of certain items improperly distributed against "Construction Account—Louisville".

Synopsis of the Above.

Shown by the books	$1,700,536.91
Add Equipment	4,707.16
	$1,705,244.07
Deduct Sundry Items	2,852.39
Corrected Total	$1,702,391.68

Expended on Construction, 1900 to 1908:

The Accountants agree that the books of account of the complainant show that the amount expended on Construction from 1900 to 1904, was the sum of	$857,310.39
And the amount similarly expended from 1905 to 1908, was the sum of	166,234.95
Making a Grand Total for the Nine Years, of	$1,023,545.34

This total sum expended, during the nine years, from 1900 to 1908, was paid for:

Aerial Construction	$565,790.99
Equipment	383,292.07
Underground Construction	62,928.96
Tools, Teams & Furniture	11,533.32
Total Expended in nine years	$1,023,545.34

1725 Quoted from Joint Report:

Stated by years, the amount so expended, was as follows:

Expended in	1900	$166,775.23	
do	1901	178,549.14	
do	1902	217,128.05	
do	1903	163,486.84	
do	1904	131,371.13	
Total 1900 to 1904			$857,310.39
Expended in	1905	$60,691.21	
do	1906	89,125.15	
do	1907	20,770.42	
Taken out during 1908 (net)		4,351.83	
Total 1905 to 1908			166,234.95
Total			$1,023,545.34

Note A.—The Credit to "Construction Account" in 1908 of $4,-351.83, by which the cost of the telephone plant to the complainant was reduced, was made up in this way:

Aerial Construction—Expenditures	$5,332.48
Equipment—Credit (see Note B)	11,430.72
Underground Construction	15.43
Tools and Teams—Credit (see Note C)	48.44
Furniture and Fixtures (see Note D)	1,779.42
Balance (Credit)	$4,351.83

Note B.—The credit of $11,430.72 to "Equipment" arises as to $10,906.39 in respect of station equipment taken back from Louisville subscribers who have discontinued the service; as to $1,472.68 in respect of office furniture, transferred to a separate classification in 1908, and other credits. Against these credits a certain amount of new equipment has been installed.

1726 Note C.—The credit of $48.44 to "Tools and Teams" arises as to $1,200 in respect of two Ford Automobiles transferred during 1908, from Louisville to Nashville; and as to $727.31 in respect of sundry tools returned by construction gangs to the Supply Department, upon completion of construction work. Charges amounting to $1,878.87 were made to "Tools and Teams" during 1908.

Note D.—"Furniture and Fixtures" occurs for the first time, as a separate classification in 1908. Same had previously been included in "Equipment". In 1908 the sum of $1,472.68 was transferred from "Equipment" and $306.74 more was expended.

Expended on Construction in 1909.

Between January 1st and March 6th 1909, the complainant made further expenditures on its telephone plant in the City of Louisville, amounting to the sum of $491.65, as follows:

On Telephone Plant—	
Aerial Construction	$1,149.12
Equipment—taken out	786.58
Tools and Teams	103.19
Furniture and Fixtures	25.92
Total Expended on Plant in 1909	491.65

Summary of the Cost of Plant.

The cost of the Telephone Plant owned by the complainant in the City of Louisville on March 6th, 1909 ($1,702,391.68) is therefore made up thus:

Acquired in 1899 from The Ohio Valley Telephone Company (particulars on pages #3 to #16, inclusive)	$678,354.69

Additional Expenditures made by the Complainant:

1900 to 1904 inclusive	$857,310.39	
1905 to 1908 inclusive	166,234.95	
Jan'y 1 to March 6, 1909	491.65	
		1,024,036.99
Total Cost to the Complainant of its telephone plant in the City of Louisville, Ky., up to March 6th, 1909		$1,702,391.68

1727 No Overhead Charge.

Nothing whatever has been added to this, the actual cost of Materials, Labor and direct expenses of Construction. No charge has been made in respect of Executive Management Expenses, Interest on capital while construction was in progress, or other overhead charges.

Cost of Lands and Buildings.

The cost to the complainant of its lands and buildings used exclusively for the purposes of its telephone business, up to March 6th 1909, was the sum of $162,191.42, made up as follows:

Acquired in 1899 from The Ohio Valley Telephone Company (particulars on page #9 of this report).		$108,034.50
Additional Expenditures made by the Complainant:		
1900 to 1904 inclusive	$49,136.77	
1905 to 1908 inclusive	3,670.15	
January 1st to March 6th 1909	1,350.00	
		54,156.92
Total cost to the Complainant of its Lands and Buildings in the City of Louisville, Ky., up to March 6th 1909		$162,191.42

Synopsis.

Total cost of the Telephone Plant	$1,702,391.68
Total cost of Lands and Buildings	162,191.42
Grand total cost to the Complainant of all its plant and property in the City of Louisville, Kentucky, up to March 6th, 1909	$1,864,583.10

Cost and additions, Jan. 1—	Aerial.	Equipment.	Underground.	Tools, teams & furniture.	Total.
1900. Initial Cost	$264,127.37	$189,245.37	$224,981.95	$.....	$678,354.69
1900. Expenditures	92,918.85	43,754.96	30,101.42	.....	166,775.23
1901. Expenditures	99,288.91	76,247.06	3,013.17	.....	178,549.14
1902. Expenditures	75,806.70	115,195.53	21,418.66	.....	212,420.89
.. Item omitted	.....	4,707.16	.....	.....	4,707.16
1903. Expenditures	74,301.44	84,691.87	4,493.53	.....	163,486.84
1904. Expenditures	97,942.29	28,091.54	268.24	5,069.06	131,371.13
Balance 1/1/05	704,385.56	541,933.49	284,276.97	5,069.06	1,535,665.08
1905. Expenditures	38,105.20	19,137.90	1,019.36	2,428.75	60,691.21
Balance 1/1/06	742,490.76	561,071.39	285,296.33	7,497.81	1,596,356.29
1906. Expenditures	70,403.10	13,225.03	2,322.06	3,174.96	89,125.15
Balance 1/1/07	812,893.86	574,296.42	287,618.39	10,672.77	1,685,481.44
1907. Expenditures	11,692.02	9,671.74	277.09	*870.43	20,770.42
Balance 1/1/08	824,585.88	583,968.16	287,895.48	9,802.34	1,706,251.86
1908. Expenditures	5,332.48	2,071.45	15.43	1,779.42	9,198.78
Taken out	.....	13,502.17	.....	*48.44	*13,550.61
1909. Expenditures to Mar. 1st	1,149.12	76.92	.....	129.11	1,355.15
Taken out	.....	863.50	.....	.....	863.50
	$831,067.48	$571,750.86	$287,910.91	$11,662.43	$1,702,391.68

1729 Explanation of Method Followed.

Quotation from Accountants' Agreement:

"Cost of Plant—

"(c) Prepare a continuous statement of the Construction Account at the Louisville Exchange, from January 1st 1900, with dates and voucher numbers and other references in detail, showing in separate columns cost of construction—"Aerial", "Equipment", and "Underground."

"(d) Upon the completion of this statement for a period Accountants will designate thereupon and call for such vouchers as they wish to examine.

"(e) The Abstract of Ledger Account to be brought down to date of March 6th 1909.

"(f) Accountants will verify the Ledger Abstract with original payrolls and original vouchers, to such an extent as may be mutually agreed upon as the work progresses.

"(g) Accountants will make such analysis and redistribution of charges made to "Construction Account" as in their judgment is right and proper."

By mutual consent of the Accountants, the employees of The Mutual Audit Company, acting under the direction of Mr. E. W. Farnham, expert accountant selected by the City of Louisville, made the Abstract above referred to, exactly as agreed on May 6th 1909.

Remark: Mr. Warren and Mr. Castleman spent many days making this Abstract.

On behalf of the complainant, we have examined said Abstract and compared it with the books of the company, and we find same is correct.

In the course of the examination, and with the object of satisfying ourselves definitely that the books of account of the complainant are correctly kept, we called for the original vouchers and original payrolls, covering the entire period, from January 1900 to December 1908, inclusive.

A few vouchers in January 1900 could not be found, as these were part of the old records of The Ohio Valley Telephone Company.

1730 With this exception all vouchers and payrolls requested were produced. These were examined most carefully, the original papers attached to the vouchers were scrutinized and notes made in regard to any apparent irregularity.

Remark: Mr. Warren and Mr. Castleman worked industriously for many days on a detailed examination of these vouchers and payrolls and the relative papers attached thereto.

Subsequently, we examined all the vouchers and payrolls covering the charges for (1) Supplies and Materials used at Louisville; (2) Interior Equipment purchased for Louisville from the Western Electric Company; (3) Payrolls for Construction work in the City of Louisville. We have compared these Vouchers and Pay rolls with the Abstract before mentioned, and we find same to have been correctly recorded.

We also examined the detailed records of the Supply Department and verified the charges to "Louisville Exchange—Construction Account" for construction materials used. We were able to check these charges from June 1903 to March 1909. The record was found complete and in good order. The earlier records were not available.

In conducting this part of the investigation, we examined vouchers and payrolls for an aggregate sum of $944,667.64. This is 92% of the total sum expended by the complainant on its telephone plant in the City of Louisville during the nine years from 1900 to 1908, as shown by the Joint Report (see page #17).

1731 Charges Objected To.

During the progress of their detailed examination of the vouchers above referred to, the employees of The Mutual Audit Company took exception to certain payments charged to "Louisville Exchange—Construction Account", on the ground that the amounts or, in most cases, portions of the amounts so charged, should have been charged to other exchanges than Louisville.

Having looked into the facts, we find that the above contention is well founded and we have accordingly made due allowance for the full amount claimed, by deducting same from the Cost of Construction, as recorded on the books of the Company. This deduction is shown in the Joint Report (see page #17).

The full list of these items follows:

Year. Month.	Voucher.	Chargeable to—	Classification.	Amount.	Part of*
1900. May	#325	Anchorage, Ky.	Aerial.	$156.00	$3,460.71
1900. Oct.	#1168	Jeffersonville, Ind.	Under.	7.80	1,732.67
1901. Jany.	#842	Supplies	Aerial.	302.25	6,088.00
1902. April	#2571	Sundry Exchanges	Aerial.	1,049.43	2,133.30
1904. August	#353	New Albany, Ind.	Aerial.	17.50	1,815.02
1904. Novem.	#290	Paris, Kentucky	Aerial.	104.00	
		Georgetown, Ky.	Aerial.	63.00	1,813.73
1905. May	#353	Jeffersontown, Ind.	Equipment.	61.05	
		Frankfort, Ky.	Aerial.	65.83	2,958.93
1905. May	#301	Jeffersonville, Ind.	Aerial.	15.20	15,638.34
1905. June	#290-A	Campbellsburg, Ky.	Aerial.	75.63	4,215.77
1905. Sept.	#290	Toll Lines	Aerial.	18.73	3,095.08
1905. Oct.	#301	Bedford, Kentucky	Aerial.	38.36	19,397.46
1906. Feby.	#753	Utica, Indiana	Aerial.	93.00	2,400.66
1906. August	#204	Charlestown, Ind.	Aerial.	50.71	1,804.16
1906. Novem.	#206	Jeffersonville, Ind.	Aerial.	8.89	
		Pleasure Ridge Pk., Ky.	Aerial.	3.50	1,587.10
		Harrods Creek, Ky.	Equipment.	.25	
Carried forward.....				$2,131.13	

*The balance of the voucher in each case was found to be properly charged.

1732

Brought forward				$2,131.13	
Year. Month.	Voucher.	Chargeable to—	Classification.	Amount.	Part of*
1907. Jany.	#204	Pewee Valley, Ky.	Aerial.	36.07	
		Crab Orchard, Ky.	Aerial.	156.10	$2,487.58
		Crab Orchard, Ky.	Equipment.	5.86	
1907. Feby.	#204	Frankfort, Ky.	Aerial.	39.11	1,952.02
1907. May	#702	Winchester, Ky.	Aerial.	152.76	1,177.67
1907. Novem.	#511-C	Supplies	Equipment.	331.36	11,466.16
Total				$2,852.39	

*The balance of the voucher in each case was found to be properly charged.

1733 *Section #2.*

Valuation of Property.

Order of Court dated April 2nd 1909, calls for: "The fair valua-
"tion of the plant and property of the complainant employed in its
"business in said City on March 6th 1909 * * *".

Quotation from Accountants' Agreement:

"(*a*) Accountants agree that "a fair valuation of plant and property" can only be arrived at by a detailed physical appraisal of the said property.

"(*b*) Accountants agree on the other hand that they can and will produce a detailed statement showing the original cost of the property as of record, brought down to date of March 6th 1909, as shown by the records, vouchers, payrolls, etc. of the Company, subject to their making such changes and modifications as they deem right and proper."

Quotation from Joint Report:

We have discussed the method to be followed in arriving at an estimate of the present value of the telephone plant of the complainant in the City of Louisville, and we find that we cannot agree as to said method.

On behalf of the complainant, we consider it our duty to provide in this, our individual report, such facts and figures as may aid the Master Commissioner in determining what would be "the fair valuation of the plant and property of the complainant".

(First.) Telephone Plant.

Condition of Plant.

We learn, in answer to our inquiry in this regard, that the telephone plant owned and operated by complainant in the City of Louisville, has been maintained in the highest state of efficiency and that the equipment and apparatus in use, in all exchanges and at subscribers' stations, is the most modern known to the art of telephony.

Maintained Out of Revenue.

This condition has been maintained out of revenue. The cost of all current repairs and of keeping the plant in efficient
1734 working condition, has been charged to "Maintenance". It equals 3.41% of the average cost of the plant in service.

The amount expended for actual reconstruction of plant, replacing equipment and rebuilding aerial or underground construction, has been charged to "Reconstruction". It equals 2.38% of the average cost of the plant in service.

Equipment Taken Out.

Where equipment and apparatus has been taken out of service the cost of the same has been credited to "Construction" and charged

to the Supply Department. This was particularly noticeable in 1908, when an unusually large number of subscribers in Louisville discontinued the service. In that year a total of $10,906.39 was credited to Construction Account (Louisville) in respect of subscribers' station equipment taken out.

Plant Actually Cost in Cash.

In the foregoing pages we have shown that the total cost to the complainant of its telephone plant in the City of Louisville, up to date of March 6th 1909, was the sum of $1,702,391.68 (see page #4).

We have also shown that this entire amount was for actual expenditures of materials, labor and direct expenses of construction and was paid in cash; except that part of the initial purchase which was paid with 1937 shares of Cumberland stock.

We have also shown that nothing whatever has been added to the cost of this Louisville plant, in respect of Executive management expenses, Interest on capital while construction was in progress, or other overhead charges.

1735 (Second.) Lands and Buildings.

In Section #1 of this report, we show that the Real Estate owned by the complainant in the City of Louisville, on March 6th 1909, consisted of certain lands and buildings, used exclusively for telephone business. These had cost the company a total of $162,191.42.

All of this sum had been expended in actual cash, not a dollar being added in any shape or way in respect of executive management expenses, interest, or any other overhead charges.

The Ohio Valley Telephone Co.:	
Paid June 3rd 1899 (for Main Building)	$100,000.00
Paid in 1898 (or before)	8,034.50
The Cumberland Telephone & Telegraph Co.:	
Paid in 1900 to 1904	49,136.77
Paid in 1905 to 1908	3,670.15
Paid in 1909	1,350.00
Total Amount paid in Cash for lands and buildings in the City of Louisville	$162,191.42

No depreciation has been charged in respect of the wear and tear and decay of these buildings.

The income arising in the form of rentals of these buildings has been included in our statement of Income Account.

The examination of the accounts for the last four years, shows that the complainant has drawn out of Louisville, in the form of Net Profit, an amount equal to only .4346 of one percent on the average amount of its investment during that period.

We submit for your consideration the fact that the complainant has drawn practically nothing out of Louisville in excess of the amount needed to provide adequately for the reconstruction of the plant, and that therefore the amount of capital invested in its plant and property in the City of Louisville, is exactly the
1736 amount the complainant put there, namely the cost to date of March 6th 1909, as shown on page #4:

Telephone Plant	$1,702,391.68
Lands and Buildings	162,191.42
Together	$1,864,583.10

Subsection #2 (*a*).

Working Capital.

In addition to the lands, buildings, telephone plant and equipment, the complainant has at all times invested in the operation of its business, a large amount of actual working capital. This exists chiefly in the form of materials and supplies kept on hand for repairing and maintaining its telephone plants, and in cash in banks and on hand.

On March 6th 1909, the complainant had invested in its business of operating its plant and property in the City of Louisville, including pro-rata proportion of supplies and cash held at headquarters in Nashville, for the benefit of said plant and property, the sum of $69,919.92, made up as follows:

Working Capital for Louisville.

Materials and Supplies in Stock for Repairing and Reconstructing Telephone Plant.

At Louisville, 3/1/09:		
(Apportioned between Louisville Exchange and Louisville District on the basis of the number of stations)	$22,175.15	
At Nashville, 3/1/09:		
(Materials and Supplies in storage and in Machine Shop, held for the use of entire system, apportioned between Louisville Exchange and the rest of the Company's territory on the basis of the number of stations)	17,182.12	
		$39,357.27
Carried forward		$39,357.27

1737	Brought forward		$39,357.27

Cash in Banks and on Hand.

At Louisville:		
Balance March 6th 1909	1,426.30	
At Nashville:		
(Proportion of $457,208.99 cash in the Treasurer's Department, used for the purposes of all exchanges; apportioned between Louisville Exchange and the rest of the Company's territory, on the basis of the number of stations) say	29,136.35	
		30,562,65
Total Available Working Capital held for the benefit of Louisville Exchange, on March 6th 1909		$69,919.92

Grand Total.

The addition of this sum to the actual cost of the plant, as previously stated, makes up a Grand Total of $1,934,503.02, as representing the valuation (taken at cost) of all the plant and property of the complainant employed in its business in the City of Louisville on March 6th 1909.

Capital Invested in Louisville.

Telephone Plant	$1,702,391.68
Lands and Buildings	162,191.42
Working Capital	69,919.92
Grand Total	$1,934,503.02

1738 *Section* #3.

Gross Earnings.

Order of Court dated April 2nd 1909, calls for:—

"The Gross Earnings and the net earnings of the complainant upon its plant and property employed in its business in said City, for the years 1905, 1906, 1907 and 1908, stating separately as to each of said years,* * *."

Quotation from Accountants' Agreement.

"(*a*) Accountants will prepare a classified statement of the gross earnings of the Louisville Exchange, by months.

"(*b*) Also separate statements of gross earnings for each year, for the years 1905, 1906, 1907 and 1908.

"(*c*) Accountants will verify statements of gross earnings from exchange reports or other original data, to such extent as may be considered necessary during the progress of the work."

The above program was carried out to the letter. The several statements called for were made out and verified by our accountants, same are filed as working papers.

Quotation from Joint Report.

We agree that the Gross Earnings of the complainant, during the four years 1905, 1906, 1907 and 1908, as shown by the books of the complainant, and as classified therein, and placed to the credit of Louisville Exchange, including 15% of the Toll Earnings, were as follows:—

1905	$269,823.38
1906	294,498.44
1907	319,758.51
1908	325,838.30

In explanation of the Gross Earnings, stated in the Joint Report as above quoted, we beg to report as follows:—

The complainant collects part of its Gross Earnings from its plant and property in the City of Louisville for the unlimited use of local telephone service, at fixed monthly rentals established by contract; part from local pay stations, and part of said gross earnings for the use of complainant's long distance telephone lines to other points.

The complainant also receives revenue from the American Telephone and Telegraph Company, in respect of terminal facilities for that company's long distance traffic. Also for rentals of
1739 private telephone lines not connected with the exchange. Also for Pole Service, Advertisements in Telephone Directory, Messenger fees, Removals and miscellaneous.

Another part of the complainant's revenue from its property in the City of Louisville, is the income from the Buildings. These buildings are occupied entirely by the complainant and are used exclusively for the purposes of the complainant's telephone business.

The main book of account of the complainant, that is the "General Ledger," contains certain accounts showing the aggregate gross earnings of the company for its entire system. In a subsidiary book of account, are separately shown the gross earnings of each exchange. From this subsidiary book we have compiled a statement of Gross Earnings of the Louisville Plant and Property, of which the amounts quoted from the Joint Report on the previous page, are the yearly totals.

In order to satisfy ourselves that all of the gross earnings of the complainant, upon its plant and property, employed in its business in the City of Louisville, for the years under review, are surely in-

cluded in said statement, we have examined the exchange reports on file in the complainant's office, and other sources of original information. We beg to report that we find the Gross Earnings, as stated in this report, to be correct.

These Earnings have arisen as follows:—

(1st) Exchange Service being the net amount received from the regular subscribers to the Louisville Exchange, in respect of rentals of business and residence telephones; also from the public at pay stations:—

1905	$264,675.13
1906	280,076.12
1907	297,501.14
1908	307,431.85

(From the amount originally charged on the books of the Company to subscribers for rentals, we have deducted all rebates and allowances, also all discounts allowed to subscribers, who pay three months' rent in advance.)

1740 (2nd) Proportion of Toll Earnings calculated at 15% on the amount collected at Louisville for all out-going messages over the complainant's toll lines.

1905	$6,539.92
1906	7,064.91
1907	8,030.15
1908	7,632.11

(The amount on which the 15% is calculated is the total gross amount taken in at the Louisville Exchange and at certain adjacent points, known as "Louisville check stations," less the proportion of such receipts due and payable to connecting telephone companies for the use of part of their lines, also less uncollectible accounts.)

(See further mention as to Toll Earnings.)

(3rd) Receipts from Telegraph Companies—Amounts received from the Western Union and Postal Telegraph Companies for use of telephones in their offices:—

1905	$983.88
1906	1,018.12
1907	939.48
1908	761.79

(The two telegraph companies have contracts with the complainant, under which they are supplied with telephone connections and pay therefor, in lieu of the regular business rates, 15% of the telegraph companies' tolls on telegrams transmitted from any of the complainant's stations, and two cents (2¢) for each telegram delivered by them over the complainant's wires.)

(4th) Originating Commission received from the American Telephone and Telegraph Company for terminal facilities for long distance messages:—

1741

1905	
1906	$2,865.29
1907	3,427.09
1908	3,864.17
	3,272.37

(The amounts above stated were actually received from the American Telephone and Telegraph Company during the period under review. This commission is computed under the terms of a certain agreement by which the complainant receives 15% of the cost of all originated tolls; said commission, however, was not to exceed ten cents (10¢) on any one message. The contract further provided that the complainant should receive an additional 15% on long distance messages originated at attended pay stations (not to exceed 10¢ on any message). The carrying out of this agreement proved to be very cumbersome and laborious, so it was simplified by a supplemental agreement to compute the commission at an average rate of 10.21 cents per outgoing message, which was found to be the average amount of commission per out-going message, allowed under the contract, during the period studied.)

(5th) Private Line Rentals being the amount received from sundry parties for use of private telephone lines not connected with the exchange.

1905	
1906	$1,342.01
1907	1,079.92
	1,153.91

(In 1908 these private line rentals were reported by the Louisville Exchange as part of the "Exchange Service"—same are included in $307,431.85.)

1742 (6th) Pole Service and Attachments—Being amount received from telegraph and other companies for use of poles and for carrying other companies' attachments on complainant's poles.

1905	$953.11	1907	$1,177.75
1906	1,096.28	1908	1,229.99

(7th) List Advertisements—Amount received by complainant for advertising space in the Louisville telephone directory.

1905	$751.83	1907	$2,984.22
1906	2,497.25	1908	3,151.59

(8th) Telegraph Drops—Amount received from sundry parties for rental of "telegraph drops"—lines from the complainant's telephone wires leading to telegraph keys in customers' premises.

1905	$215.49	1907	$2,110.61
1906	976.40	1908	2,130.55

(9th) Messenger Fees.—Amount collected at the Louisville Exchange for messenger service rendered by complainant, in part at Louisville, and in part at other exchanges.

1905	$862.02	1907	$769.15
1906	812.40	1908	658.30

(10th) Removals and Miscellaneous.—Amount received at the Louisville Exchange for removal of subscribers' stations and from miscellaneous sources.

1905	$1,001.12	1907	$3,278.70
1906	680.53	1908	2,682.97

Bad Debts.—From the total of all these Gross Earnings, have been deducted the amount of uncollectible accounts:—

1905	$10,366.42	1907	$2,050.77
1906	4,230.58	1908	3,113.22

1743 The following Classified Summary of Gross Earnings is quoted from the Joint Report.

The Gross Earnings are classified as follows:—

	1905.	1906.	1907.	1908.
1. Exchange Service	$264,675.13	$280,076.12	$297,501.14	$307,431.85
2. Proportion of Toll Earnings	6,539.92	7,064.91	8,030.15	7,632.11
3. From Telegraph Companies	983.88	1,018.12	939.48	761.79
4. From American Telephone & Telegraph Company	2,865.29	3,427.09	3,864.17	3,272.37
5. Private Line Rentals	1,342.01	1,079.92	1,153.91	*
6. Pole Service and Attachments	953.11	1,096.28	1,177.75	1,229.99
7. List Advertisements	751.83	2,497.25	2,984.22	3,151.59
8. Telegraph Drops	215.49	976.40	2,110.61	2,130.55
9. Messenger Fees	862.02	812.40	769.15	658.30
10. Removals and Miscellaneous	1,001.12	680.53	3,278.70	2,682.97
Gross Total	$280,189.80	$298,729.02	$321,809.28	$328,951.52
Deduct Bad Debts	10,366.42	4,230.58	2,050.77	3,113.22
Total Gross Earnings of the complainant as placed to the credit of Louisville Exchange:				
Year 1905	$269,823.38			
Year 1906		$294,498.44		
Year 1907			$319,758.51	
Year 1908				$325,838.30

*In 1908 "Private Line Rentals" were reported from the Exchange and included in $307,431.85 "Exchange Service".

1744 *Sub-Section #3 (a).*

Toll Earnings.

Quotation from Accountants' Agreement:

"Toll Earnings—

"(*d*) Accountants will prepare a statement of toll earnings originating in the Louisville Exchange, showing the total number of calls and the total amount earned thereon, such statement to be made by months, separately for each year, for the years 1905 to 1908.

"(*e*) Such statement to also show the amount credited to Gross Earnings of the Louisville Exchange in respect to commission or percentage of Earnings credited to the Louisville Exchange."

We beg to report upon our findings in this matter. We have examined the original toll reports from the Louisville Exchange, on file in the complainant's office, from April, 1906, to December, 1908, inclusive. The reports prior to April, 1906, are not to be found, and we are informed that same are not kept for a longer period. We have also examined the Vouchers and other original sources of information in this regard.

Number of Toll Calls.

The toll reports above referred to show the number of out-going toll calls from the Louisville Exchange and from certain stations adjacent thereto, whose toll traffic is handled through Louisville—these are known as "Louisville check stations."

The total number of out-going toll messages originated at the Louisville Exchange and at the "Louisville check stations," by years, for 1906 to 1908, were:

	Louisville.	Louisville check stations.
January to March (estimated)	29,805	484
Year 1906, April to December	119,220	1,937
	149,025	2,421
Year 1907	147,558	2,044
Year 1908	115,404	1,474

1745 Method of Handling.

For convenience of bookkeeping, and to save clerical labor, the total gross amounts collected for tolls, on messages going over complainant's long distance wires, are credited on the books to the exchange collecting such amounts.

These tolls are earned for the use of the complainant's long distance telephone lines and may extend throughout the company's

entire system, involving the services of any of the 517 other telephone exchanges operated by the complainant.

It is an essential part of the business of the complainant to render this long distance service to its Subscribers, through their individual telephone stations installed in their places of business and in their residences; also to the public through its pay stations.

The work done by the employees of the complainant, in handling these toll messages, includes making the out-going connections, receiving in-coming calls, making "Toll Tickets," recording charges for tolls, collecting and accounting for amounts received. The expense of rendering these services is included in the operating expenses of the exchange.

Remuneration to Exchange.

It is therefore proper that the exchange should receive some remuneration for the services thus rendered, and for this reason, a proportion of all the tolls collected is credited, in the form of originating commission. The rate at which this commission is computed is designated by the complainant to be fifteen per cent (15%).

The complainant's ground for fixing 15% as a fair basis for the remuneration of its exchanges, for the services they render in handling this long distance traffic, is that this is the rate at
1746 which substantially all connecting telephone companies render similar service at the hands of their exchanges to the complainant, or remunerate the complainant for the latter's service to them.

Rate to Connecting Companies.

We find that the complainant does business with a great many other telephone companies, whose toll lines connect with the complainant's exchanges, at various points throughout the state of Kentucky, excepting Louisville.

19 companies or individuals receive from the complainant a commission of 15% (or less) on original messages.
11 companies or individuals agree to interchange services without charge.
2 companies receive 15% with a small added charge for extra facilities furnished.

35 in all.

We submit for your consideration the suggestion that the foregoing facts establish that the 15% Commission allowed to the Louisville Exchange for the terminal facilities and recording furnished, is a sufficient remuneration for the service rendered.

In this connection, it is proper to bear in mind that the plant and property owned by the complainant in the City of Louisville, includes the switchboard and other exchange equipment used in affording terminal facilities for long distance traffic.

Toll Earnings Classified.

The so-called Toll Earnings have arisen as follows:

(1) Total Gross Amount taken in at Louisville for messages over complainant's long distance lines, as shown by the Toll Reports and the books.

1905	$47,467.80
1906	50,096.78
1907	56,687.10
1908	52,936.88

1747 (2) Total Gross Amount taken in at the Louisville Check Stations (same as above):

1905	$545.18
1906	447.86
1907	356.56
1908	266.76

From the above gross amounts taken in, the following deductions must be made.

(3) Other Line Charges.—Amounts due connecting telephone companies, for their proportion of the gross amount collected:

1906	$201.50
1907	287.47
1908	218.74

(4) Rebates.—Amounts returned or allowed to subscribers in respect of errors, overcharges, or the like:

1905	$1,229.49
1906	407.04
1907	559.07
1908	868.13

(5) Discounts on Coupons.—Pro-rata proportion of discounts on telephone coupons taken in at Louisville:

1905	$1,723.52
1906	2,134.06
1907	2,084.84
1908	50.35

(6 Bad Debts.—Uncollectible accounts written off. These are found, upon examination, to have arisen from toll earnings.

1905	$1,460.52
1906	702.55
1907	577.97
1908	1,185.61

After deducting all of the above (3, 4, 5 and 6) from the gross amounts taken in (1 and 2) we find that the amount on which the originating commission of 15% should be calculated, for each year, is:

1905	$43,599.45
1906	47,099.49
1907	53,534.31
1908	50,880.81

1748 The amount credited to the Louisville Exchange in respect of its services in originating and handling the toll traffic, being 15% on the above, was:

1905	$6,539.92
1906	7,064.91
1907	8,030.15
1908	7,632.11

Recapitulation of Toll Earnings by Years.

Total Gross Amount Taken in for Tolls—

	1905	1906	1907	1908
1. At Louisville	$47,467.80	$50,096.78	$56,687.10	$52,936.88
2. At Check Stations.	545.18	447.86	356.56	266.76
Deduct—				
3. Other Line Charges		201.50	287.47	218.74
4. Rebates & Allowances	1,229.49	407.04	559.07	868.13
5. Discounts on Coupons	1,723.52	2,134.06	2,084.84	50.35
6. Bad Debts	1,460.52	702.55	577.97	1,185.61
Amount upon which the originating commission of 15% is computed	$43,599.45	$47,099.49	$53,534.31	$50,880.81
Amount credited to the Louisville Exchange in respect of originating commission on Tolls	$6,539.92	$7,064.91	$8,030.15	$7,632.11

1749 *Sub-Section* #3 (*b*).

Operating Expenses.

Order of Court dated April 2nd, 1909, calls for: "The Gross Earnings and the Net Earnings of the complainant upon its plant and "property employed in its business in said City, for the years 1905, "1906, 1907 and 1908, stating separately as to each of said "years, * * *."

Quotations from Accountant's Agreement:

"(*h*) Accountants will prepare a classified statement of operating expenses, by months, for each year.

"(*h*-2) Accountants will make their examination of Operating Expenses, in detail, direct upon the book of record, using exchange reports, vouchers, payrolls and other original data. First examining the months of Jan. 1905, May 1906, August 1907, and November 1908.

"(*i*) If, in the progress of the work, it appears to be advisable to examine into the operating expenses for the entire period under review, or any part thereof, such examination shall be made in like manner."

The above program was carried out. The several statements were made by our accountants and the vouchers, payrolls and other evidences were examined by the employees of The Mutual Audit Co.

The expenses of operating the complainant's telephone plant in the City of Louisville is divided under the following principal headings:

(1) General Expenses (pro-rated).
(2) General Expenses (direct).
(3) Operating Expenses.
(4) Maintenance.
(5) Reconstruction.
(6) Instrument Expense.

(1) General Expenses (pro-rated).

These consist of the pro-rata proportion of Executive Management Expenses at the complainant's principal office at Nashville, which include general Officers' Salaries and their assistants, Salaries and Wages of clerical force, Rent, Light and Heat at principal offices, Traveling expenses of Officers, and Incidental Expenses. The apportionment of these expenses, which appertain to the conduct of the complainant's business, as a whole, has been made pro-rata on the basis of the direct charges for Operating, Maintenance and Reconstruction.

1905	$11,205.34
1906	11,270.15
1907	11,226.76
1908	9,531.29

1750 (2) General Expenses (direct).

These consist of direct expenses, mostly incurred at Louisville, in conducting the business of the complainant, which do not come

under the head of "Operating Expenses," "Maintenance," or "Reconstruction." Same include Postage, Printing, Stationery, Directory expenses, including local canvassing, Taxes on real estate, personal property and franchise, and Legal expenses directly applying to the operation of the plant. To a minor extent, as shown below, these general expenses include a pro-rata proportion of expenses, exactly similar in nature to the above, which have been charged for convenience of bookkeeping, to "General Account," because same are chargeable in common to all or many exchanges.

	Direct.	Proportion of "General."	Together.
1905	$26,131.56	$3,139.93	$29,271.49
1906	32,488.17	3,460.20	35,948.37
1907	31,212.54	3,614.37	34,826.91
1908	30,624.43	1,921.03	32,545.46

(3) Operating Expenses.

These comprise salaries of local manager and superintendent, local clerical force; wages of operators, supervisors, and all those directly connected with the operation of the plant; proportion of Rent, Light and Heat of Buildings; Advertising and canvassing for subscribers, and other expenses incidental to the operation of the telephone plant of the complainant in the City of Louisville.

1905	$84,264.54
1906	80,738.06
1907	79,661.04
1908	75,440.28

1751

(4) Maintenance.

The charges under this heading are for current repairs, mending breaks, tightening wires, rectifying "trouble," and generally maintaining the property in first class running order.

The expenses include Salaries and Wages of foremen, linemen, electricians and troublemen; Materials used in repairing the plant and in replacing small parts which wear out in less than a year; Traveling expenses and keep of teams, Repairs to wagons and vehicles; Pole, conduit and roof rent; Fire Insurance on plant; Payments for damages to persons and property and Miscellaneous expenses incident to maintaining the telephone plant in good working condition.

1905	$49,819.14
1906	52,796.93
1907	65,616.31
1908	54,705.91

(5) Reconstruction.

The charges under this heading are for new work put into old places—for replacement of equipment that is worn out or obsolete, for rebuilding construction that has become worn out, except that which is worn out in less than a year.

The cost includes Wages of construction gangs, Superintendence; Wages of foremen, linemen, electricians and others, while engaged on reconstructing plant; Materials used for replacement and reconstruction; Traveling expenses, hire of teams for reconstruction gangs, and other Expenses incidental to rebuilding the telephone plant.

1905	$41,051.02
1906	40,626.07
1907	41,895.10
1908 (estimated)	31,450.07

1752 During the period from 1900 to 1904, no separate account was kept on the complainant's books of the cost of reconstruction. During part of 1904, and all of 1905, 1906 and 1907, a separate account was kept of the cost of reconstruction, but this was again abolished in 1908.

For this reason we are only able to state definitely the amount expended for Reconstruction during 1905, 1906 and 1907, and have estimated the amount for 1908, on the same ratio.

The figure stated above for 1908 was the estimated proportion of the total amount expended for all repairs ($86,155.98).

(6) Instrument Expense.

The amount charged to Operating Expenses each year in respect of what is known as "Instrument Expense" is calculated at four and one-half per cent. (4½%) on the actual gross earnings arising from the use of telephone instruments. "Instruments" are the "transmitters" and "receivers" manufactured under patents owned exclusively by the American Bell Telephone Company. The arrangement to pay this rental to the American Bell Telephone Company was entered into in November 1902 and was made effective as on January 1st 1902. It superseded a previous contract with the same company, under which the complainant paid the Bell Company a flat rental per instrument—at one time one dollar per annum.

Rental is payable on all instruments in use including those used in switchboards and elsewhere upon the company's premises. The American Bell Telephone Company allows the users of instruments under its licenses—known by it as Licensees—to deduct from the amounts on which the rentals are computed, all uncollectible accounts.

We have carefully recalculated the "Instrument Expense" for each of the four years under review, going back to original sources of information for the figures used, and making all necessary and proper allowances.

1753	1905	$11,559.76
	1906	12,518.70
1907		13,372.49
1908		13,722.52

The following quotation from the Joint Report supplies the place of a classified Recapitulation of Operating Expenses by years:

Operating Expenses of the Complainant in Conducting Its Business in the City of Louisville During 1905, 1906, 1907 *and* 1908.

	1905.	1906.	1907.	1908.
1. General Expenses (pro-rated)	$11,205.34	$11,270.15	$11,226.76	$9,531.29
2. General Expenses (direct)	29,271.49	35,948.37	34,826.91	32,545.46
	$40,476.83	$47,218.52	$46,053.67	$42,076.75
3. Operating Expenses	84,264.54	80,738.06	79,661.04	75,440.28
4. Maintenance	49,819.14	52,796.93	65,616.31	54,705.91
5. Reconstruction	41,051.62	40,626.07	41,895.10	31,450.07
6. Instrument Expense	11,559.76	12,518.70	13,372.49	13,722.52
Total Operating Expenses:				
Year 1905	$227,171.29			
Year 1906		$233,898.28		
Year 1907			$246,598.61	
Year 1908				$217,395.53

1754 Remarks.

In the course of the examination of the books of account and vouchers of the complainant, with the object of satisfying themselves that the Operating Expenses of the complainant's plant and property in the City of Louisville were correctly stated in the books, a careful check was made of the vouchers, and payrolls, which are the basis of the original entries for all operating expenses. This examination of the payrolls and vouchers was made by the employees of The Mutual Audit Company, and was very carefully conducted.

As a result of the above scrutiny made of the vouchers and payrolls, several deductions have been made from the operating expenses, shown by the books of account of the complainant.

These deductions are for proportion of Wages paid at Louisville, and charged on the books of the complainant to "Operating Expenses—Louisville," which are considered to apply to work done for neighboring exchanges; also for Traveling and other expenses improperly distributed to Louisville. A great many small items are included in this latter category, but after all, the amount involved is comparatively quite small.

Year.	Proportion of wages applying to neighboring exchanges.	All other items cut out of operating expenses.
1905	$8,435.89	$512.46
1906	9,984.03	609.04
1907	5,725.72	725.19
1908	4,159.24	

1755 *Subsection* #3 (*c*).

Income from Buildings.

As shown in Section #1 of this individual report (at page #4) the complainant owns certain lands and buildings in the City of Louisville. All of these are used exclusively for the purposes of its telephone business.

Gross Rentals.

A monthly rental is charged to the Louisville Exchange in respect of the use of the properties, same being distributed to appropriate Operating and Maintenance Accounts in proportion to the space occupied by the different departments. The rentals so charged have been computed at what is regarded as a fair return on the amount invested. For the four years under review, the amounts so charged for Rental of Premises, have been:

1905	$13,050.00
1906	13,500.00
1907	13,720.00
1908	13,800.00

The amount charged in 1908 ($13,800.) is made up thus:

Main Exchange	$9,000.00
South Exchange	900.00
East Exchange	1,500.00
West Exchange	1,320.00
Warehouse	660.00
Stable	300.00
Material Shed	120.00
Total	$13,800.00

These rentals are part of the income of the complainant upon its plant and property, employed in its business in the City of Louisville. As such they are credited to Louisville in our Statement of Income Account.

1756 Repairs to Buildings.

On the other hand, the cost of maintaining the several buildings and keeping them in tenantable condition, which cost has been borne by the complainant and charged to its general Income Account (not to Louisville), is a proper charge against these rentals. To determine exactly what this cost of maintenance has been, we have drawn off a statement thereof from the books of the complainant, and have examined the relative vouchers. We find that the repairs to buildings owned by the complainant in the City of Louisville, and used for the purposes of its telephone business there, during the four years under review, were:

1905	$1,414.77
1906	445.01
1907	680.24
1908	2,092.48

Taxes and Insurance.

Under the terms of the arrangement, and in view of the amount charged as "Rentals," the Taxes on Real Estate and the Insurance on the buildings, have been charged to the Louisville Exchange, and are included in the Expenses previously enumerated, in this report.

Net Income from Buildings.

There remain, therefore, only the Repairs to take off the Gross Rentals charged, and these being deducted, we find that the Net Income from Buildings, for the four years under review, were:

1905	$11,635.23
1906	13,054.99
1907	13,039.76
1908	11,707.52

1757 *Subsection* #3 (*d*).

Net Earnings.

Order of Court dated April 2nd 1909, calls for:—

"The Gross Earnings and the Net Earnings of the complainant "upon its plant and property, employed in its business in said City, "for 1905, 1906, 1907 and 1908, stating separateley as to each of said "years * * *."

The Net Earnings of the complainant upon its plant and property employed in its business in the City of Louisville, were as follows:—

Year 1905, Loss	$12,158.21
Year 1906, Net Earnings	2,536.30
Year 1907, Net Earnings	10,111.09
Year 1908, Net Earnings	32,162.79

This result is arrived at in the following manner:—

(1) Gross Earnings:

Fully dealt with in Section #3, pages #31 to #36.

1905	$269,823.38
1906	294,498.44
1907	319,758.51
1908	325,838.30

(2) Net Income from Buildings:

Fully dealt with in Sub-Section #3 (*c*), pages #48 to #49.

1905	$11,635.23
1906	13,054.99
1907	13,039.76
1908	11,707.52

(3) Operating Expenses:

Fully dealt with in Sub-Section #3 (*b*), pages #42 to #46.

1905	$227,171.29
1906	233,898.28
1907	246,598.61
1908	217,395.53

1758 (4) Depreciation Reserve:

Fully dealt with in Section #5, pages #59 to #62.

Year.	Reserve for reconstruction.	Amount expended for reconstruction.	Unexpended portion to be charged.
1905	$107,496.55	$41,051.02	$66,445.53
1906	111,744.92	40,325.07	71,418.85
1907	117,983.67	41,895.10	76,088.57
1908	119,437.57	*31,450.07	87,987.50
Total Reserve for Reconstruction	$456,662.71		
Expended portion of Reserve		$155,022.26	
Unexpended portion of Reconstruction Reserve, to be charged against the earnings			$301,640.45

*Estimated.

After deducting the Operating Expenses and "Depreciation" from the Gross Earnings on the Plant and Income on the Buildings, we reach the Net Earnings as previously stated.

Income Account.

Credits.

	1905.	1906.	1907.	1908.
1 Gross Earnings	$269,823.38	$294,498.44	$319,758.51	$325,838.30
(See Section #3, page #36.)				
2. Net Income from Buildings	11,635.23	13,054.99	13,039.76	11,707.52
Total Credits	$281,458.61	$307,553.43	$332,798.27	$337,545.82

Debits.

	1905.	1906.	1907.	1908.
3. Operating Expenses, General Expenses, Maintenance, Reconstruction and Instrument Expense	$227,171.29	$233,898.28	$246,598.61	$217,395.53
4. Unexpended Portion of Reconstruction Reserve	66,445.53	71,118.85	76,088.57	87,987.50
Total Debits	$293,616.82	$305,017.13	$322,687.18	$305,383.03

Result of the business of the complainant in the City of Louisville.

1905 Loss	$12,158.21			
1906 Net Earnings		$2,536.30		
1907 Net Earnings			$10,111.09	
1908 Net Earnings				$32,162.79

1760 *Subsection* #3 (e).

Average Investment.

Order of Court dated April 2nd 1909, calls for:—"The gross "earnings and the net earnings of the complainant * * * for "the years 1905, 1906, 1907 and 1908, stating separately as to each "of said years, and giving the percentage of net income in each "year * * * ."

In order to correctly state the percentage of net income in each year, we must first establish the average amount of Capital employed by the complainant in its business in the City of Louisville, in each year, 1905 to 1908.

The capital invested by the complainant in its business in the City of Louisville is made up of the following four principal items:—

(1) Cost of Telephone Plant and Equipment.

(2) Cost of Lands and Buildings used exclusively for its telephone business.

(3) Materials and Supplies in stock for the maintenance of the plant and property.

(4) Cash in Bank and on hand at Louisville and proportion of Cash in the Treasury of the Company for the benefit of all exchanges.

(1) Cost of Telephone Plant and Equipment:

Full particulars of the cost to the complainant of its plant and property in the City of Louisville, from year to year, are given in Section #1 of this report.

We find that the average amount of the complainant's capital employed in its telephone plant and equipment each year was:—

1905	$1,566,010.68
1906	1,640,918.86
1907	1,695,866.65
1908	1,704,075.94

(2) Cost of Lands and Buildings:

As stated fully in Section #1 of this report, the lands and buildings owned by the complainant in the City of Louisville, are used exclusively for the operation of its telephone business.

1761 We find that the Average amount of the complainant's capital invested in lands and buildings used for telephone purposes, was:—

1905	$158,827.89
1906	160,641.12
1907	160,819.57
1908	160,841.42

(3) Materials and Supplies:

As related in "Sub-Section #2 (*a*)" of this report (on page #29)—"The complainant has at all times invested in the operation "of its business, a large amount of actual working capital. This "exists chiefly in the form of Materials and Supplies kept on hand "for repairing and maintaining its telephone plants, and in Cash in "Banks and on Hand.

We find that the Average amount of the complainant's capital invested in Materials and Supplies and held for the benefit of the Louisville Exchange proper, was made up of two amounts:—

(*a*) Proportion of Materials and Supplies in the warehouse at Louisville, held for Louisville Exchange.

(*b*) Proportion of the General Inventory of Materials and Supplies held in the warehouse and at the machine shops in Nashville, for the benefit of all exchanges.

Average for the year—	Louisville.	Nashville.
1905	$18,133.47	$5,738.60
1906	26,496.58	8,823.89
1907	32,934.12	14,551.62
1908	27,054.47	17,113.60

(4) Cash in Banks and on Hand:

We find that the Average amount of Cash in Banks and on hand for working capital, and held for the benefit of the Louisville Exchange proper, was made up of two amounts:—

1762 (*a*) Average cash on deposit in Bank at Louisville and Cash at the Louisville Exchange.

(*b*) Proportion of average cash balance held by the Treasurer's Department, used for the purposes of all exchanges; apportioned between Louisville Exchange and the rest of the territory, on the basis of the number of stations.

Average for the year.	Louisville.	Nashville.
1905	$3,223.77	$22,293.28
1906	2,800.82	18,881.52
1907	2,524.95	31,312.31
1908	1,890.18	31,462.97

Recapitulation of Average Investment.

	1905.	1906.	1907.	1908.
(1) Average Cost of Plant	$1566,010.68	$1640,918.86	$1695,866.65	$1704,075.94
(2) Average Cost of Lands & Buildings	158,827.89	160,641.12	160,819.57	160,841.42
(3) Average Value of Supplies:				
At Louisville	18,133.47	26,496.58	32,934.12	27,054.47
At Nashville	5,738.60	8,823.89	14,551.62	17,113.60
(4) Average Cash Balance:				
At Louisville	3,223.77	2,800.82	2,524.95	1,890.18
At Nashville	22,293.28	18,881.52	31,312.31	31,462.97

Average Total Capital invested by the Complainant in its business in the City of Louisville:				
For the Year 1905	$1774,227.69			
For the Year 1906		$1858,562.79		
For the Year 1907			$1938,009.22	
For the Year 1908				$1942,438.58

1763

	1905	1906	1907	1908
Average number of Stations in Service	8,836	9,857	10,830	10,006
Average Investment per Station in Service	$200.79	$188.55	$178.95	$194.13

Sub-section #3 (*f*).

Percentage of Net Earnings.

The Order of Court calls for:— "* * * the "Percentage of Net Income in Each Year, * * *."

We find that the percentage of net income in each year upon the average amount of Capital employed by the complainant in its business in the City of Louisville, has been as follows:—

	1905.	1906.	1907.	1908.
Net Earnings	$12,158.21	$2,536.30	$10,111.09	$32,162.79
See Sub-Section #3 (*d*).	Loss			
Average Investment	$1,774,227.69	$1,858,562.79	$1,938,009.22	$1,942,438.58
See Sub-Section #3 (*e*).				
Percentage of Net Earnings to Capital		.136%	.522%	1.656%

Average investment for the four years..... $1,878,309.57
Average annual net income..... $8,162.99

Average percentage of net income to investment covering four years .4346 of one percent.

Synosis of Net Result.

During the first three years of the period we have examined, the net earnings of the complainant upon its plant and property employed in its business in the City of Louisville, amounted in the aggregate to the sum of $489.18. During the year 1908, the best year of the period under review, after raising the rates, the complainant made a net income of $32,162.79, or at the ratio of a little more than one and one-half percent (1.656%) on the capital invested.

1764 *Section #4.*

Probable Result 1910.

The Order of Court dated April 2nd 1909 directs:—
"The said special master is directed to make an estimate upon the "testimony, and state his conclusions thereupon as to what would "be the reasonably probable Gross and the reasonably probable Net "Income of the complainant, from its said plant and property em-"ployed in its business in said City, for the current year and the year "1910, if the rates of telephone charges fixed by the ordinance en-"acted by the legislative body of defendant and approved by the "Mayor, on March 6th 1909, should be put into operation and "effect."

First as to the reasonably probable Gross Income:

The Ordinance adopted by the legislative body of the defendant and approved by the Mayor on March 6th 1909, fixes the maximum rates to be charged for telephone service in the City of Louisville, Kentucky, as follows:

Business (unlimited service):

Private Line	$5.50	a month
Party line	4.00	"

Residence (unlimited service):

Private Line	$3.00	a month
Party Line	2.00	"
Extension Set	1.00	"

The record of Subscribers to the Louisville Exchange of the complainant is kept at Louisville in three volumes.

Quotation from Joint Report.

Section #4.

Probable Result for 1910.

We have made a calculation showing the amount in which the complainant's Gross Earnings will probably be cut down by the enforcement of the rates fixed by the Ordinance adopted by the Legislative body of the City of Louisville and approved by the Mayor March 6th, 1909. We have used as the basis for this calculation, a typewritten list of the names of the Subscribers to the Louisville Exchange on April 1st 1909, copied from the records of the Company kept at the Louisville Exchange, the correct amount
1765 chargeable to Subscribers for the month of April (face of contracts) is the sum of $27,270.31.

To this list we have applied the maximum rates fixed by the Ordinance and we find that the total gross earnings on this same list of Subscribers for the same month of April 1909, at the Ordinance rates, would be only $20,486.92, net.

The terms of all telephone rental contracts provide for an allowance in the form of cash discount of fifty cents a month on all rentals that are paid three months in advance.

The actual cash discounts allowed to the Louisville Subscribers during the three months, March April and May, 1909, in respect of quarterly payments made in advance, came to $7,919.74. One-third of this sum—$2,639.91 would be a fair deduction to make from the Gross Earnings for the one month of April (face of contracts).

This would leave the sum of $24,630.40 to represent the measure of the Earnings actually collectible for April 1909, under the contracts in force on April 1st 1909.

Thus we have this calculation:—

Gross Earnings for April, 1909.

At Contract Rates (after deducting discounts).....	$24,630.40
At Rates fixed by Ordinance (which are net).....	20,486.92
Loss of Gross Earnings for one month.....	$4,143.48

This is equal to a loss of $49,721.76 a year.

Against this probable loss of $49,721.76 a year, there will probably be an increase in gross earnings in respect of the natural growth of the business and the increased number of subscribers, due to the lowering of the rates, upon the enforcement of the Ordinance. What this increase will amount to, we cannot definitely determine.

1766 *Section #5.*

Depreciation of Plant.

Order of Court dated April 2nd 1909, says:—

"He (the special master) will ascertain and report from the testi-"mony, what would be a fair amount or proportion of annual in-"come to be set aside as a substantial provision and allowance for "depreciation of complainant's plant and property employed in its "business in said City, and the basis of his estimate thereof."

Quotation from Accountant's Agreement.

"(*m*) A further reduction from gross earnings is to be allowed in respect to depreciation of property and plant."

Quotation from Joint Report.

Charge for Depreciation.

Having discussed the matter of Depreciation, we find we cannot agree in regard thereto.

On behalf of the complainant, we beg to report that, during the progress of our examination of the books of account and records of the company, we have given careful thought to the question of depreciation, especially with a view to what would be a fair proportion of annual income to be set aside as a substantial provision and allowance for depreciation of complainant's plant and property employed in its business in the City of Louisville.

As a result of the special study we have made, we beg to submit for the consideration of the Master Commissioner, the result of four calculations of Depreciation Reserve.

Plan A. "Chicago Plan."

We call this the "Chicago Plan" because it is based upon the Report of the Special Telephone Commission, appointed by the City Counsel of Chicago. This Commission consisted of Messrs. Dugald C. Jackson, William H. Crumb and George W. Wilder, and was appointed to examine into and report upon the Telephone situation in the City of Chicago. The report of the Commission was dated April 3rd 1907, and is a public document. The rates used by the Chicago Commission in calculating Depreciation are found tabulated on page #73 of the printed and published report.

1767 Plan B. "Diminishing Value Plan."

Under this plan, the charge is calculated at ten percent (10%) per annum, on the depreciated value of the telephone plant, arrived at by deducting from the cost of the plant 10% of the average cost of the plant employed during each year, beginning in 1900 and coming right down to 1908 on the same diminishing plan.

This diminishing value plan was discussed briefly and figured concurrently by both Accountants; the calcualtion being agreed on June 10th 1909.

Plan C. "Complainant's Plan."

The Cumberland Telephone and Telegraph Company claims that the provision for depreciation reserve should be calculated at seven and one-half per cent (7½%) per annum, flat, on the cost of the plant, as shown by the books of the Company.

Plan D. "Plan Recommended."

We recommend to the Special Master a plan by which the provision for depreciation reserve should be calculated at seven percent (7%) per annum, flat, on the cost of the plant, as shown by the books of the complainant.

The result of the four calculations, is stated on the following page.

1768 Plan A.—"Chicago Plan."

Year	Principal.	* Amount.
1905	$1,535,665.08	$137,851.30
1906	1,596,356.29	143,759.73
1907	1,685,481.44	152,249.06
1908	1,706,251.86	154,376.22
In the aggregate		$588,236.31

Plan B.—"Diminishing Value Plan." (10%.)

Year	Principal.	* Amount.
1905	$1,110,701.01	$111,070.10
1906	1,115,377.73	111,537.78
1907	1,100,048.32	110,004.83
1908	1,034,925.37	103,492.53
In the aggregate		$436,105.24

Plan C.—"Complainant's Plan." (7½%.)

Year	Principal.	* Amount.
1905	$1,535,665.08	$115,174.87
1906	1,596,356.29	119,726.70
1907	1,685,481.44	126,411.07
1908	1,706,251.86	127,968.82
In the aggregate		$489,281.46

Plan D.—Plan Recommended (7%.)

Year	Principal. *	Amount.
1905	$1,535,665.08	$107,496.55
1906	1,596,356.29	111,744.92
1907	1,685,481.44	117,983.67
1908	1,706,251.86	119,437.57
In the aggregate		$456,662.71

*At the beginning of each year.

1769 Amount Expended on Reconstruction.

As shown in Section #3 (b) of this individual report, the amounts actually expended in Reconstruction of Plant and Replacement of Equipment—except that which is worn out in less than a year—were:

1905	$41,051.02
1906	40,626.07
1907	41,895.10

while the estimated amount similarly expended during 1908 (part of $86,155.98) was $31,450.07.

The amounts expended for Reconstruction, as above stated, must be deducted from the amount taken out of the Earnings for this purpose, leaving the unexpended amount to be charged as Depreciation for each year.

Synopsis of Plan D.

This table shows how the plan recommended works out: (a) the amounts which should be reserved out of the earnings to provide for the reconstruction of the plant; (b) amounts actually expended for this purpose and charged against the earnings as "Reconstruction;" (c) Unexpended portion of depreciation reserve to be now charged against the earnings.

	(a) Amount of Reserved for Reconstruction.	(b) Amount Expended for Reconstruction.	(c) Unexpended portion to be Charged now.
1905	$107,496.55	$41,051.02	$66,445.53
1906	111,744.92	40,626.07	71,118.85
1907	117,983.67	41,895.10	76,088.57
1908	119,437.57	31,450.07 (estimated)	87,987.50
Total Reserve for reconstruction	$456,662.71		
Expended portion of Reserve		$155,022.26	
Unexpended portion of Reconstruction Reserve, to be charged against Earnings			$301,640.45

1770 Method in Regard to Vouchers.

An orderly and efficient voucher system is maintained. Vouchers are kept on file at the head office of the complainant, in the City of Nashville, for a number of years. With the exception of a few in January 1900, all the vouchers called for by the Accountants were produced. Vouchers are divided into three classes, and may be described as follows:

(1) Cash Vouchers.

Payments for all materials purchased, or for services rendered to the company, by others than regular employees, are covered by vouchers properly checked by employees in the auditing department, and approved by Officers of the company. These vouchers are kept in the office for record, and are accompanied by the original documents, evidencing precisely for what materials or services such vouchers were issued. These cash vouchers are paid by regularly drawn bank voucher-checks, approved by the Auditor, signed by the Treasurer and countersigned by the President of the Company. These bank voucher-checks, when returned by the banks, are filed with the original record—vouchers and documents above mentioned. All vouchers are made, checked and approved in ink.

(2) Payroll Vouchers.

These are very complete, showing the name and occupation of each employee; the days worked or absent; the rate of pay, and the amount earned. Each employee has his place on the payroll, and signs for his wages at the time of payment. The payroll is checked and certified as correct by responsible employees at the local exchange, and again, by a clerk in the auditing department; certified by the Auditor, and approved for payment by the General Manager or Secretary. Wages were paid to employees at the exchange in currency, from 1900 to 1907, inclusive. During 1908, payments of wages were made by individual bank checks to employees,
1771 said checks being signed by the Manager and Cashier of the local exchange. The payrolls for 1908 are much the same form as above described, and have the same approvals.

The distribution of the total amount shown by each payroll is written on the back of each voucher. All signatures and endorsements are made in ink.

(3) Supply Vouchers.

Supply vouchers are made monthly. Attached to each is a schedule, showing the name of each exchange and the value of materials and supplies issued to each exchange during the month, showing separately for Construction, for Maintenance and for Reconstruction.

These supply vouchers are checked as correct by the Voucher Clerk; approved by the Supply Agent; examined and found correct by the Auditor, and finally approved by the General Manager. Behind these supply vouchers are the records, kept in the Supply Department, in an orderly and efficient manner, showing in detail, what materials and supplies have been issued each day, to each exchange, the price at which same are to be charged, and the amount of money involved.

General Remarks.

As previously related the examination of the books and records of the complainant was begun on May 4th, and was continued, without interruption, from that date to June 23rd, when the Accountants withdrew from the complainant's offices. Since the latter date, we have been continuously engaged in the construction of this, our individual report, and in compiling the information herein contained.

From May 4th to June 23rd—a period of seven weeks—
1772 the Accountants were provided with adequate quarters in the complainant's principal offices in the City of Nashville, and were afforded every facility for conducting the examination.

The Memorandum drawn up on May 5th for the guidance of the Accountants in making said examination, was adhered to and was carried out completely. Much additional clerical work was performed by the employees of the Mutual Audit Company, the result of which is known only to themselves. All demands for information and assistance were promptly met by complainant's employees. The General Books of the company were shown to the Accountants on both sides, all subsidiary books of account and books of record were placed unreservedly at their disposal; all vouchers, payrolls, exchange reports, traffic statements, auditor's bills, and other original sources of information, which the Accountants called for, were promptly provided.

Nothing was held back and no information pertinent to the enquiry was refused.

* * * * * * *

We beg to submit the foregoing as our individual report, on behalf of the complainant, in supplement to the Joint Report, dated July 7th, 1909, signed by us and by E. W. Farnham, expert accountant on behalf of the defendant.

This report is made in accordance with your order of April 27th 1909, and your further written instructions in relation thereto.

Respectfully submitted,

WILKINSON, RECKITT, WILLIAMS & CO.,
Certified Public Accountants.

1773 EXHIBIT #3—WILKINSON.

(One of the separate reports.)

George Wilkinson
Ernest Reckitt
Harold Benington
William A. Milligan
Albert W. Rugg

London Agents,
Woodthorpe, Bevan & Co.
Chartered Accountants.

Cable Addresses
New York & Chicago
"Wilkittams".
(Western Union Code.)

Wilkinson, Reckitt, Williams & Co.

Certified Public Accountants.

New York—
52 Broadway.
Telephone 3135 Broad.

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Mutual Life Building.
Telephone Walnut 2226.

Chicago—
Marquette Building.
Telephone Central 1988.

NEW YORK, *August 31st*, 1909.

To the Honorable Henry Burnett, Special Master, Louisville, Kentucky.

DEAR SIR: Cumberland Telephone and Telegraph Company vs. the City of Louisville, Kentucky.

We now beg to reply to the individual report, made to you on behalf of the Defendant in the above entitled cause, by Mr. E. W. Farnham, General Manager of The Mutual Audit Company of Louisville, Ky. So far, there have been submitted to your Honor the following Accountants' reports, to each of which it will be necessary for us to refer.

(First.) Joint Report—Dated at Nashville, Tenn., 7th July, 1909, and signed by Wilkinson, Reckitt, Williams & Company, Certified Public Accountants, on behalf of the Complainant; and by E. W. Farnham, on behalf of the Defendant.

1774 (Second). Individual Report—dated at Nashville, Tenn., 12th July, 1909, and signed by Wilkinson, Reckitt, Williams & Company, Certified Public Accountants, on behalf of the Complainant. (This report will be briefly referred to as "Wilkinson's Report").

(Third). Individual Report—dated at Louisville, Ky., 26th July, 1909, and signed by E. W. Farnham, on behalf of the Defendant. (This report will be briefly referred to as "Farnham's Report").

In the Joint Report the Accountants agreed upon essential facts shown by the books of account and records of the Complainant, to-wit:

(1) Cost of the telephone plant owned by the complainant in the City of Louisville.

(2) Gross Earnings of the complainant, placed to the credit of Louisville Exchange (1905-1908).

(3) Operating Expenses of the complainant in conducting its business in Louisville.

(4) Loss of Gross Earnings, if the Ordinance approved March 6th, 1909, should go into effect.

* * * * * * *

In the two Individual Reports the two Accountants, after starting at the same point, having at the same time examined the same books of account and records, having been afforded the same facilities by the complainant, and having had the same opportunities to question the officers and employees of the complainant company, have arrived at very dissimilar results.

* * * * * * *

The scope of our reply to Mr. Farnham's Individual Report, and the extent to which we shall encumber the record and burden
1775 your Honor with further written evidence in the matter, being left to our discretion, we shall refrain, at this time, from replying to each and every claim made by said Farnham on behalf of the Defendant.

* * * * * * *

Farnham's Individual Report.

The first six pages of Farnham's Individual Report are devoted to the early history of the complainant company, which we do not care to comment upon at this time, except to remark that most of the subject-matter contained therein is in evidence before your Honor and is irrelevant to the enquiry the Accountants are instructed to make.

* * * * * * *

The next ten pages are devoted to a labored attempt to explain away a considerable portion ($384,228.83) of the cost of the property, as recorded on the books of the complainant. No less than fourteen sheets of exhibits (#1 to 4 inclusive) are offered to assist in this effort.

Finally, Farnham comes back to the figures contained in the Joint Report, for he states the total cost as $1,702,391.68 (Exhibit #5-B).

* * * * * * *

As opportunity will be had later for counsel on both sides to examine the Accountants, we would prefer to content ourselves with laying before your Honor at this time a compact statement of the Differences between the Individual Reports of the two Accountants. What are these?

Differences.

The following comparative table shows, at a glance, the extent of the variation between the two Reports. The reasons therefor will be stated later.

1776 Farnum for Defendant. Wilkinson for Complainant.

References to respective Individual Reports are given in red.

Cost of Telephone Plant.

$1,702,391.68 Exhibit #5-B	$1,702,391.68 (page #19)

Cost of Lands and Buildings.

(no mention)	$162,191.42 (page #20)

Value of Plant and Property.

$1,318,162.85 Exhibit #4.	$1,864,583.10 (page #29)

Net Earnings of Business.

$101,010.80	Net Revenue	1905	Loss	.....	12,158.21
118,737.95	" "	1906	Net Earnings	.....	2,536.30
130,012.58	" "	1907	" "	.....	10,111.09
151,612.74	" "	1908	" "	.....	32,162.79
Exhibit #15					(page#52)

Probable Result, 1910.

$166,585.14 "Profit" (page #29)	"Deficiency" $18,852.97 (see page #29 of this Reply)

Capital invested in Louisville.

(no mention)	$1,934,503.02 (page #30)

* * * * * * *

We will first state briefly how the Differences tabulated above are explained.

(1st) Cost of Telephone Plant.

Order of Court dated April 2nd, 1909, calls for:

"The cost to the complainant of its Plant and property in the City of Louisville, Ky.

* * * * * * *

1777 Both Accountants agree that the cost of the telephone plant, up to March 6th, 1909, is the sum of $1,702,391.68. It will therefore not be necessary to discuss this item.

References:

Joint Report ..... Page #2
Farnham's Report .....
Wilkinson's Report ..... Page #19

* * * * * * *

(2nd) Cost of Lands and Buildings.

Order of Court, as above quoted, calls for the Cost of the Property, as well as the plant.

Wilkinson reports that the complainant owns certain lands and buildings in the City of Louisville which are used exclusively for the purpose of its telephone business, and which cost the complainant the sum of $162,191.42 in cash.

Farnham's report is silent on this subject.

Reference—Wilkinson's Report, page #20.

* * * * * * *

(3rd) Value of Plant and Property.

Order of Court dated April 2nd, 1909, calls for:

"The fair valuation of the plant and property of the complainant employed in its business in said City on March 6th, 1909. * * *"

Both Accountants submit their views as to the present value of the Plant, but Farnham is silent as to the value of the Property (lands and buildings). Farnham claims (1st) that the cost of property acquired from the Ohio Valley Telephone Company was not properly carried on to the books of the complainant (difference, $190,453.83); and (2nd) that $38,755.00 a year, for five years, should be deducted arbitrarily in respect of Reconstruction (difference, $193,775.00).

1778 After deducting these two sums Farnham states that the value of the Plant on March 6th, 1909, is the sum of $1,318,-162.85.

Wilkinson claims that nothing be deducted fro mthe actual cost of the plant, which was, as stated in the Joint Report—$1,702,-391.68 plus the cost in cash of the lands and buildings, $162,191.42 —making in all the sum of $1,864,583.10.

References:

Joint Report ..... Page #2
Farnham's Report ..... Exhibit #4
Wilkinson's Report ..... Page #29

* * * * * * *

This matter of Value of Plant and Property and the difference above stated, is taken up again and gone into fully on page #8 of this Reply.

* * * * * * *

(4th) Net Earnings of Business.

Order of Court dated April 2nd, 1909, calls for:

"The Gross Earnings and the Net Earnings of the complainant upon its plant and property, employed in its business in said city for 1905, 1906, 1907 and 1908, stating separately as to each of said years * * *".

Farnham sets up a statement purporting to show the "Net Revenue" on the Louisville Exchange, taken by itself, eliminating the Earnings and the alleged Operating Expenses of what he calls the Toll Department, also eliminating all charges for Reconstruction.

Wilkinson shows "the Net Earnings of the complainant upon its plant and property employed in its business in the City of Louisville"—same being stated after all proper charges have been made.

1779

Farnham's "net revenue."		Wilkinson's "net earnings."
$101,010.80	1905	$12,158.21 Loss
118,737.95	1906	2,536.30
130,012.58	1907	10,111.09
151,612.74	1908	32,162.79

References:

Farnham's Report ..... Exhibit #15
Wilkinson's Report ..... Page #52

This matter of Net Earnings of Business and the difference above stated is taken up and gone into fully on page #12 of this Reply.

* * * * * * *

(5th) Probable Result for 1910.

Farnham undertakes to show that the complainant will be very largely benefitted by the enforcement of the Ordinance. He states there will be such a large increase in the business that the complainant will make $14,972.40 more money in 1910 than in 1908.

Wilkinson shows that the earnings of the complainant will be completely wiped out if the Ordinance goes into effect. In place of a profit, there will be a deficiency of $18,852.97 for the first year.

References:

Joint Report (as to Gross Loss) ..... Page #6
Farnham's Report ..... Page #29
Wilkinson's Reply ..... Page #30

This matter of Probable Result for 1910 is taken up again and gone into fully on page #22 of this Reply.

* * * * * * *

1780 *Value of Plant and Property.*

Order of Court dated April 2nd, 1909, calls for:

"The fair valuation of the plant and property of the complainant employed in its business in said city on March 6th, 1909 * * *."

Quotation from Accountant's Agreement:

"(*a*) Accountants agree that "a fair valuation of plant and property" can only be arrived at by a detailed physical appraisal of the said property.

"(*b*) Accountants agree on the other hand that they can and will produce a detailed statement showing the original cost of the property as of record, brought down to date of March 6th, 1909, as shown by the records, vouchers, pay-rolls, etc., of the company, subject to their making such changes and modifications as they deem right and proper."

Quotation from Joint Report:

We have discussed the method to be followed in arriving at an estimate of the present value of the telephone plant of the complainant in the City of Louisville, and we find that we cannot agree as to said method.

* * * * * * *

The Accountants Disagree.

Wilkinson claims that nothing should be deducted from the actual cost of the plant and property which is made up thus:

Cost of the Telephone Plant to March 6th, 1909, as per Joint Report (page #2)	$1,702,391.68
(Agreed to by Farnham—see his Exhibit #5B.)	
Cost of Lands and Buildings owned by the complainant and used exclusively for its telephone business.	162,191.42
(See page #20 of Wilkinson's Report.)	
Total cost is total value	$1,864,583.10

1781 Farnham claims that the real cost value of the Telephone Plant to the complainant is the sum of 1,318,162.85

(See Exhibit #4 of Farnham's Report.)

The Difference is..... $546,420.25

This difference of $546,420.25 is accounted for in three items:

(1) Difference in Initial Cost.....	190,453.83
(2) Arbitrary Deduction for Reconstruction.....	193,775.00
(3) Cost of Lands and Buildings (omitted).....	162,191.42
Total Difference	$546,420.25

We will explain each item.

(1) Difference in Initial Cost:

Amount shown by the complainant's books of account as being the initial cost of the plant taken over from the Ohio Valley Telephone Company (*a*) (References—page #15 of Wilkinson's Report and Exhibit #5B of Farnham's Report.		$678,354.69
Total allowed by Farnham as cost of plant at Louisville (*b*) (Reference—Farnham's Exhibit #4.)		487,900.86
		$190,453.83

Explanation: (*a*) The complainant's books and records show distinctly that the cost of the telephone plant acquired in 1900 by amalgamating with the Ohio Valley Telephone Company was the sum of $678,354.69. The method by which this sum was arrived at is set forth in Wilkinson's Individual Report, the information having been derived from an examination of the records and from enquiry of the President of the complainant company.

1782 Explanation: (*b*) Farnham works up his own figures for the initial cost of the plant in 1900, and "Allows" the sum of $487,900.86. The theory on which this particular sum was arrived at is an Artificial Creation of Farnham's Own, is not founded upon the facts and is unsupported by any enquiries made by Farnham when in Nashville.

(2) Arbitrary Deduction for "Reconstruction":

Farnham deducts the sum of $193,775.00 from the actual cost of the telephone plant, as recorded on the books of the complainant, for what he calls "Reconstruction."

Farnham argues that, because the complainant expended $155,022.26 for "Maintenance-Reconstruction," during the four years under review, making an average annual charge of $38,755.00, all of which was taken out of Earnings, he (Farnham) is justified in deducting an equal amount, each year, from 1900 to 1904 inclusive, (or a total of $193,775.00) from the amount complainant paid for New Construction.

The figures made use of are these:

Amount actually expended for "Maintenance-Reconstruction" (a sub-division of "Maintenance," as shown by the books of the complainant—		
Year 1905	$41,051.02	
Year 1906	40,626.07	
Year 1907	41,895.10	
		$123,572.19
Estimated amount for year 1908, part of $86,155.98 expended for "Maintenance," pro-rated as between "Current Repairs" and "Reconstruction"		31,450.07
Total		$155,022.26

The above stated sums were part of the ordinary operating expenses, and are so agreed to in the Joint Report. Same have nothing whatever to do with Construction, nor with the cost or
1783 value of the plant.

It is the equivalent of these items, for the five years 1900 to 1904, as calculated by Farnham, which he deducts from the cost of the plant, in attempting to arrive at an estimate of its present value.

Farnham attempts to justify this fallacy by pointing out that the telephone plant was fourteen years old when the complainant took hold of it in 1900, and that it doubtless needed reconstructing. Further, that because no separate account was kept during the five years from 1900 to 1904 inclusive, the money spent by the complainant during those years for Reconstruction must have been charged to Construction Account.

In answer to this claim, we would say that Farnham and the other employees of The Mutual Audit Company spent weeks in making a detailed examination and careful scrutiny of the vouchers, pay-rolls and entries covering the entire Construction Account of the Louisville plant, from 1900 to 1909, and failed to find any charges therein contained for Reconstruction.

Fearing that some such question as this might arise, we had our Accountant go over the same ground—with the same result.

(3) Cost of Lands and Buildings:

Farnham's Individual Report contains scant mention of the lands and buildings owned by the complainant. He does not iclude them in the Cost of the Property.

Farnham claims that these lands and buildings are conducted "as an Outside Operation and Not as a part of the Exchange." This is not the fact in any sense. The lands and buildings owned by the complainant in the City of Louisville are essentially a part of and a most important part of, the "Plant and Property of the complainant employed in its business in said city on March 6th, 1909 * * * ."

(Quoted from Order of Court, April 2nd, 1909.)

1784 As shown on page #20 of Wilkinson's Report, these Lands and Buildings cost the complainant the sum of $162,-191.42 in cash.

* * * * * * *

Net Earnings.

Order of Court dated April 2nd, 1909, calls for:

"The Gross Earnings and the Net Earnings of the complainant upon its plant and property, employed in its business separately as to each of said years * * *."

Farnham States the "Profit."

On page #25 of his Individual Report, Farnham claims that the Gross Earnings, "Exchange Expenses" and "Profit" of the "Louis-

ville Exchange" during the four years under review were as follows:

Year.	Gross Earnings.	"Exchange Expenses."	"Profit."
1905	$259,556.15	$158,545.35	$101,010.80
1906	283,194.04	164,476.09	118,717.95**
1907	307,095.04	177,082.46	130,012.58
1908	314,275.52	162,662.78	151,612.74

(Annual average "Profit"—$125,338.52.)

Farnham States the "Net Revenue."

On Exhibit #15, filed with his Individual Report, Farnham states what he calls the "Net Revenue." He reaches it in this way:

From the Gross Earnings of the Exchange (after eliminating all "Toll Revenue") Farnham deducts the expenses and Current Repairs, which in his estimate attach to Louisville Exchange, leaving this result:

"Net Revenue"	1905	$101,010.80
do	1906	118,737.95**
do	1907	130,012.58
do	1908	151,612.74

**Error of $20.00 in Farnham's work for 1906.

1785 Fanrham's Result Described.

Mr. Farnham's result, when fully and correctly described, is the profit derived by the telephone company from its subscribers and the public in Louisville for Exchange Service Only, before setting aside anything whatever "from the net earnings for the reconstruction of the physical properties."

Wilkinson States the Net Earnings.

On page #50 of our Individual Report we show:

"The Net Earnings of the complainant upon its plant and property "employed in its business in the City of Louisville" as follows:

Year 1905—Loss	$12,158.21
Year 1906—Net Earnings	2,536.30
Year 1907—Net Earnings	10,111.09
Year 1908—Net Earnings	32,162.79
(Annual Average Net Earnings	8,162.99)

How Wilkinson's Result is Reached.

The following summary shows how the result shown in our Individual Report is reached. The red notes show where further particulars will be readily found, if desired:

See Notes.	Gross Earnings. (a)	Income from Bldgs. (b)	Operating Expenses. (c)	Unexpended portion of Reconstruction. (d)	Net Result. (e)
1905 ..	$269,823.38	$11,635.23	$227,171.29	$66,445.53	$12,158.21
1906 ..	294,498.44	13,054.99	233,898.28	71,118.85	2,536.30
1907 ..	319,758.51	13,039.76	246,598.61	76,088.57	10,111.09
1908 ..	325,838.30	11,707.52	217,395.53	87,987.50	32,162.79

(a) See Joint Report, pages #3 and 4.
(b) " Wilkinson's Report, page #49.
(c) " Joint Report, page #5.
(d) " Wilkinson's Report, page #62.
(e) " " " " 50.

1786 The Results Compared.

In the following table we compare the two showings and state the Difference.

	Farnham (his page 25)		Wilkinson. (his page 50)	Difference.
1905, "Profit"....	$101,010.80	Loss.	$12,158.21	$113,169.01
1906, "Profit"....	118,717.95	Net..	2,536.30	116,181.65
1907, "Profit"....	130,012.58	Net..	10,111.09	119,901.49
1908, "Profit"....	151,612.74	Net..	32,162.79	119,449.95

The Difference.

The difference between the two showings, stated in figures, is given below:

	No. 1 Gross Earnings cut out by Farnham.	No. 2 Operating Expenses cut out by Farnham.	No. 3 Income from Buildings not included.	No. 4 No provision made by Farnham for Depreciation Reserve.	Difference.
1905,	$10,267.23	$68,625.94	$11,635.23	$66,445.53	113,169.01
*1906,	11,304.40	69,442.19	13,054.99	71,118.85	116,181.65
1907,	12,663.47	69,516.15	13,039.76	76,088.57	119,901.49
1908,	11,562.78	54,732.75	11,707.52	87,987.50	119,449.95

*Error of $20.00 in Farnham's "Exchange Expenses" for 1906.

Each of these Differences is explained in turn, as follows:

#1 Gross Earnings Cut Out.

Year.	Joint Report. (Page No. 3)	Farnham's Individual Report. (Page No. 25)	Cut out by Farnham.
1905	$269,823.38	$259,556.15	$10,267.23
1906	294,498.44	283,194.04	11,304.40
1907	319,758.51	307,095.04	12,663.47
1908	325,838.30	314,275.52	11,562.78

1787 The Gross Earnings cut out are what Farnham styles "Toll Revenue credited Louisville Exchange." Same is made up of these three factors:

(1) Commission on Cumberland long distance tolls (calculated at 15%);

(2) Commission on American Telephone and Telegraph Company long distance tolls computed at 15%; (for convenience and to save work in reporting, the actual calculation is made at 10 21/100 per message); and,

(3) Messenger fees. These three factors are stated on lines #2, #4 and #9, on page #4 of Joint Report.

Farnham's Deductions.

The amounts deducted by Farnham are stated in detail by years, as follows:

15% on long Distance Tolls:	1905.	1906.	1907.	1908
Cumberland	$6,539.92	$7,064.91	$8,030.15	$7,632.11
American	2,865.29	3,427.09	3,864.17	3,272.37
Messenger Fees	862.02	812.40	769.15	658.30
Total deducted by Farnham from the Gross Earnings, shown by the Joint Report	10,267.23	11,304.40	12,663.47	11,562.78

These three factors constitute what Farnham designates repeatedly as the Toll Department, which he describes "as separate and distinct from the Exchange."

On page 18½ of his Individual Report, Farnham writes:

"* * * the Toll department of the Louisville Exchange is operated as an outside "financial operation" so far as earnings are concerned. * * *."

The books of account and records of the complainant distinctly prove that the contrary is true.

1788 These commissions on long distance business and these messenger fees are part of the "Gross Earnings of the complainant upon its plant and property employed in its business" in Louisville. Same were included in the Gross Earnings shown in the Joint Report (Section #3, page 4), and cannot rightfully be set aside "as separate and distinct from the exchange."

This whole matter of Toll Earnings is explained fully on pages #37 to 41 of our Individual Report.

* * * * * * *

#2 Operating Expenses Cut Out.

Year.	Joint report (page #5).	Farnham's report (page #25)	Farnham's deductions.
1905	$227,171.29	$158,545.35	$68,625.94
1906	233,898.28	164,476.09**	69,442.19
1907	246,598.61	177,082.46	69,516.15
1908	217,395.53	162,662.78	54,732.75

**Error of $20.00 in Farnham's "Exchange Expenses" for 1906.

These "Deductions" are covered by certain items of Operating Expenses which Farnham excludes as follows:—

(1) Amount expended for Reconstruction of Plant;

(2) Insurance and Taxes on Real Estate and Supplies;

(3) Wages of certain employees and portion of expenses, claimed by Farnham to belong to "Toll Department."

By years, these "Deductions" are as follows:—

	1905.	1906.	1907.	1908.
(1) Reconstruction.	$41,051.02	$40,626.07	$41,895.10	$31,450.07
(2) Insur. & Taxes	4,038.67	4,144.22	3,142.19	3,043.03
(3) "Toll Department"	23,536.25	24,671.90	24,478.86	20,239.65
Total	$68,625.94	$69,442.19	$69,516.15	$54,732.75

1789 In regard to the three "deductions" which Farnham makes from the operating Expenses, he agreed to in the Joint Report, we give the following explanation:

(1) Reconstruction.

Farnham cuts out of the Operating Expenses the total amount expended for reconstruction during the four years, namely, the sum of $155,022.26. The cost of partially reconstructing the plant, whenever and wherever necessary, is part of the cost to the complainant of maintaining and operating its plant and property employed in its business in the City of Louisville. Same is included in the operating expenses shown in the Joint Report (section #3, page #5) and cannot rightfully be set aside.

In this regard, on page #17 of his report, Farnham writes:

"During the years 1905 to 1908, the complainant company charged to reconstruction out of earnings, entering the various amounts as an operating expense, the gross sum of $155,022.26, or an average of $38,755.56 per annum."

And again on page #27 he writes in regard to Reserve Account for Reconstruction:

"As this is an account which contemplates a "Reserve" to be set aside each year from the net earnings for the reconstruction of the

physical properties, as same may be required, it should be treated only in connection with "Earnings Account."

Just why, in face of the above, Farnham reports the "Profit" (on page #25) and the "Net Revenue" (on Exhibit #15) before making any charge for a "Reserve for Reconstruction," he does not explain.

* * * * * * *

This so-called "Reconstruction Account," as it has been kept by the complainant, is really a sub-division of Maintenance. As explained on page #45 of Wilkinson's Report, "no separate ac-
1790 count was kept on the complainant's books of the cost of reconstruction" prior to 1904.

From 1905 to 1907, inclusive, the cost of Maintenance was subdivided on the complainant's books into these two accounts:

(*a*) "Maintenance—Current Repairs:"

(*b*) "Maintenance—Reconstruction."

Both are operating expenses, pure and simple. The names of the two accounts are as above quoted: the use for which they are kept is covered in the name given to both, "Maintenance."

(*a*) The charges to "Maintenance—Current Repairs" are for mending breaks, tightening wires, rectifying "trouble," and generally maintaining the property in first-class running order. Anything that wears out in less than a year is charged to this account when replaced.

(For further particulars see page #44 of Wilkinson's Report.)

(*b*) The charges to "Maintenance—Reconstruction" are for new work put into old places—for replacement of equipment that is worn out or obsolete, for rebuilding any part of the plant which has become worn out, except that which is worn out in less than a year.

(For further particulars see page #44 of Wilkinson's Report.)

During the short period of three years (1905, 1906, 1907) when Maintenance of the plant was kept in two accounts instead of one, as above described, it was found to be an extremely difficult matter to differentiate between the two accounts. In 1908, the division was abandoned as valueless and misleading.

* * * * * * *

(2) Insurance and Taxes.

The deductions made by Farnham from the Operating Expenses include Insurance and Taxes on the complainant's buildings. These are part of the cost to the complainant of its business in the City
of Louisville. Under the Company's regulations, Insurance
1791 and Taxes are charged to the operation of the plant. It is found necessary, for the proper control of the complainant's business, to have these items booked where they really belong.

These charges are included in the Operating Expenses shown in the Joint Report (section #3, page #5).

Farnham claims that Insurance and Taxes on the buildings are not properly chargeable as Operating Expenses, but should be charged against the revenue derived by the complainant from said buildings in the form of Rentals.

On behalf of the complainant, we claim that it is proper to charge Insurance and Taxes to Operating Expenses. However, as we include the Rentals on all the buildings owned by the complainant in Louisville, as part of the Income, any further discussion of the propriety of charging Insurance and Taxes would be futile.

(3) "Toll Department."

In his individual report Farnham cuts out certain items of operating expenses which he claims to be the cost of operating the so-called "Toll Department," which he claims is conducted "as separate and distinct from the exchange."

By years these deductions are as follows:

	1905.	1906.	1907.	1908.
General Expenses..	$4,750.42	$5,557.33	$5,670.32	$5,074.08
Operating Expenses.	16,517.88	18,247.44	17,660.18	14,535.13
Current Repairs...	2,267.95	867.13	1,148.36	630.44
Total	$23,536.25	$24,671.90	$24,478.86	$20,239.65

The principal item in the above deductions is that of Wages which Farnham arrives at by picking out certain employees of the Louisville Exchange who, he says, give all or a portion of their time to handling the Toll Traffic.

The other expenses and the repairs are arrived at by taking an arbitrary proportion of the Louisville expenses upon a sliding
1792 scale which Farnham describes as "pro-rated upon the basis of the respective collections."

These expenses are a part of the cost to the complainant of conducting its business in the City of Louisville. Same are included in the Operating Expenses, shown in the Joint Report (Section #3, page #5 and cannot rightfully be set aside "as separate and distinct from the exchange."

#3 Income from Buildings.

The statement of earnings contained in Mr. Farnham's Individual Report does not include any credit for the rentals of the buildings owned by the complainant in Louisville. All of these buildings are used exclusively for the purposes of its telephone business. Rents are charged to Operating Expenses and shall be accounted for as part of the Income.

This whole matter is fully dealt with on pages 48 and 49 of our Individual Report.

The amount which we have credited as part of the Income on the property each year is arrived at as follows:

Year.	Gross rentals.	Repairs to buildings.	Credited to income.
1905	$13,050.00	$1,414.77	$11,635.23
1906	13,500.00	445.01	13,054.99
1907	13,720.00	680.24	13,039.76
1908	13,800.00	2,092.48	11,707.52

* * * * * * *

1793 #4. Depreciation Reserve.

In the Agreement, dated at Nashville, Tenn., May 6th, 1909, between the Accountants, it was stipulated:

"A further deduction from Gross Earnings is to be allowed in respect to depreciation of property and plant."

In the Joint Report the matter of Depreciation was dismissed in these words:

"Having discussed the matter of Depreciation, we find we cannot agree in regard thereto."

A Matter of Judgment.

The rate at which a charge should be made for Depreciation Reserve is a matter of judgment. In our Individual Report, on pages #59, #60 and #61 we state four alternative methods of computation.

"We recommend to the Special Master a plan by which the provision for depreciation reserve should be calculated at seven (7%) per cent per annum, flat, on the cost of the plant, as shown by the books of the complainant."

(Quoted from page #60 of Wilkinson's Report.)

Synopsis.

This table shows how the plan recommended works out:

(*a*) Amount which we recommend should be charged against the Earnings as a "Reserve to be set aside each year from the net earnings for the reconstruction of the physical properties, as same may be required;"*

(*b*) Amounts actually expended for this purpose and charged to Operating Expenses;

(*c*) Unexpended portion of depreciation reserve to be now charged against the earnings.

*Quoted from page #27 of Farnham's Report.

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* * * Year.	(a) Amount of reserve for "reconstruction."	(b) Amount expended for reconstruction.	(c) Unexpended portion to be charged now.
1905	$107,496.55	$41,051.02	$66,445.53
1906	111,744.92	40,626.07	71,118.85
1907	117,983.67	41,895.10	76,088.57
1908	119,437.57	31,450.07 (estimated)	87,987.50
Total Reserve for Reconstruction	$456,662.71		
Expended portion of Reserve		$155,022.26	
Unexpended portion of Reconstruction Reserve, to be charged against Earnings			$301,640.45

***Table of figures copied from page #62 of Wilkinson's Report.

Probable Result for 1910.

The order of Court dated April 2nd, 1909, directs:

"The said Special Master is directed to make an estimate upon the testimony and state his conclusions thereupon as to what would be the reasonably probable Gross and the reasonably probably Net Income of the complainant, from its said plant and property employed in its business in said City for the current year and the year 1910, if the rates of telephone charges fixed by the ordinance, enacted by the legislative body of defendant and approved by the Mayor, on March 6th, 1909, should be put into operation and effect."

1795 In the Joint Report (page #6) the Accountants agree upon a calculation which shows that the Gross Earnings of the complainant in the City of Louisville would be cut down $4,143.48 per month by the enforcement of the rates fixed by the ordinance adopted by the legislative body of the City of Louisville, and approved by the Mayor March 6th, 1909.

Section #4 of the Joint Report was concluded as follows:

(Page #6)

This is equal to a loss of $49,721.76 a year.

Against this probable loss of $49,721.76 a year, there will probably be an increase in gross earnings in respect of the natural growth of the business and the increased number of subscribers, due to the lowering of the rates, upon the enforcement of the Ordinance.

The Accountants Disagree.

Wilkinson shows that the earnings of the complainant will be entirely wiped out.

Farnham undertakes to show that the complainant will make an additional profit of $14,972.00.

Farnham's Calculation.

In a very ingenious manner, on page #29 of his Individual Report, Mr. Farnham computes what the increase in the number of subscribers might have been had nothing happened to check the steady growth of the business.

Mr. Farnham's calculation is based upon "the normal increase in the average monthly subscribers in 1906 over 1905,"* which he says was 2.17%.

*Quoted from page #29 of Farnham's Report.

1796 Starting in 1906 with the average number of real subscribers (5,956) Mr. Farnham builds these up on paper, year by year, at 2.17% until, in 1910, he reaches a total number of real (?) subscribers of 6,631 (on paper.)

Carrying his calculation further, Mr. Farnham computes that there will be "an aggregate increase in the earnings of $14,972.40 for the year 1910."*

*Quoted from page #29 of Farnham's Report.

Unfortunately, the complainant has not been able to realize Mr. Farnham's fantastic calculation.

* * * * * * *

On Behalf of Complainant.

As Accountants for the complainant we have to deal with facts—not fancies. The fact is, that the complainant began the year 1907 with 5,890 real subscribers * * * (January, 1907,) before the main increase was made in the telephone rentals, and ended the year 1908 with 5,165 real subscribers * * * (December, 1908)—Decrease 725 * * *.

***Mr. Farnham supplied us with these particulars in Nashville.

In the event that the lower telephone rates prescribed by the Ordi- that a fair proportion of the subscribers lost between January 1st, 1907, and December 31st, 1908, will come back.

Decrease Analyzed.

In order that we may make an intelligent estimate of the number of real subscribers, the complainant is likely to regain, by reducing the rates, we must first see how many subscribers were lost between January, 1907, and December, 1908, apparently through raising the rates to Exchange Subscribers. We must also see

1797 what proportion of subscribers take business telephones and what proportion take residence telephones.

* * * * * * *

In January, 1907, the complainant had in service 10,516 stations, of which 4,626 were extension sets, private board extensions, pay stations, dead-heads and others, not affected by the Ordinance. The individual subscribers numbered..... 5,890

In December, 1908, (two years later) the complainant had in service 9,657 stations, of which 4,492 were extension sets, private board extensions, pay stations, dead-heads and others, not affected by the Ordinance. The individual subscribers—those who would be benefited by the change numbered..... 5,165

1,874 Business Telephones;
3,291 Residence Telephones;

Decrease in number of individual subscribers..... 725

Subscribers Regained.

It may fairly be expected that the complainant might regain two-thirds (2/3) of this loss, say 483.

It is also fair to expect that the subscribers thus to be regained will be in the same ratio, as to business and residence, and as to private and party lines, as are the now existing subscribers.

On April 1st, 1909, (March 22nd report) the complainant had in service 9,525 stations, of which 4,371 were private branch extensions, extension sets and others, not affected by the Ordinance.

The individual subscribers numbered 5,154, distributed as follows:

Business Telephones:

Private Lines.....	948		
Party Lines	961		
		1,909	37% of total.
1798 Forward		1,909	37% of total.

Residence Telephones:

Private Lines	1,050		
Party Lines	2,195		
		3,245	63% of total.
Total		5,154	

Probable Regain.

It is very reasonable to expect that the probable subscribers to be regained by reducing the exchange rates, will be distributed on this same basis. If so, the increase in gross earnings would be at the rate of $18,666 00 per annum, made up thus:

Business Telephones (unlimited service):

Private Lines	89 at $5.50.....	$489.50
Party Lines	90 at $4.00.....	360.00

Residence Telephones (unlimited service):

Private Lines	98 at $3.00	$294.00
Party Lines	206 at $2.00	412.00
Total new subscribers	483	

Total Added Earnings per month.....$1,555.50
$1,555.50 x 12, equals $18,666.00 per annum.

Recapitulation.

Probable Loss (see Joint Report, page #6)	$49,721.76
Probable Regain (see above calculation)	18,666.00
Estimated loss in gross earnings	$31,055.76

No Increased Operating Expenses (says E. W. Farnham).

On pages #29 and #30 of his Individual Report, Mr. Farnham questions whether

"* * * an increase in the number of subscribers, increases the cost" of operating. Farnham claims that, by reducing its exchange rates, as provided in the Ordinance, the complainant would make a clear gain of $14,972.40 for the year 1910, and $21,441.82 for the year 1911.

1799

Mr. Farnham contends that all this additional revenue can be collected from the Louisville public without a dollar more expense to the complainant. He adds the whole of this $21,441.82 additional revenue to his paper "profit" of $151,612.74 (page #25), thereby making a paper profit for 1910 of $166,585.14. He concludes his argument (page #29) by saying:

" * * * * so that the net earnings for the latter year (1911) should aggregate approximately $173,054.56."

Operating Expenses Were Reduced.

The complainant has conducted its business in the City of Louisville with all due regard to economy of operation. As the number of stations fell off, so did the operating expenses.

Year.	Average actual subscribers.	Operating expense.
1906	5,956	
1907	5,746	$80,738.06
1908	5,158	79,661.04
		75,440.28

*These Operating Expenses "comprise salaries of local manager and superintendent, local clerical force; wages of operators, supervisors and all those directly connected with the operation of the plant; proportion of rent, light and heat of buildings; advertising and canvassing for subscribers and other expenses incidental to the operation of the telephone plant of the complainant in the City of Louisville."

*Quoted from Wilkinson's Report, page 43.

1800 Estimated Increase in Expenses.

Increase in Number of Circuits: In the event that the Ordinance rates should be enforced, the reduction in price will enable subscribers, now content with party lines, to take private lines. This will lead to an increase in the number of circuits, without any—or with very litle—increase in revenue. Let us see how this will be brought about:

The monthly report on "Classification of Rates," dated at Louisville, March 22nd, 1909 (nearest report to April 1st) shows this:

961 Business Party Lines paying an average of $5.11 a month; and

2,195 Residence Party Lines paying an average of $3.03 a month.

It is expected that a considerable proportion of these party line subscribers will contract for private lines, the rates for which are fixed by the Ordinance at $5.50 and $3.00 a month (net) respectively.

The present contract rates are subject to a discount of 50 cents a month to such subscribers as pay three months' rental in advance; not by any means all of them take advantage of this discount.

This anticipated increase in the number of circuits would involve the use of considerably more capital for extra wiring; it would also lead to more direct expense in operating.

Increased Expense.

It is inevitable that an increase in direct operating expenses will follow an increase in the number of stations and circuits. There must be more operators to handle the increased number of openings on the switchboard (two operators for every hundred direct lines).

1801 There will be more lines to care for and maintain and more reconstruction to provide for.

The average cost of Operating, Maintenance and Reconstruction per station, during the year 1908, amounted in all to $24.95 per station, made up thus:

Operating	$7.54	per station
Maintenance	5.47	" "
Reconstruction	11.94	" "
Together	$24.95	" "

We estimate that 483 prospective subscribers, to be regained during the first year by reducing the rates, would be equivalent to approximately 800 stations. At the above stated average costs per station, this increased number would make $19,960.00 more expense. Thus:

Operating	800 at	$7.54	$6,032.00
Maintenance	800 at	5.47	4,376.00
Reconstruction	800 at	11.94	9,552.00
Total Increased Cost			$19,960.00

Reasonably Probable Net Income.

It remains for us to recapitulate the foregoing calculations and submit for your consideration our estimate of what will be "the reasonably probable net income of the complainant from its plant and property employed in its business in said City for the current year and the year 1910, if the rates of telephone charges fixed by the Ordinance * * * should be put into operation and effect."*

*Quoted from Order of Court April 2nd, 1909.

1802–1830 *Recapitulation.*

Estimated Loss of Gross Earnings:		
Gross Loss (shown by Joint Report on page #6)	$49,721.76	
Probable Regain (shown on page #26 of this Reply)	18,666.00	
Loss of Gross Earnings		$31,055.76
Estimated Increase of Operation Expenses (shown on page #28 of this Reply)		19,960.00
Total Loss to the complainant if the terms of the Ordinance should be put into operation and effect,		$51,015.76
Net Earnings for year 1908, (shown on page #52 of Wilkinson's Individual Report)		32,162.79
Estimated Deficiency for the first year, should the terms of the Ordinance be put into operation		$18,852.97

We beg to submit the foregoing as our reply on behalf of the complainant, to the Individual Report made by Mr. E. W. Farnham, on behalf of the Defendant, and dated at Louisville, July 26th, 1909.

This Reply is made in accordance with your order of April 27th, 1909, and your further written instructions in relation thereto.

Respectfully submitted,

WILKINSON, RECKITT, WILLIAMS & CO.
Certified Public Accountants.

1831 City to Receive all Profits Over Ten Per Cent on the Average Net Investment of Any Year.

A provision is inserted in the proposed ordinance which will serve as an automatic regulation of rates. It is made a requirement of the ordinance that all net profits over ten per cent. on the average investment of any year shall be paid to the City. Manifestly, if the Company finds itself able to make more than ten per cent. on its average investment, under the rates fixed by the
1832–1845 Council, it will voluntarily reduce its rates, thereby making its service more popular and increasing its business. If it fails to do so the City gets the excess profits. The ordinance expressly states that this provision shall not be taken

as an admission on the part of the City that a rate of income of less than ten per cent. on the average investment is not adequate or reasonable.

1846 *Report of Special Telephone Commission.*

CHICAGO, *April* 3, 1907.

To the Honorable Linn H. Young, Chairman, and Members of the Committee on Gas, Oil and Electric Light of the City Council of the City of Chicago.

GENTLEMEN: We have industriously worked at the problems which you laid upon us at the time of our appointment as a commission to advise you on matters relating to the telephone situation in the City of Chicago, and by instructions from time to time since, and we beg leave to hand you our report.

A telephone company in a large city must face a problem in many respects more complex than that of any other public utility corporation. The water department is called upon to sell a single commodity, namely, water, and at prices which are fixed with comparative readiness. The gas company also is called upon to sell a single commodity, metered for nearly every customer, and its conditions in dealing with customers are relatively simple. It may sell some additional by-products, as coke, tar and ammonia, but the quantities and market values of these are readily arrived at. The traction company has a more complex problem than some of the other purveyors of public utilities, but even here the price paid by the several patrons is uniform and the substantial difference between patrons lies only in the lengths of the rides which they may choose to take.

The telephone problem, on the contrary, involves many complexities, partially caused by the relatively large number of classes of service which the telephone company must offer to its patrons for the purpose of fully developing the telephone service of the city, and partially by the intangible character of the electric medium with which the telephone business is carried on, the delicacy of the apparatus used, and the wide differences in the manner and extent of the use of the apparatus by the various subscribers.

1847–1854 If a telephone company properly extends the telephone service in the city, it must be prepared to take care of the requirements of a range of patrons as wide as the interests of the city itself, including the largest business organizations, the hotels, the newspapers, the professional men, the small business houses, and residences of all classes. It must provide apparatus for the service of each class of patrons which will enable it to furnish the service to each subscriber at an appropriate price within his means. It is desirable for the prices to be graded so that the largest user shall not pay less than his fair share of the expense of maintaining the traffic and the remuneration to the company for its investment, and equally so that the smallest user may get his telephone service at a price which is within his means and yet is reasonably remunerative to the company for its outlay.

TABLE No. 1.

Manufacturers' Telephone Company—Construction Estimates.

	Manufacturers' Telephone Co. original estimate.	Manufacturers' Telephone Co. revised estimate.	Chicago Telephone Co. estimate.	Telephone Commission estimate.
1. Conduit	$3,425,000	$3,425,000	$4,290,000	$2,970,000
2. Pole lines	1,350,000	1,300,000	1,350,000	1,380,000
3. Cable, underground and aerial	3,800,000	3,274,000	4,873,500	4,785,000
4. Line wires	157,500	135,000	310,500	525,000
5. Drop wires	400,000	480,000	721,000	420,000
6. Substation equipment	1,450,000	1,450,000	1,770,000	1,620,000
7. Switchboards	2,430,000	1,580,000	3,120,000	2,326,000
8. Main Building	500,000	400,000	1,000,000	500,000
9. Small buildings	300,000	432,000	600,000	480,000
10. Fitting rented space	25,000	15,000	.....	15,000
11. Tools and supplies	*a*235,000	235,000	*a*770,000	250,000
12. Furniture and fixtures	15,000	20,000	50,000	25,000
13. Supervision and engineering	250,000	600,000	917,750	700,000
14. Interest and insurance	570,000	*c*550,000	*b*90,000	600,000
15. Bank balance	100,000	*d*400,000	500,000	300,000
Total	$15,007,500	$14,296,000	$20,362,750	$16,896,000
16 Brokerage	.....	687,300	.....	1,877,333
Total investment	.....	$14,983,300	.....	$18,773,333

a—Includes stable and supply buildings.
b—Insurance only.
c—Interest only.
d—Bank balance and insurance.

1868–1872 Four hundred thousand telephones is too low an estimate to be reasonable, especially in consideration of the fact that a first class and cheapened service is likely to increase the number of telephones beyond ten per cent per 100 inhabitants, and may increase the development to a point where as many as fifteen telephones will be introduced to that number of inhabitants.

1873 The average rate paid in 1897 was $123.53, as indicated on the chart, and it has fallen year by year since, until it has now become as low as $53.29. The figures on this chart do not include "neighborhood" telephones.

With continued careful management, improved methods of keeping records for the determination of the costs of the different classes of service, and a greater extension of the measured rate service, we believe that the Chicago Telephone Company, in case it should be granted a franchise, can continue this decrease in the average yearly rate that the subscribers pay per telephone, until the average yearly rate does not exceed forty dollars, or perhaps less, and a large proportion of the telephones will be paying not more than eighteen dollars per year. On the other hand, our study of the problem convinces us that an extension of the flat rate telephone service would tend to so greatly increase the useless calls over the telephones, and so overload the lines, that the unavailing calls would increase tremendously, making the daily calls per telephone even larger than they were in 1896, and thus increase the annual expense of the service so largely that the average price per telephone would be given a tendency to rise instead of fall.

It is a tradition in telephone circles that the service per telephone costs more as the number of telephones connected with the plant increases. As the number of telephones increases, each subscriber has the opportunity to call upon more people by telephone, and the law of averages would indicate that the number of calls per day from each telephone should increase, thus making the service more expensive to the operating company, provided the service is flat rate service and unnecessary use of the telephone is not deterred by a measured rate charge. This condition seems to have worked out in practice, according to the statements of telephone companies at Cleveland, Indianapolis and elsewhere, and flat rate service seems to increase in cost per telephone as the number of telephones attached to a system increases.

On the other hand, a different condition exists in connection with measured rate service. With the measured rate service the message is the unit instead of the rental of the instrument; and it is the message that the subscriber ought to pay for, because it is for the purpose of sending his messages that he provides himself with a telephone. With measured rate service, and a reasonable use of the telephone lines, the unavailing calls are reduced to a minimum. The number of calls per telephone per day, apparently, are not inclined to increase as the system increases in extent. This is illustrated in our Charts Nos. 9 and 10. But the total number of messages handled increases approxi-

1874–1881

mately in proportion to the number of telephones. Under these conditions, the ordinary laws regulating the difference between the cost of producing articles in large and small quantities comes into play, and the actual cost per message ought to steadily decrease. Since it is the messages that are paid for under the measured rate system and the actual cost per message ought to steadily decrease as the system enlarges, the average amount paid by each subscriber will decrease if the subscribers limit the use of their telephones to their actual needs, and the telephone company is well managed.

The difference thus arising between flat rates and measured rates is very marked. The flat rate telephone user tends to increase his number of messages as the system enlarges, so that the average calls per day per telephone may be expected to increase and the proportion of unavailing calls also to increase. The consequence is that the company is forced to handle more calls per telephone as the system becomes larger, and the price per telephone has to increase under flat rate charges; while the subscribers limit their use of the telephone to their actual needs under measured rates and the number of calls per telephone does not have a tendency to increase as the system increases in size after it has reached a considerable development such as is now found in the City of Chicago. Under these conditions the principle of wholesale production makes it possible for the company to reduce its cost of operating per message and thereby reduce the average price charged the telephone subscribers.

The telephone hanging on the wall appeals to the average telephone subscriber as constituting the total expense to the company through the maintenance of the instrument and lines. The maintenance and the interest on the equipment does constitute a considerable expense to the company, but a great deal of the expense to the company is due to the actual cost of handling each message. This expense composes a large proportion of the annual expenditures of the Chicago Telephone Company.

1882 The book value of the entire fixed plant, including real estate and buildings, of the Chicago Telephone Company on December 31, 1905, aggregated, according to the report of the City Auditor, $15,827,033.42. The company's construction account for the year 1906, to be added thereto, amounted to $3,343,673.88 according to the statement of the company's auditor.

1883-1888 The City Auditor has examined these expenditures and traced the charges, and has found that they are properly posted and agree with the statement submitted. Our examination of the plant leads us to believe that the figures are correct.

Subtracting $700,000, which was written off by the company for depreciation for the year 1906, makes a total book value for fixed plant, including real estate and buildings, at the opening of 1907 of $18,470,707.30. This is the valuation shown on the books of the company for the entire system, which gives service to 170,834 telephones inside and outside of the limits of the City of Chicago, of which 131,747 (on January 1, 1907) are within the limits of the city.

1889 Consideration of the contract with the Western Electric Company is a delicate question, because we understand that the American Bell Telephone Company owns a controlling interest in both the Chicago Telephone Company and the Western Electric Company. We have therefore scrutinized the contract between the Chicago Telephone Company and the Western Electric Company with much care. This is a contract which makes the Western Electric Company the purchasing agent for the Chicago Telephone Company under certain conditions which seem to us to be reasonable and to the advantage of the Chicago Telephone Company. The Western Electric Company is a large manufacturer of electrical apparatus, and therefore a large user for itself of copper wire and of other materials needed by the Chicago Telephone Company, which makes it a purchaser that is able to gain the best market prices for large purchases.

1890–1892 The Western Electric Company is also the purchasing agent of other Bell telephone operating companies, which farther improves its opportunity for purchasing at low figures. The contract between the Chicago Telephone Company and the Western Electric Company may be terminated by either party upon three months' notice given in writing. The telephone company is privileged to purchase of other parties any materials that can be purchased for less money direct than through the Western Electric Company. The Western Electric Company is under obligation to sell any of its manufactured products to the telephone company for not exceeding the price at which similar products could be bought elsewhere, and at a price not exceeding that at which it sells to any other purchaser. The Western Electric Company receives two per cent. commission for handling the general supplies furnished to the telephone company which the Western Electric Company does not manufacture, but this commission is only paid to it on condition that the total price to the Chicago Telephone Company, with the two per cent. commission added, shall not exceed the price the telephone company would pay if it purchased its supplies at the most favorable figures in the open market. The telephone company has the privilege of buying a special list of apparatus and supplies anywhere at its pleasure, and this list of apparatus and supplies may be changed by adding thereto or deducting therefrom at the pleasure of the telephone company.

This contract appears to us favorable to the telephone company, and it is in such form that it gives the telephone company the privilege of purchasing in the lowest market in case the Western Electric Company fails to meet the prices of other vendors.

* * * * * * *

1893-1913 The last item mentioned above, namely, the toll business from Chicago to points outside of the city limits done by the Chicago Telephone Company over its own lines or its own lines in association with those of the Central Union Telephone Company in Illinois and Indiana and the Wisconsin Telephone Company in Wisconsin, amounts to a much larger sum.

During December, 1906, there were 112,775 outgoing messages handled in this service solely over lines of the Chicago Telephone Company, bringing a revenue of $23,370.95 for the month, according to the books of the company; besides which there were 7,495 messages from Chicago to points in the Central Union territory, affording total receipts of $3,823.20, of which $2,677.22 belongs in the gross receipts of the Chicago Telephone Company, and there were 2,889 messages from Chicago to points in the Wisconsin Telephone Company's territory, bringing the total sum of $1,183.80, of which $1,072.23 belongs in the gross receipts of the Chicago Telephone Company. This gives a gross revenue to the Chicago Telephone Company from the aforesaid toll connections of $27,119.40 for the month of December, 1906. The statement of the toll business of the Chicago Telephone Company for December, 1906, shows that 49.6 per cent. of this sum was earned on account of mileage within the City of Chicago. This is so near 50 per cent. that we feel justified in recommending that the ordinary toll service of the company, aside from that going to the long-distance company (American Telephone and Telegraph Company), shall be considered as having an earning capacity of 50 per cent. within Chicago and 50 per cent. outside of Chicago. It is reasonably fair to assume that as much traffic comes into the city as goes out over the toll lines. Upon these assumptions, it is proper that the three per cent. compensation (if applied at all to the service to exterior points) shall apply to all of the receipts of the Chicago Telephone Company for toll business originating in Chicago, except as described for the long-distance company. This arrangement, it will be noted, makes it unnecessary in the accounting with the city to enter upon any consideration of incoming toll messages, because the receipts of the Chicago Telephone Company for the ordinary outgoing toll messages aggregate substantially an amount which will account for both outgoing and incoming toll messages when prorated according to the proportion earned within the City of Chicago.

* * * * * * *

1914 It is well understood that operating plant is limited in life, and (however well ordinary repairs have been kept up) after a period of years the generally worn out condition of the equipment or the advance of the art makes a substitution of new equipment desirable and economical. The expense of this substitution which does not increase the gross earning capacity cannot be fairly charged to capital account, but should be defrayed out of a suitably supported depreciation fund which has been gradually accumulated out of the earnings during the life of the equipment, and which, at the end of the life period, has become equal to the first cost of the original equipment diminished by the amount of any "scrap" value or salvage which may be obtained from the discarded equipment. Interest accretions will add to the amount as the fund grows, and the annual sum set aside out of the earnings should be adjusted with this in view. Three per cent. is a con-

servative rate of interest to set as the minimum which ought to be accepted on the moneys of a trust fund, within which category this depreciation fund belongs, and our table is computed on the basis of that percentage. A higher rate of interest would
1915-1916 obviously decrease the size of the annual contributions to the fund which must be made from earnings, but it is not safe to count upon a higher rate of interest being procurable for a trust fund.

The rate at which the telephone art is advancing, and the delicacy of the apparatus used, makes it a matter of particular importance for a telephone company to establish a proper depreciation fund. Depreciation is distinct from maintenance, which latter includes current repairs that are required to keep the plant in first-rate working order as long as it is economically workable at all.

When dealing with reconstruction we have tried to arrive at the best judgment of the effect of future street and park improvements on the existing plant of the Chicago Telephone Company; and we have given due consideration to the fact that the telephone conduit and cable equipment in the heart of the city is likely to be soon disturbed by the construction of street railway subways.

The computations of the Commission are made on the basis of the original cost of the tangible property, excluding land, stock of materials and cash on hand, owned by the Chicago Telephone Company within the City of Chicago at the end of 1905. This differs from the "book value" of the same part of the property by an amount equal to the sums heretofore written off for depreciation. We consider it proper to make our estimate of the depreciation rate on the basis of the first cost. The percentage values attributed to the depreciation fund will be approximately the same for other years, and are applicable to present conditions within the City of Chicago. We have taken the estimate of the relative values of the different subdivisions of the plant as set forth by the engineers of the Chicago Telephone Company. An independent verification of the accuracy of these subdivisions of the total cost was impossible on account of the limited time at our disposal, but they appear to us to be reasonably accurate.

TABLE No. 8.

Estimate of Depreciation and Insurance Fund Made by Commission.

1	2	3	4	5	6	7	8	9
Property.	Original cost.	Life in years.	Per cent. to depreciation account.	Per cent. salvage.	Annual contribution for depreciation.	% to reconstruction & ins. acct.	Annual contribution for reconstruction and insurance.	Total annual contribution to fund.
Underground conduit, main, clay in concrete	$1,126,200	50	.89	0	$10,000	1½	$22,500	$46,500
Underground conduit, main, fibre, etc.	375,400	20	3.72	0	14,000			
Underground conduit, subsidiary	448,500	20	3.72	0	16,700		9,000	25,700
Underground cable, main	1,981,700	20	3.72		44,200	2	39,600	83,800
Underground cable, subsidiary	495,400	15	5.38	10	16,000	2	9,900	25,900
Aerial cable	743,100	15	5.38		24,000	3	22,300	46,300
Poles, including cross-arms, etc.	1,299,400	10	8.73	0	113,400	4½	58,500	171,900
Aerial strand	18,700	12	7.05	0	1,300	3½	700	2,000
Aerial cable terminals	93,400	12	7.05	0	6,600	3	2,800	9,400
Aerial wire, copper	929,700	15	5.38	70	15,000	3	27,900	42,900
Drop wires, copper	649,700	8	11.25	15	62,100	4	26,000	88,100
Subscribers' station instruments	2,428,800	10	8.73	5	201,400	2	48,600	250,000
Private Branch Exchange switchboards	720,800	8	11.25	20	64,900	2	14,400	79,300
Central Office switchboards	2,073,600	8	11.25	20	186,600	2	41,500	228,100
Buildings, fireproof	933,000	40	1.33	0	12,400	1	9,300	21,700
Teams, tools, furniture, etc.	214,000	4	23.92	10	46,100	0	.....	46,100
Total	$14,531,400	..	.....	..	$834,700	...	$333,000	$1,167,700
Per cent. of original cost	.....	..	.....	..	5.74	...	2.29	8.03

2094 Circuit Court of the United States for the Western District of Kentucky.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY,
Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

The depositions of James E. Caldwell and E. D. Green, taken on the 18th day of April, 1910, at the law office of Judge Henry Burnett, in the Paul Jones Building, Fourth and Jefferson streets, at Louisville, County of Jefferson and State of Kentucky, to be read as evidence on behalf of the Complainant in the above entitled action, caption, certificate and formalities being waived.

Present:
For Complainant: Mr. Granberry.
For Defendant: Mr. Clayton B. Blakey.

By Mr. BLAKEY: As I understand this notice, so far as I am concerned at least, it is a notice on behalf of the Master that he desires the depositions of Mr. Caldwell taken on the question of depreciation solely.

Is that your understanding, Mr. Burnett?

2095 The COMMISSIONER: I would like to hear him on that subject, and I so expressed myself to Mr. Granberry.

Mr. BLAKEY: What I was going to say was this: The Complainant took depositions on the question of the value of the plant at Nashville, and rested its case. The Defendant went to the expense of some fifteen or sixteen hundred dollars to meet that case. The Complainant was then permitted to take other proof, which was certainly not in rebuttal, but direct evidence, establishing another basis on which to determine the value of its plant, and the city went to the expense of some $500 to meet that case, and it is certainly my understanding that the evidence was closed, and any depositions that the Master wants to take on any particular subject, of course, that is with the Master to determine. I understood this was a deposition of Mr. Caldwell, taken partially, at least, at the request of the Master as to Depreciation. Mr. Green, as I understand, is Superintendent of Construction in Louisville, and is one of the men whom Mr. Jagoe spoke of as having made an inventory of the property at Louisville. Of course, I don't know what it is intended to ask Mr. Green, but I assume it is along the line of fixing the value on the plant. Should Mr. Green testify—of course, what he would say, no one can tell until he says it, but it would mean that the city would be put to the expense of employing other experts possibly to meet what Mr. Green had to say. I did not want to put the city to any further expense in meeting these various cases that they

2096 may seem to put up.

The MASTER: I suppose Mr. Green's testimony will be confined to rebuttal.

Mr. BLAKEY: That is what they said about Mr. Jagoe, and we had to go to the expense of $500 to meet it. It was not rebuttal. I do not think the Master ought to permit Complainant to take any further depositions. Complainant has rested its case. Defendant has rested its case. The Complainant rested its case again, and the Defendant rested its case again.

Mr. GRANBERY: I would like to make a statement on that before the Master rules. When the Defendant closed its case, the Complainant set about taking its rebuttal proof. When Mr. Jagoe was on the stand testifying in rebuttal, he was asked on cross examination, if he actually counted the poles in person in Louisville. He stated that he had not, but that Mr. Green had done it under his direction, thereupon, I ask the City Attorney if he was going to object to Mr. Jagoe giving this information. He then stated in the presence of the Master, that I could take Mr. Green's testimony at any time, before the proof was closed on that point. Thereupon, we proceeded to New York to take the deposition of Mr. Wilkerson. While we were in New York, or coming back from New York, the City Attorney stated that he wished to take the deposition of Mr. Polk, and wanted me to meet him the following Monday in
2097 Toledo, stating that he could not get hold of Mr. Polk after the first day of April, and it would be necessary for him to take his deposition at some time prior to that date. I assented and agreed to go to Toledo the following Tuesday, but was notified by the City Attorney that it would not be necessary to go to Toledo, that he would arrange for Mr. Polk to come to Louisville. I agreed to let Mr. Polk's deposition be taken out of order and before I had closed my rebuttal proof purely as an accommodation to the City Attorney, understanding from him that unless he took Polk's deposition prior to the first of April, he could not get it at all, but I had never closed my case in rebuttal, and I have allowed Mr. Polk's deposition to be given out of time, as a pure accommodation to the City Attorney.

Mr. BLAKEY: Mr. Polk's deposition was not taken until the 10th of April. The conversation you speak of on the train was certainly with the distinct understanding on my part that you had closed your case and I had to give you notice to take Mr. Polk's deposition any time I saw fit. It was merely a discussion of whether you could make it suit your convenience to take it before the first. I never agreed that Polk's or Green's deposition might be taken at any time, except as Jagoe's deposition was taken. I said, if anything, if Mr. Jagoe's deposition was allowed in, of course, I supposed Mr. Green's deposition would be allowed in for the same reason, and that it certainly ought to be taken before the city was re-
2098 quired to meet the case you made at that time.

Mr. GRANBERY: I will ask the Master Commissioner to state his recollection of the fact as to Mr. Caldwell's deposition, whether it is not a fact that it was understood by him all the time that Mr. Caldwell's deposition would be taken in rebuttal.

The COMMISSIONER: My understanding has been—I don't remember whether I suggested it or whether Attorney for Complain-

ant suggested it, but in any event, I thought that the question of evidence on the subject of depreciation, when you consider that Mr. Wilkerson filed some exhibits showing from his standpoint the proper allowance for depreciation, which are not taken from the books of the company, as I understand it, in reading his deposition—I thought and still think that matter ought to be made a little more clear. I think it is all right, but I think it ought to be confined, this deposition and Mr. Green's, strictly to rebuttal matters, and it may be that I will, of my own accord, ask some questions.

Mr. GRANBERY: I will ask the Master to state his recollection of the City Attorney's statement at Nashville about the taking of Mr. Green's deposition on the pole account.

The COMMISSIONER: I do not recall that matter. I did not pay much attention to it. I thought it was in my own hands,
2099 and I will overrule any objections. I want the evidence to be as full as possible, except that I think that we ought now at this stage of the procedure, confine the proof strictly to rebuttal matters on such questions as the Master may see proper to ask.

Mr. BLAKEY: I think we might get some idea about what rebuttal matter is. Mr. Jagoe says there was 14,000 poles here in round numbers, which he says is his information and Mr. Polk says there are, according to his estimate, about 10,000 poles here. After we have closed our case, the city has closed its case, I don't think that the Complainant should be allowed to introduce evidence on that subject, because all we did was to say what we thought was the estimated number of poles here.

The COMMISSIONER: Nobody has testified that he counted the poles, and that he knows how many poles there are. All the evidence, as I remember it, was based largely on estimates.

Mr. GRANBERY: The sole purpose in taking Mr. Green's deposition is to prove two facts by him: One is, that he actually counted these poles, pole by pole; and the second is, to prove that the company does have No. 10 iron wire serving surburban subscribers, and that is strictly in rebuttal to the testimony of Mr. Polk, given this month, that the company had no No. 10 iron wire in this
2100 exchange for subscribers' use.

The COMMISSIONER: Well, let's get along.

JAMES E. CALDWELL, called in rebuttal for the Complainant, being duly sworn and examined by Mr. Granbery, deposed as follows:

Q. 1. You are the President of the Complainant Company?

A. Yes, sir.

Q. 2. And you have heretofore given your deposition in this case?

A. Yes, sir.

Q. 3. Evidence has been introduced by the defendant as to the rates charged in Kansas City, St. Louis, Columbus, Toledo, and possibly other places: I will ask you to state whether that information has any bearing or throws any light upon this controversy in any way?

Mr. BLAKEY: That is a question that is not on the subject of Depreciation, evidence that could have been brought out when you were rebutting defendant's evidence, and therefore, I object to it.

Mr. GRANBERY: I have never closed my case in rebuttal. I have never had a chance to close it.

The last question was read by the Stenographer.

The COMMISSIONER: I don't think that is evidence, but to
2101 save time, go ahead.

Mr. BLAKEY: I want to make it now, because if that is his line of questioning, he is going to indulge in, it means we are going over the whole case again.

The COMMISSIONER: I understand you are objecting to everything most. Just let the witness go on and make the statement. That is the shortest way out of it.

A. I regard it as very irrelevant and largely academic.

Q. 4. Please give your reasons.

A. For the reason that local conditions are so entirely different in various places, the quality and quantity of service rendered for the respective rates are also different, that it makes it quite impossible to draw any parallel or definite conclusion from such information.

Q. 5. Does it throw any light upon the reasonableness or unreasonableness of the rates in other places, in Louisville, for instance?

A. I don't think it does, as I say, I regard it as entirely irrelevant and academic.

Q. 6. Mr. Polk stated that the Western Electric Company not only made up plans and specifications, and supervised the installation of the telephone switch-board for the Complainant company, but had often times refused to permit the Complainant's employés access to the room, where they were installing the apparatus. Is that so?

A. We have never had any such experience. On the contrary, our experience with them has been just the opposite.

Q. 7. Who makes up the specifications, and who supervises the installation of the switch-board in the Complainant com-
2102 pany's system.

A. Our Engineers.

Q. 8. What is the theory upon which the rates of the city of Louisville are established and charged?

A. Upon the theory——

Mr. BLAKEY: Do you think that is in rebuttal of anything, even if he is entitled to introduce rebuttal proof.

The COMMISSIONER: I will hear it.

A. It is upon the theory of paying for what—the customer paying for what he actually gets, and considering the use and value. Those are the two basic principles upon which rates are made by us in Louisville.

Q. 9. What would be the effect with reference to patrons in your judgment if the rates prescribed in the rate ordinance under consideration should be put into effect?

A. Well, it would have the effect of possibly causing a considerable increase in the patronage on that line, calling for a very considerable increase of capital stock. In other words, they would have a right to consider it as people do bargains, and their action would be very much the same as the public is when they consider that they are getting a thing below its cost. In other words, the incentive to buy bargains is very great, meaning thereby that they are getting a thing at a price that it will not be furnished permanently at.

Q. 10. What are the maximum business and residence
2103 rates in Louisville?

A. Net $7.50 a month for straight or private lines, and $3.50 net for private lines in residences.

Q. 11. What would you say would be the immediate effect on the patrons who are paying more than the rate ordinance prescribes, the maximum rate ordinances for unlimited business and unlimited residences.

A. They would, of course, drop at once to that class of service and the income that is derived by them, that would be lost.

Q. 12. What effect would the introduction of those rates have upon the company and its business in Louisville?

A. As I said before, it would necessitate upon the part of the company a very—possibly and almost certainly a very large increase in its investment here. It must be borne in mind that for every customer an additional investment has to be made, and that it might and very likely would, necessitate quite a revolution in its whole engineering plans—outlay.

Q. 13. Would the expenses be increased or decreased?

A. Expenses would be increased in proportion as the business rose, and increases. The rates that the customer pays for the service has no bearing on the expenses. I mean by that, that it would be just as much expense to supply service to a customer having a direct line,—the expense would be just the same if he paid nothing as it would be if he paid $20 a month for it, and as the business increases, and as the greater number of lines are connected with the
2104 exchange the expense would rise in a proportionate ratio. The fact would be that the ratio of expense would increase, and the ratio of income would decrease.

Q. 14. Mr. Polk has stated that the company had excess cable facilities in the Louisville plant, sufficient to accommodate 8,000 additional subscribers. Do you know whether that is true or not?

A. I don't know that fact. It is new to me, and I don't think it is true. We carry and aim to carry a certain excess service to take care of customers, as they would come in the ordinary growth, and I do know that we have some surplus here. It might be that we would have that amount of surplus in some conduit space. We might have it in buildings. We might have adequate space in our buildings, and as I say, in the conduits, but to say that we have that as a complete equipment, ready to take on those customers, that would not be true.

Q. 15. Is the company contemplating at the present time any extension of the cable system in the city of Louisville?

A. Yes, sir; we have under consideration, right at once, an extension which is estimated to be something like $20,000, that is to take on customers in a part of the city where the facilities are already exhausted and the growth is increasing.

Q. 16. How far has that progressed? Have the local rep-
2105 resentatives——

Mr. BLAKEY: I don't think we ought to go into all these questions. They are not in rebuttal of anything and they are not matters which were left open at all.

The COURT: Let the witness go on.

Mr. BLAKEY: I would like the Master to state whether or not it was his understanding, when we left New York, after taking Mr. Wilkerson's deposition that Mr. Granbery had closed his case?

The COMMISSIONER: I understood that Mr. Caldwell was going to testify. I don't know whether I got it right at that time or when it was, but I have been under that impression, and at some stage of the proceedings since we were in Nashville, I know I suggested that I would like to hear Mr. Caldwell on several points.

The last question was read to the witness by the stenographer.

Q. 17. Have the local representatives of the company taken any action in regard to that extension of the cable system in Louisville?

A. They have notified the central office that there was a need for such facilities, and the engineers have the matter up for making up the estimates.

Q. 18. Did the general manager have anything to do with the matter?

Question objected to as hearsay.

2106 A. Yes, sir; the General Manager has been here and had the matter up with me, and discussing the kind and extent of the investment that will be made.

By the COMMISSIONER:

Q. 19. Do you apprehend that a reduction in the rates here would bring about a sudden increase in the number of subscribers?

A. The effect, I think, would be two-fold: First, that there would be an immediate and sudden increase in business, and that the effect on our business at large, would be to drag it all down. In other words, we could not possibly sustain rates elsewhere out of parity with Louisville.

By Mr. GRANBERY:

Q. 20. Now, on that point: Suppose the rates should be reduced at other points in the company's system on a parity with the rates prescribed by the Louisville rate ordinance, what would be the effect on the company's business?

A. It would be very pronounced, and to the extent that I unhesitatingly say that it would bankrupt it.

Q. 21. Now, coming to the question of Depreciation, I will ask you to state in your own way as fully as you can, what is depreciation, how it is treated by your company, and how it is handled?

A. Depreciation covers—in other words, when I am considering depreciation and when I am discussing it, it covers quite a wide field. Not only is contemplated the wear and tear that is not observable or that does not require immediate attention, but it
2107 also contemplates the changes in the art, the evolution that has gone on and is going on continuously, and the unknown dangers and hazards that are likely to come up and are sure to arise in some form, not at stated intervals and not perhaps frequently, but will arise in some form or other and call for extraordinary expenditures. That, I say, is the field that I have before me when I am considering the question of Depreciation, and the necessity to provide therefore is imperative. As to how it may be treated, or how it may be kept, is a subject that will vary and has varied with different people in different lines of business, but whether it is reckoned with in the accounts or not, does not alter the fact that the force is working its way all the time, and that it will have to be reckoned with inevitably. In other words, it is a force that is not dependent upon the whim or idiosyncrasies or opinions of individuals. They are entirely above and beyond any such influences.

Q. 22. Have you made a study of Depreciation as applied to a telephone property?

A. I have had it under consideration and as a element of study, ever since I have known anything of the business.

Q. 23. Does the Interstate Commerce Commission recognize this question of Depreciation in dealing with the railroads of the country?

A. I think it is universally recognized.

Q. 24. Now, is this Depreciation the same in all kinds of
2108 properties?

A. No, sir; it varies every variety of property.

Q. 25. Now, in getting at the amount that has to be allowed out of the receipts of the business to take care of this question of Depreciation, have you taken into consideration, or do you take into consideration, the difference in the cost at different times, of the different material entering into the plant? For illustration, if cable during the year 1910 should cost, say twenty cents a foot and during 1911 it should cost ten cents a foot, and the value of the property based upon cable at ten cents a foot would be the value upon which a return should be figured, would that difference in the cost of cable figure in your estimate on Depreciation?

A. We have used—I have considered that seven and a half per cent was about a figure. I say, seven and a half per cent, that represents seven and a half per cent of the cost of the property, has been the sum that I have considered was approximately correct. I felt like to attempt to provide beyond that would be, if not impossible, at any rate impracticable, and to reckon anything under that would be unsafe. Clearly, fluctuation in the values has got to be met somewhere. It has got to be treated as much—for instance, the cost of a cable at twenty cents a foot, copper at twenty cents a pound, that cir-

cumstance, as I say, you would have to earn a rate that would allow a return upon that, or if it was going to be inventoried down,
2109 when the price fluctuates, then that whole loss will have to be provided for somewhere. Now, I have not considered that loss in that variation as being covered or being contemplated to be covered in that seven and a half per cent. I don't think it would take care of such a contingency, but I felt that the cost of the property, one way and another, would be the fair amount to reckon as the capital upon which to earn the return and make the calculations of replacement.

Q. 26. That is assuming that the investment was judiciously and with good business judgment made?

A. Undoubtedly, that is the assumption. The best that possibly could have been done at the time, was done, and that every business prudence and precaution was taken.

Q. 27. Do you know whether or not the Chicago Commission, in getting a valuation of the Chicago Telephone Company's property, upon which the city was to base rates, used actual value at that particular time or actual cost value?

A. I don't know. I am not familiar at this moment with just what it is. I would have to refer to their report.

Q. 28. Is it fair in your opinion to take the present value of material in the market, and figure the value of the plant upon that or should it be the original cost, or should it be taking the value of the material over a period of years—which of these?

A. I think the safe and fairest thing is to take it over a
2110 period of years, not taking it in extremes in either case, either high or low.

Q. 29. Does the value of material entering into a telephone plant vary from year to year?

A. It does.

Q. 30. I mean the cost value?

A. Yes, sir; for instance, on copper now, which is a very considerable element in the construction of a telephone plant, is on a basis of about thirteen cents, whereas only a short time ago, it was selling on a basis of twenty-six or twenty-seven cents. Therefore, I consider that it is running on the extreme. As I say, then it was extremely high, and now it is extremely low.

Q. 31. Do you know what basis Prof. Jackson used in getting at the value of the New England Company's property, when he was making the value of it for the Massachusetts Commission?

A. I think he took copper at eighteen cents.

Q. 32. Do you know how he arrived at that, whether it was the price at that particular time or whether it was for a series of years, or whether it was at the time it was purchased?

A. I think it was the average he was taking. I think he considered that was the fair average. That is about the average, right about that, is about the average that copper has cost us. I should say, taking the copper in our territory from one end to the other,
2111 that it would be found to be very close to that, as the average, running through a period of twenty years.

Q. 33. Is this item of Depreciation an expense of conducting the business?

A. Right there, I should explain, when I have been giving the extreme of thirteen and twenty-seven cents, that meant the cost at the factory; whereas, Professor Jackson, in making his eighteen cent average, I think, counted it on the ground, place of delivery, and that is what I had in mind when I said that our average would be about eighteen cents at points of delivery.

The last question was read to the witness by the stenographer.

A. It undoubtedly is.

Q. 34. To what should be charged the expense of Reconstruction?

A. It should be charged to Repairs.

Q. 35. I mean, is that an expense or a capital charge?

A. Expense.

Q. 36. Now, in figuring this seven and a half per cent depreciation, did you include in that any expenses that have fallen upon the company on account of the city's action in the City of Louisville, during the past year or two years?

A. Why, we would naturally contemplate some expense of that nature. We have not calculated or contemplated anything
2112 like the Extraordinary Expenses that have arisen. For instance, in the litigation here at Louisville.

Q. 37. What expenses in that respect, which I understand you to say are unsual and not contemplated have arisen during the past two years, in regard to the city of Louisville plant?

A. The expenses of experts have been very heavy, experts which we had to employ to work in connection with those that were put upon our books by the city, which went over a considerable period of time, running into thousands of dollars. The legal expense of fees to lawyers in these particular cases alone, outside of General Counsel Expenses, have gone to quite $15,000 in one item. The sum total of the expenses in these cases has not been considered—or no such expenses were considered by us in making up our calculation for Depreciation.

Q. 38. You include also the expenses of defending the company's franchise which the city undertook to repeal?

A. Yes, sir. The two are rather together, the rate case, and the franchise case.

Q. 39. Has the company been able to make an amount sufficient to take care of the Depreciation in the City of Louisville since it has owned the plant?

A. No, sir; it has not.

Q. 40. Can an expert unfamiliar with the telephone plant have a correct or an accurate idea of the Reconstruction Expense or the Depreciation Expense of that plant?

2113 A. He could do no more than make a guess at it.

Q. 41. Who should have the best opinion in regard to that matter?

A. Those who live with it, and have the responsibility for the result.

Examined by the COMMISSIONER:

Q. 42. In Mr. Wilkerson's report, he says that prior to 1905, there was no separate account kept of Reconstruction by your company. That is correct, is it?

A. Yes, sir; that is correct.

Q. But that it was all embraced under the head of Maintenance?

A. Yes, sir.

Q. 44. Now, in 1905, there was a separation of those two accounts and he states here on page 13 of his report, that during the four years, 1905 to 1908 both inclusive "The Complainant has expended in actual repairs, reconstruction and replacement of its telephone plant at Louisville, the total sum of $377,960.55, or equal to an average of $94,490.14 a year. This actual expenditure was equal to 5.79 percent per annum on the cost of construction." Now, in addition to that, Mr. Wilkerson makes up a statement based, as I understand it, on the proposition that all telephone companies are fairly entitled to seven and a half percent annual
2114 depreciation fund. Now, that excess over and above the amount he has given, he puts down at $301,640.45, or an average of $75,410.11. Now, these two amounts, that is, the amount first given as having been actually expended for Maintenance, Reconstruction and Replacement and the latter amount as being unexpended, together amount, as he states it to more than ten per cent of the cost of the plant. Now, what I wanted you to explain is whether or not in your judgment the seven and a half percent claimed for depreciation, ought to include the amount expended for Maintenance?

A. It in all likelihood, ought to take a part of that, and a part not. I will endeavor to explain that to you in this way: If a brick—if something should fall off of this house, a brick or something, and break our route in two there, men would go there to repair that. The cost of doing that would be Incidental Repairs, and it would go into Maintenance, but it would not be that class of expenditure which would be counted as a thing to perpetuate and renew the property. Now, then, all that class of expenses, if it had gone into Maintenance, would have to be taken out, and excluded before you made up the amount that would represent what you term the equivalent of seven and a half percent, and evidently, that is what he has done. He has taken out of that first expenditure in the sum total there, such an amount as would go just for Incidental Repairs, and then taken that for Renewal purposes or Re-
2115 construction, don't you see? That then, would represent a part of this seven and a half percent fund, and what it lacked of making up the seven and a half percent, is what is represented in his amount which he has estimated he still had held in abeyance.

Q. 45. Now, then, the distinction between Maintenance and Reconstruction is more or less shadowy.

A. It is. It is a hazy line in there that requires very careful auditing to determine just where it should properly belong.

Q. 46. There is another point that I would like to have cleared up. I have been re-reading this morning, Mr. Smith's deposition.

He says that for a period — time, the Cumberland Company charged for installing an apparatus in a subscriber's house, the cost of the instrument of the cord and of the wire and the labor attached to it, and charged that to Construction Account. Now, then, in the same connection, but not in answer to the same question, put by Mr. Blakey, he said that for a period of time in addition to that, as I understand it, the company made a lump charge for construction of $10 per instrument. Now, if I remember the testimony correctly, I would like for you to explain that to me, why was the ten dollar additional charge, if that is what the witness stated, the way I understand it. Why was that added?

A. I think I understand it quite clearly, that the instrument itself, represented a certain amount of money.

2116 A. It is the same thing, same result, only the actual way of doing it was, instead of charging the Construction to these thousand that went in, and crediting it with the eight hundred taken out, it was only charged with the net gain of two-hundred, don't you see.

Q. 50. Now, I don't understand that.

A. If, in the month of April, we put in a thousand instruments, and charged $10 for it, that would have represented $10,000.

Q. 51. And that is chargeable to Construction?

A. That would have been chargeable to Construction. Now, if we had taken out eight hundred——

Q. 52. In May?

A. No, in the same month, they would have credited back eight-thousand.

Q. 53. That would have been credited to Construction?

A. Credited to Construction. Instead of putting it through that process, we have, say at the end of the month, we had made a net gain of two hundred, they would charge $2,000 to Construction, don't you see?

Q. 54. I see.

A. It has the same identical effect as if he had charged $10,000 and credited $8,000. He has only got into the account the net increase.

Q. 55. Going back to the Ohio Valley Purchase or consolidation, Mr. Smith states that the Ohio Valley Construction Account

2117 as of date January 1st, 1899, was $638,196.74. The toll line construction, he says, was, as found by the joint Auditors, $125,406.80.

Mr. BLAKEY: I think that was a part of the $638,000.

Q. 56. Yes, I understand that. Now, then, he says if you will take that amount, to-wit, the cost of the toll line Construction from the Total Construction Account, it will leave so much. Now, isn't the toll line construction considered a part of the exchange?

A. No, sir; the Toll Line Construction Account cost is not considered a part of the exchange cost.

Q. 57. Now, that was a part of your purchase. You bought that from the——

A. We bought that as a whole, you see. In the Ohio Valley as a whole, we bought that.

Q. 58. Including the toll lines?

A. In that, we bought all exchanges and toll lines, you see, and he is giving there a separation of the value.

Q. 59. Now, when you transferred to the books of the Cumberland Telephone Company the cost of the Louisville Exchange, was there included in that cost of the Louisville Exchange—in other words, when you separate it, the total cost of the Ohio Valley and its eleven exchanges and set apart the cost of the Louisville Exchange, was the cost of the toll lines $125,000 included in the cost of the Louisville Exchange?

2118 A. It should not have been so, and I do not understand that it was.

Q. 60. I have got mixed up on that and I wanted to ask you a question on it. That is all.

Cross-examined.

By Mr. BLAKEY:

Q. 61. Mr. Smith is in charge of the books of the company, isn't he?

A. Yes, sir; he is the Auditor and in charge of the accounts.

Q. 62. Do you stand by what Mr. Smith had to say about the books and what they contained, what they represented?

A. I have every reason to believe that any statement that was made by Mr. Smith would be true and correct to the best of his knowledge and belief.

Q. 63. Do you have every reason to believe that the books showed what he said they showed?

A. I do. I have every confidence in the entire honesty and truthful statements of Mr. Smith.

Q. 64. I hand you a pamphlet which is entitled "Annual Report of the American Telephone & Telegraph Company to the Stockholders, 1909" and ask you what that book represents, if you know?

A. This purports to be the Annual Report of the President of the American Telephone & Telegraph Company to its stock-

2119 holders.

Q. 65. Do you know that that is the report made by the President of that company to the stockholders?

A. I have no reason to doubt it whatever.

Q. 66. Will you file that and make it a part of your deposition?

A. I do so.

The pamphlet in question was thereupon filed with this witness' deposition and marked by the Stenographer for identification "Exhibit Caldwell, Rebuttal No. 1."

Q. 67. In your original deposition in this case, you stated on page 604 that you considered ten percent the proper amount to set aside for Depreciation, I believe; was that true?

A. I would consider that ten percent would not be an improper amount.

2120 Re-examined.

By Mr. GRANBERY:

Q. 68. I will ask you to look at your deposition on page 604 and read exactly the answer that you did give at that time.

A. The question asked was: "What percent of the original cost of a telephone Exchange for the city of Louisville is necessary to be set aside out of the earnings, in order to provide for the renewal of the property from time to time, as the same decays or becomes worn out, or out of date?" The answer was: "It will not be found very far from ten percent. It might be something under that, and it might be something more, but between seven and a half and ten percent, is in all likelihood the amount that will be found necessary, and these estimates will necessarily vary and will be varied from time to time as experiences gain."

2121 O. D. GREEN, called for the Complainant in rebuttal, being duly sworn and examined by Mr. Granbery, deposed as follows:

Mr. BLAKEY: I want to renew my objection to Mr. Greene's deposition.

The COMMISSIONER: Lets the Record show the same objections made and the same rulings had.

Q. 1. You are the City Foreman of Construction for the Cumberland Telephone & Telegraph Company in its Louisville Exchange?

A. I am.

Q. 2. How long have you occupied that position?

A. Almost two years.

Q. 3. Where did you come from to Louisville?

A. I was out in the district at the time, one of the crew in the district.

Q. 4. Did you, during any time this year count the number of poles in the Louisville Exchange?

A. I did.

Q. 5. I will ask you to state how many poles you found in that exchange? I will ask you to state first how many poles you found carrying exchange wires exclusively?

A. I would have to refer to these notes. I have not got it exactly without it, that is, I could not carry it in my head. Local lines only, is that the question?

Q. 6. Yes.

2122 A. 12,584.

Q. 7. How many did you find carrying both exchange of wires and toll line wires?

A. 1,815.

Q. 8. Do you know how those are divided between toll lines and exchange, according to circuits?

A. Well, not exactly; the percentage of locals, is the greatest. I have not figured exactly how much.

Q. 9. State whether or not the Cumberland Company has now and had last year any No. 10 iron wire serving local subscribers?

A. No. 10 serving local subscribers?

Q. 10. Yes.

A. Quite a bit of it—yes, sir.

Q. 11. Do you know how much?

A. There is between 559 and 600 miles connected with the Louisville Exchange.

Q. 12. Why is that No. 10 iron wire used for that purpose?

A. Because the carrying capacity of 14 is not sufficient.

Q. 13. Where is this No. 10 wire used?

A. Principally on our long lines; some of it on short lines.

Mr. BLAKEY: I decline to cross examine the witness because had the deposition been taken before Mr. Polk gave his deposition, I should have had an investigation made to meet this case, as I did have an investigation made to meet the case made by Mr. Jagoe. Instead of cross-examining the witness, I now make a motion
2123 to *swash* his deposition. The city cannot again go to the expense of having a man come here and meet the case made by this witness.

The COMMISSIONER: My idea about this is that the testimony heretofore about the number of poles in Louisville, as I recall it, has been based almost entirely upon estimates. Men rode along and walked along the lines and estimated that there were so many. This testimony I think is the kind of testimony that the case ought to have had as an original proposition. It seems to me that the city could have had ample facilities for counting the poles heretofore and could have made an absolutely correct statement.

Mr. BLAKEY: Of course, we would have counted them had they presented any such case. We were not called upon to answer any such case, until they presented it. Now, we have reached the end of our rope so far as spending the money of the city is concerned.

Mr. GRANBERY: You will recall that Mr. Jagoe stated the exact number of poles, which is not different from what Mr. Green stated, and stated at the time that Mr. Green counted these poles under his direction, and that was before Mr. Polk's deposition was taken the last time, and we never heard any dispute about their being No. 10 wire until Mr. Polk took the stand the other day and said we did not have any.

2124 1909.

Annual Report of the Directors of American Telephone & Telegraph Company to the Stockholders for the Year Ending December 31, 1909.

Boston: Geo. H. Ellis Co., printers, 272 Congress Street, 1910.

2125 American Telephone & Telegraph Company.

Officers.

President, Theodore N. Vail.

Vice-Presidents, Edwin J. Hall, H. T. Thayer, B. E. Sunny, U. N. Bethell, William R. Rriver, Charles P. Ware.

Treasurer, William R. Driver.

Secretary, Charles Eustis Hubbard.

Directors: Charles W. Amory, George F. Baker, Francis Blake, Alexander Cochrane, T. Jefferson Coolidge, Jr., W. Murray Crane, Henry P. Davison, Rudolph Ellis, Henry S. Howe, Charles Eustis Hubbard, John J. Mitchell, William Lowell Putnam, Thomas Sanders, Sylvanus L. Schoonmaker, Nathaniel Thayer, Theodore N. Vail, John I. Waterbury, Moses Williams.

2126 *Report of the Directors of American Telephone and Telegraph Company.*

NEW YORK, *March* 8, 1910.

To the Stockholders:

Herewith is respectfully submitted a general statement covering the business of the Bell system as a whole, followed by the report of the American Telephone and Telegraph Company, for the year 1909.

Bell System in the United States.

Subscriber Stations.

At the end of the year the number of stations which constituted our system in the United States was 5,142,692, an increase of 778,063. 1,508,790 of these were operated by local, co-operative and rural independent companies or associations having sub-license or connection contracts, so-called connecting companies.

Wire Mileage.

The total mileage of wire in use for exchange and toll service was 10,480,026 miles, of which 649,308 were added during the year. These figures do not include the mileage of wire operated by connecting companies.

2127

Traffic.

Including the traffic over the long-distance lines, but not including connecting companies, the daily average of toll connections was about 517,000, and of exchange connections about 19,925,000, as against corresponding figures in 1908 of 463,000 and 18,500,000; the total daily average for 1909 reaching 20,442,000, or at the rate of about 6,582,300,000 per year.

Plant Additions.

The amount added to plant and real estate by all the companies, excluding connecting companies, constituting our system in the United States during the year 1909 was:

For exchanges	$20,958,700
For toll lines	6,316,100
For land and buildings	1,425,300
	$28,700,100

Plant Additions of Previous Years.

The amount added in 1900 was $31,619,100; in 1901, $31,005,400; in 1902, $37,336,500; in 1903, $35,368,700; in 1904, $33,436,700; in 1905, $50,780,900; in 1906, $79,366,900; in 1907, $52,921,400; and in 1908, $26,637,200, making the total expenditure for additions to plant during the ten years $407,172,906.

Maintenance and Reconstruction.

During the year $44,838,900 was applied out of revenue to maintenance and reconstruction purposes.

The total expenditure for maintenance and reconstruction
2128 charged against revenue for the last seven years was over $231,500,000.

Our charges against revenue for maintenance and reconstruction are no more than a conservative policy would dictate. It is necessary to make suitable provision for any change of plant and equipment required by the evolution and development of the business.

In the meantime the public is getting the benefit of the surplus and reserves without cost to it.

Permanency of Plant.

All that was said last year about the permanency of the plant could be re-said and emphasized this year. Steady improvement is being made in both plant and apparatus, but as the lines on which it is based are of a permanent character the process is one of evolution, not revolution. Careful comparative studies seem to warrant the statement that there is no one of the larger public service corporations that has a greater ratio of plant value to its outstanding obliga-

tions than has this company, nor has the plant of any other such company as great a ratio of realizable value to the book valuation.

Real estate, underground conduits, copper wire, cables of lead and copper, rights of way on private property—which represent such a large proportion of the company's assets—have a permanent value in the business and even a realizable value outside of the business which would be no mean asset.

2129 Construction for the Current Year.

Estimates of all the associated operating companies and of the American Telephone and Telegraph Company for all anticipated requirements for 1910 have been prepared. Maximum expenditure in each case has been agreed upon, and all who are responsible for the expenditures are working in entire accord with these agreements and understandings, and it is believed that the results will be, as they were in 1909, well within the limits fixed.

Associated Operating Companies.

(American Telephone and Telegraph Company Not Included.)

Financial Condition.

The associated operating companies (not including the American Telephone and Telegraph Company) show for the year, as compared with last year, an increase in gross of about $10,000,000; operating expenses and taxes increased $2,484,000. (Total taxes paid $6,316,000.) Charges to maintenance out of earnings increased $5,214,000. Interest charges were $80,000 more. The balance available for dividends was $30,899,000—$2,217,000 more. Dividends to the amount of $22,610,000 were paid, an increase of $1,004,000.

The undivided profits were $8,289,000, an increase of $1,212,000.

2130 Associated Operating Companies in United States.

American Telephone and Telegraph Company Not Included.

Comparison of Earnings and Expenses, 1908 and 1909.

(Duplications Excluded.)

	1908.	1909.	Increase.
Gross earnings	$127,117,200	$137,112,700	$9,995,500
Expenses operation	$49,083,800	$50,425,700	1,341,900
Taxes	5,173,600	6,316,200	1,142,600
	$54,257,400	$56,741,900	$2,484,500
Balance	$72,859,800	$80,370,800	$7,511,000
Maintenance and depreciation	37,204,200	42,418,000	5,213,800
Net earnings	$35,655,600	$37,952,800	$2,297,200
Interest	6,973,700	7,053,900	80,200
Balance	$28,681,900	$30,898,900	$2,217,000
Dividends	21,605,300	22,609,900	1,004,600
Undivided profits	$7,076,600	$8,289,000	$1,212,400

Combined Balance Sheet, 1908 and 1909.

(Duplications Excluded.)

Assets:	Dec. 31, 1908.	Dec. 31, 1909.	Increase.
Contracts and licenses	$8,107,600	$7,212,800	$894,800*
Telephone plant	475,034,600	501,757,100	26,722,500
Supplies, tools, etc.	14,858,500	15,713,400	854,900
Receivables	36,359,400	22,578,100	13,781,300*
Cash	8,730,400	11,709,900	2,979,500
Stocks and bonds	23,450,400	28,765,400	5,315,000
Total	$566,540,900	$587,736,700	$21,195,800
Liabilities:			
Capital stock	$375,891,600	$358,938,000	$16,953,600*
Funded debts	39,649,800	79,364,600	39,714,800
Bills payable	85,179,300	66,347,900	18,831,400*
Accounts payable	17,205,500	21,133,800	3,928,300
Total outstanding obligations	$517,926,200	$525,784,300	$7,858,100
Surplus and reserves	48,614,700	61,952,400	13,337,700
Total	$566,540,900	$587,736,700	$21,195,800

* Decrease.

2131 Entire Bell System in United States.

American Telephone and Telegraph Company and Associated Holding and Operating Companies in the United States.

Not Including Connected Independent or Sub-licensee Companies.

There can be no boundaries to a telephone system as it is now understood and demanded. Every community is a centre from which the people desire communication in every direction, always with contiguous territory and often with distant points.

Every exchange must be the centre of the system.

The following tables, showing the business in the United States treated as one system, giving the amount collected from the public and the amount paid in dividends and interest to the security holders, will be of interest.

The gross revenue collected from the public for telephone service by the Bell system—not including the connected independent companies—was $150,000,000; an increase of nearly $12,000,000 over last year. Of this, operation consumed $50,000,000; taxes, $7,000,000; current repairs and maintenance of property and provision for depreciation $45,000,000.

The surplus available for charges, etc., was $48,400,000, of which $10,220,000 was paid in interest and $24,000,000 paid out in dividends to the public.

The capital stock, funded and floating debts outstanding in the hands of the public at the close of the year were $581,300,000. The surplus of liquid assets was $57,200,000, leaving $524,000,000 as the net obligations of all the system to the public.

2132 *Entire Bell System in United States.*

Comparison of earnings and expenses, 1908 and 1909. (All duplications, including interest, dividends and other payments to American Telephone and Telegraph Company by associated holding and operating companies, excluded.)

	1908.	1909.	Increase.
Gross earnings	$138,144,300	$149,914,700	$11,770,400
Expenses operation	48,081,900	49,732,000	1,650,100
Taxes	5,558,100	6,976,300	1,418,200
	$53,640,000	$56,708,300	$3,068,300
Balance	$84,504,300	$93,206,400	$8,702,100
Maintenance and Depreciation	39,736,700	44,838,900	5,102,200
Net earnings	$44,767,600	$48,367,500	$3,599,900
Interest	10,874,100	10,221,400	652,700*
Balance	$33,893,500	$38,146,100	$4,252,600
Dividends	20,719,000	23,910,600	3,191,600
Undivided Profits	$13,174,500	$14,235,500	$1,061,000

*Decrease.

Combined Balance Sheet, 1908 and 1909.

(Duplications Excluded.)

Assets:	1908.	1909.	Increase.
Contracts and licenses	$8,107,600	$7,212,800	$894,800*
Telephone plant	528,717,000	557,417,100	28,700,100
Supplies, tools, etc	15,618,100	17,048,200	1,430,100
Receivables	23,283,800	49,744,900	26,461,100
Cash	53,827,600	32,055,900	21,771,700*
Stocks and bonds	37,032,500	38,166,300	1,133,800
Total	$666,586,600	$701,645,200	$35,058,600
Liabilities:			
Capital stock	$304,139,100	$352,904,100	$48,765,000
Funded debts	236,017,400	187,685,300	48,332,100*
Bills payable	35,680,800	40,721,600	5,040,800
Accounts payable	21,488,600	24,633,800	3,145,200
Total outstanding obligations	$597,325,900	$605,944,800	$8,618,900
Surplus and reserves	69,260,700	95,700,400	26,439,700
Total	$666,586,600	$701,645,200	$35,058,600

*Decrease.

2133 Against these obligations, the companies had property $612,600,000, an excess of $88,600,000, or 17 per cent.

In addition, there is the intangible property, such as licenses, contracts, patents, rights of way, etc.,—not including any public franchises—of great value, which it would now be difficult to obtain at any price.

In every case where the public authorities have appraised the plant of the companies, the valuation has been far in excess of the book valuation. It is within the bounds of conservation to say that the obligations of all the companies outstanding in the hands of the public are represented by 150 per cent. of property at a fair replacement valuation of the plants and assets, not including public franchises.

Western Electric Company.

The policy adopted last year with regard to the Western Electric Company has been more than justified. The company for the year 1909 shows an improvement of $3,125,053 in net over the previous year.

Both the foreign business and the domestic business other than with the Bell system show a marked improvement over last year.

The business is being concentrated at Hawthorne as fast as possible; as soon as completed, the company will have for sale real estate valued at several millions.

Since the close of the year, the company has disposed of $5,000,000 two-year 4½% notes, and $8,750,000 of its 5% bonds. The proceeds of these sales will enable the company to pay off all its floating debt and have working capital sufficient for a largely increased business.

2134 Report of the American Telephone and Telegraph Company.

The improvement which has marked previous years still continues. The net revenue for the year was $30,190,765.86, out of which were paid interest $7,095,377.34, and dividends $17,036,275.64. The balance, $6,059,112.88, shows an increase notwithstanding the large increase in dividends due to the exchange of convertible bonds for shares.

Convertible Bonds.

At the close of business December 31st, 1909, $101,861,000 of the $150,000,000 convertible bonds sold had been handed in for conversion, leaving outstanding at that date $48,139,000.

Share Capital.

Due to the conversion of the bonds, and the sale of the shares of the company which were in the treasury, there has been an increase of $97,998,700 in the outstanding share capital. This increase has been well distributed. The number of shareholders, 35,823 on December 31st, 1909, shows an increase of 9,453 during the year. The distribution is general, there being 35,510 shareholders out

of the 35,823 holding in blocks of less than 1,000 shares each, 1,700,543 shares—an average of 47 shares each. The distribution continues, as the number of shareholders has increased 1,500 during the first two months of the present year.

2135 Increase of Capital Stock.

The limit of the authorized capital with what is reserved against the conversion of the convertible bonds has almost been reached. The expansion of our business is continuous and probably will continue at least as fast as in the past. It is believed, however, that in the future, much of the financing can be done locally, thus relieving this company of the burden and strengthening the local associate company.

While there are not in contemplation any large financial operations, yet a company of this magnitude should be in a position where every situation can be met promptly and effectively; it is recommended that the authorized share capital of this company be increased from $300,000,000 to $500,000,000.

None of this increase will be needed during the current year for ordinary capital expenditures.

Independent and Opposition Companies.

A large number of opposition and independent companies have been absorbed into the Bell system during the year. Our position has been consistent. Wherever any opposition company can be legally brought into and made a part of the Bell system, it is done if it can be done to the advantage of the public, by and with the assent of all parties interested, including not only the public served, but the public authorities.

Rearrangement of Territory.

Some effort has been, and is being, made to make a closer adjustment of the boundaries of our associated companies to the commercial or geographical boundaries.

2136 This has been completed during the past year in the Middle States by bringing together into the New York Telephone Company and the Bell Telephone Company of Pennsylvania the territory naturally belonging to each. In both cases this was accomplished by a virtual consolidation of the various companies operating in the territory, and in both cases the out-standing obligations after the consolidation showed a considerable reduction below the total outstanding obligations of the various companies combined.

In later pages of the report will be set forth the relations between the Western Union Telegraph Company and this company, and the advantages which are expected to result from these relations.

It will also be shown that the capital of the American Telephone and Telegraph Company represents actual cash paid in by its shareholders in excess of the par value of all the outstanding obligations

in the hands of the public, and that it is not represented by stock obtained for surplus earnings, inflated valuations, franchises or other intangible property no matter how valuable;

That the shares of the American Telephone and Telegraph Company are not largely concentrated in the hands of a few individuals;

That improvements in plant and operating methods are more responsible for reduction in rates than competition; and that there is within reach of almost if not every one desiring it, some kind of telephone connection;

That the organization is probably the most effective that could be devised for the business as a whole, and certainly is the only one possible under all the existing conditions;

2137 That the administration and policy have been consistent and uniform from the very beginning;

That the interests of the Bell system are dependent upon giving the best service possible under existing conditions, and anticipating as far as possible any improvement.

Telephone service in its close personal touch with every subscriber is a unique service, different from all other public services; efficient service requires the co-operation of the user, it requires prompt attention on the part of the public.

In every use of the telephone system three human factors are brought into action—one at each end, one or both anxious and probably impatient, the one at the central office, as nearly a machine as is possible, a trained expert with at least as much intelligence and reliability as the best stenographers, typewriters or bookkeepers. This central office factor is the personal servant for the time of the factors at the end and is entitled to the same consideration that is given to their own personal staff. Perfect service depends on the perfect co-ordinate action of all of these factors—any one failing, the service fails. This should never be forgotten. All attempts so far to eliminate the personal factor of the central office, to make it a machine, have failed in systems of any extent; there are times when, at the central office, action guided by intelligence, is absolutely necessary.

2138 History and Development of the Telephone System.

In spite of repeated attempts to make known the real facts of the early history and evolution of the Bell system, there seems to be still much misunderstanding.

At the risk of being prolix, and of repeating what has often been told, the history and evolution and development will be retold as briefly as possible.

The telephone was first introduced to the public in 1876, and put to the first practical or commercial use in 1877. During that year was organized the first "association" or "company" to hold the patents. The first companies to systematically exploit the business were formed in 1878, one for New England, and one for the rest of the United States and Canada. These two companies succeeded to all the rights and property of the original association. The capital, $650,000, 6,500 shares at $100 par each, represented the patents,

such rights and property as had resulted from the time and money expended up to the spring of 1878, and in addition $100,000 in cash.

Early in 1879, these two companies were consolidated into one company, the National Bell Telephone Company, the first company to attain any prominence.

The capital of this company was $850,000, 8,500 shares of $100 par value each. $650,000 in shares was given share for share for the stock of the two old companies and $200,000 in shares left in the treasury. The treasury stock was sold as the company required the money, for the best price obtainable. The $200,000 par yielded to the treasury $430,000 in cash, an average of $215 per share, the last 500 shares having been sold for $600 each.

2139 It was during the existence of this company that the permanent foundations were laid upon which is built the present comprehensive system.

It was in the fall of 1879, that the settlement was made with the Western Union Telegraph Company which removed the most formidable and powerful competitor from the field.

It was during this period that those fancy flights in the prices of the stock took place, the $100 shares (of which there were only 8,500) being quoted at one time at $1,000. Few, if any, transactions took place however at this price or anything near it. The sale of 500 shares of the treasury stock at $600 per share was probably about the best price at which any considerable transaction took place.

The stock of this company was fairly well distributed among 338 holders, an average of about 25 shares each, twelve holding in lots of 200 shares or over an aggregate of 4,795 shares out of the 8,500 shares.

At the highest quotation the total market value of all the shares of the company would have been $8,500,000. According to the popular belief, over twelve of the original investors have been credited with realizing, if not more, at least as much as this.

No dividends were paid by this company.

The rapid increase in the business called for more capital. Early in 1880 the American Bell Telephone Company was organized and the business of the National Bell Telephone Company transferred to it. The shareholders of the National Bell Telephone Company were given for each share of their stock six shares of the new American Bell Telephone Company stock. 8,500 shares of the treasury stock were at the same time sold at par.

2140 At the close of 1880 there were 540 holders of the 59,500 shares, an average of 110 each. Twenty holders of 500 shares or over had in the aggregate 33,190 shares. This was the last year that a majority of the stock was closely held.

In 1881 the first dividend was paid.

The American Bell Telephone Company continued the business until 1899, during which time the capital stock had increased from $5,950,000 to $25,886,300. The $25,886,300 capital was held by 6,961 shareholders. 62,649 shares were held by 61 shareholders

in blocks of 500 shares or over, while the balance, 196,214 shares, was held by 6,900 holders.

The increase in the stock had been sold for cash at various times, yielding the company more than enough in premiums above par to offset the shares that had been issued for patents, inventions, and property of the National Bell Telephone Company.

When the American Bell Telephone Company transferred its business to the American Telephone and Telegraph Company there had been over $28,000,000 actual cash paid into the treasury of the company by shareholders as against $25,886,300 capital outstanding. During the time no stock dividend or dividend of surplus in cash to pay for stock issued was made.

The market price of the American Bell Telephone Company shares during the year ranged above $200 a share. The company was paying 15 per cent dividends yearly.

The demands of the business required much larger capital than could be provided under the corporate powers of the American Bell Telephone Company. The American Telephone and Telegraph Company, a company organized to operate the long-distance traffic, purchased the business in 1899. The consideration
2141 was cash, but in effect the shareholders of the American Bell Telephone Company received two shares of the American Telephone and Telegraph Company for each share held. The dividends were put on a 7½ per cent basis and were increased in 1906 to 8 per cent, at which rate they still continue.

Since 1900 the stock of the American Telephone and Telegraph Company has been increased from time to time as the business called for money. At the close of 1909 there were in the hands of the public $256,475,300.

So much of this stock as was not sold to the shareholders at par was sold for cash at a premium, the highest at $152 per share, or was issued in exchange for the convertible bonds at about $134 per share. None of the stock has been issued as a dividend, nor have any cash dividends been declared to meet payments for stock issues.

At the close of 1909 the premiums thus received over the par of the outstanding share capital amounted to over $14,000,000.

The original owners and promoters of the telephone were first of all business promoters. Their idea was to develop the business on broad lines. Whatever reward they expected or received was the legitimate reward following a legitimate development of a substantial and beneficial business.

The Bell system was founded on the broad lines of "One System," "One Policy," "Universal Service," on the idea that no aggregation of isolated independent systems, not under common control, however well built or equipped, could give the public the service that the interdependent, intercommunicating, universal system could give.

2142 This is no recent or new idea or theory. It is co-existent with the business; in fact the theory was evolved and developed before the business, and the business has been developed on that theory.

To develop the business it was first necessary to develop the "art." It was unique, nothing like it existed; the whole art of the practical application of electricity was new and undeveloped.

To develop the business to the best advantage all the best in the way of instrumentalities, apparatus and methods must be controlled. Apparatus and methods at the start were crude, but new instrumentalities and new methods were suggested from daily association, practice and study.

It was necessary to develop these, improve and reduce the useful to practice, and eliminate the worthless. For this purpose a staff of technical, electrical and mechanical operating experts must be gathered together and educated. To educate and assist these, to enable them to do intelligent work, avoid repetition and duplication, all that had gone before and all that was being done here and elsewhere must be known. For this purpose a bureau of research and information was formed. Patent and legal experts must be employed and educated to secure the advantage of this work and study, as well as to furnish protection in the use of the patents.

A highly developed manufacturing organization under proper supervision and control was required to reduce to practical use these ideas and inventions, as well as to secure the standardization and uniformity of instruments and apparatus.

To ascertain which were the best of the methods being evolved in field practice, to educate the others in the use of them, to assist generally in the development, and to bring about standardization
2143 of operating practice and methods, a staff of traveling experts, observers and teachers was placed in the field.

It is necessary to the growing and constantly improving business that this work be continued. It is being done much more economically and far more effectively by this company than it could be done by the associated companies, and without expense to them except so far as it is covered by the mis-called "rental" of telephones.

The preliminary work was certainly difficult enough. Add to that the necessity of educating a doubting, hesitating public who looked on the invention as little better than a toy, and some idea of the task can be formed.

In the promotion and exploitation of the business two methods were possible.

One Company covering the whole country. This would require a large executive and administrative staff in the field, and a large capital which, at the time, it was impossible to secure. Under this method, state organizations would also have been necessary to hold franchises.

The other way was to enlist a large number of individual workers, each with some capital, large faith and expectation, with great capacity for work, who would cover the field and develop the business.

To insure a common policy and central control, all licenses were issued for small units of territory under restricted terms, confining the business entirely within each territory. The parent company owned and furnished the telephones, had all reversionary interests or rights in the territory, and the right to connect the units with

each other for the purpose of forming a universal intercommunicating telephone system. For this purpose the long-distance lines and other toll lines were built. Under these temporary
2144 licenses certain rentals, so-called, or royalties, were paid to the parent company for the use of the telephones and other inventions owned, and also as compensation for all the many other services rendered, as described above. When these licenses were made permanent and included all future as well as all existing inventions, and the right to the business within the units of territory, the parent company retained an interest in the business which was represented by a stock interest in each company.

These licenses called for a continued certain percentage of the stock of the company, but this right was soon waived by the parent company.

Through purchases to defeat the attempts of hostile interests to get possession of some of our associated companies, through the necessity of financing the companies for the purpose of keeping up with the demands for development, and through the purchase of its pro-rata of new issues, the American Telephone and Telegraph Company acquired its large holdings.

The book valuation of the American Telephone and Telegraph Company's interest in the share capital of the associated operating companies December 31st, 1909, was nearly $306,000,000; of this only 16,000,000 was received through contract or for licenses. The balance, $290,000,000 was obtained under precisely the same conditions that shares have been received by the other shareholders.

While the settlement with the Western Union Telegraph Company in 1879 removed from the field the most formidable and powerful competitor, it must not be concluded that the American Bell Telephone Company had the field to itself. The Bell system did not then, nor did it in any year or any time since the great value of the telephone to the world was established, have a monopoly of
2145 the business or anything approaching it.

Patents and inventions were necessary for defence, but were no protection against imitators.

There was a continued running fight in the courts and in the field. The fact that the Bell won every case in the courts availed it nothing except that it was credited with a monopoly which did not exist.

The only time that the Bell Telephone was without a competitor was at the Centennial Exhibition of 1876.

Competition.

There is not, nor can there be, any competition between these local associated operating companies, as under the conditions under which they can use the instruments and inventions, they must operate entirely within their respective territories; nor can there be competition in the telephone exchange systems operating in the same territory such as exists between other public utilities, certainly not such as exists between two gas companies or even between a gas and an electric light company.

The telephone system does not give you a "commodity" or a

"product," or even a "service" except so far as it is service to make up a "path" or "line" or "highway" for personal communication with a party as some distant point.

The value of a telephone system is measured by the possibility of reaching through its connections any one—at any possible place.

There can be said to be no limit to those with whom one may desire communication at some one time or other. Ordinarily your communications are confined to a certain few other subscribers; occasionally you may wish to reach certain others, but there are times when it is an absolute necessity to get a connection
2146 with some one possibly unthought of or unknown before, and the importance of this connection may be vital.

A purely local exchange has a certain value.

If it has, in addition to its local connections, a connection with outlying contiguous localities, it has a largely increased value.

If it is universal in its connections and intercommunication, it is indispensable to all those whose social or business relations are more than purely local.

A telephone system which undertakes to meet the full requirements must cover with its exchanges and connecting lines the whole country. Any development which is comprehensive must cover some territory which is not, and may never become, profitable in itself but must be carried at the expense of the whole. It must be a system that will afford communication with any one that may possibly be wanted, at any time. To do this the system must offer a connection of some kind, and at such rates, as will correspond to the value of the system to each and every user.

"Interdependence," "intercommunication," "universality" cannot be had with isolated systems under independent control, however well connected. They require the standardization of operating methods, plant facilities and equipment, and that complete harmony and co-operation of operating forces, that can only come through centralized or common control.

Wherever two systems exist, each has, with the exception of a percentage common to both, a different list of subscribers. Those of large and extended social or business connections must connect with both, while those who do not connect with both get only partial service—the same character of service offered by two street car lines, each having its tracks on and running through the principal main street of the town but each extending into and serving entirely different sections of the community.

2147 Offering a connection with a so-called competing exchange, having a list of subscribers either entirely or largely different, is offering a different service, except so far as they connect the same subscribers, and there it is of no benefit, as either one would serve the purpose. Two exchanges, each with the same list of subscribers, cannot, in the nature of things, exist. One or the other would be unnecessary because a subscriber would be paying twice for the same service when either exchange gave all that could be obtained from both. It would be like paying two fares each time you ride in a street car to maintain a parallel line, although you could ride in but one at a time. Competition of that character in-

creases the cost to you. Competition is only of service when it reduces your cost or increases your service.

Economy of Competition.

By reason of duplications, duplication of investment, duplication of operation, competition in telephone systems cannot, in the nature of things, produce economy in operation, and without economy there can be no reduced charges.

With only one system, at once is eliminated the duplication of subscribers' lines—so also is eliminated the greater part of the unused and idle staff, equipment and plant, and with this are also eliminated capital investments, capital charges, operating salaries, plant maintenance and depreciation. That it contributes also to the comfort and convenience of the subscribers is in itself no small consideration.

What Has Competition Done For the Public?

No one can dispute the fact that the Bell methods and system are the standard and have been accepted as the best the world over.

2148 Telephone rates have fluctuated. Beginning with simple and crude instrumentalities and methods, with small developments, the rates were low. As facilities increased, as methods and apparatus improved, and apparatus almost new and hardly in use had to be discarded to make place for new and improved methods, rates had to be increased.

In the New York City exchanges, apparatus and plant practically good as new to the value of over eight and one-half millions of dollars, have been discarded because new improvements had made them obsolete, nearly all between the years 1883 and 1902, and the same is relatively true of any exchange system. As methods, plant and apparatus became more fixed and permanent, methods of operating improved, operating expenses declined, and reductions in rates followed—not because of competition.

Reduction of Rates and Development.

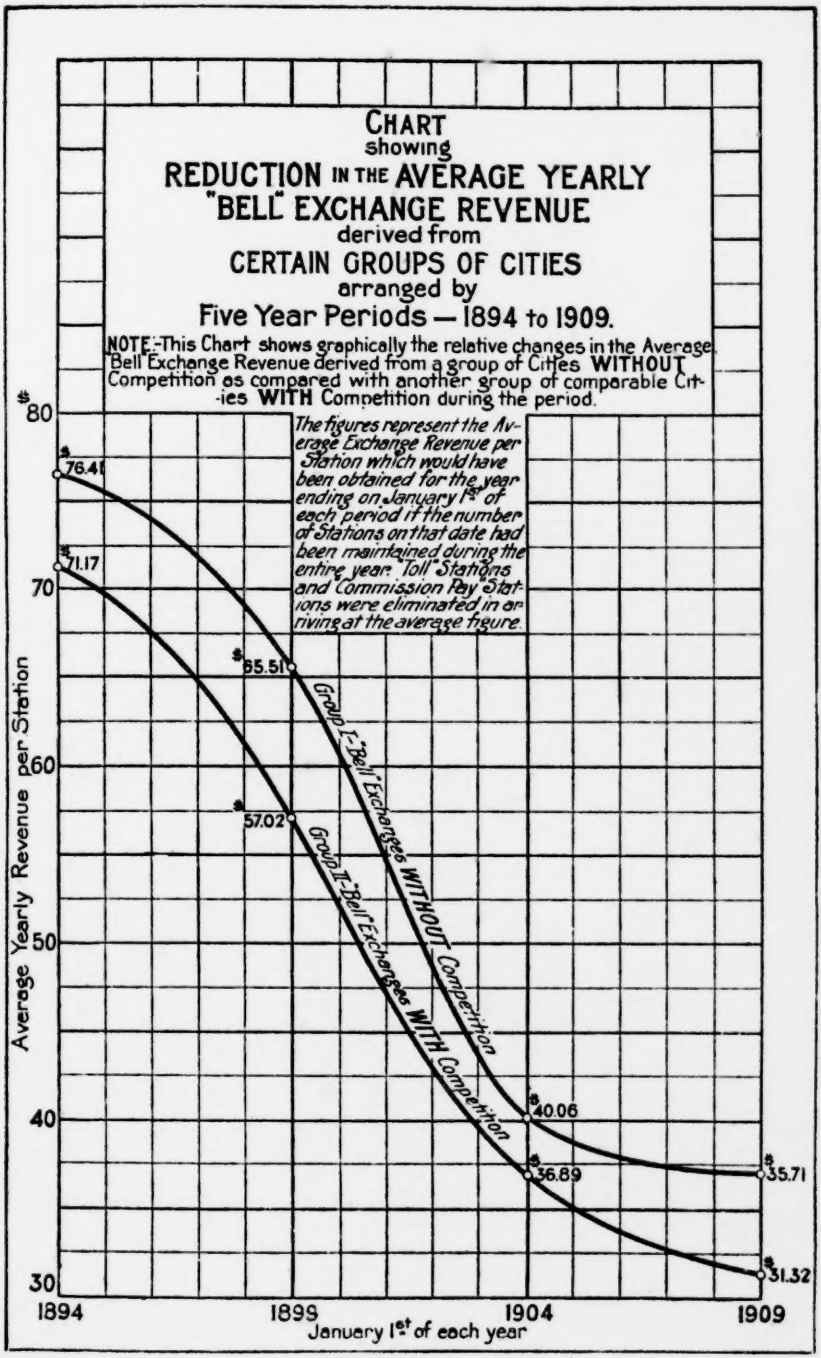
The diagrams on pages 26 and 27 show the course of rates and development from 1894 to 1909, in the principal cities and exchanges with and without competition. The non-competitive cities and exchanges are about 50 per cent. larger than the competitive.

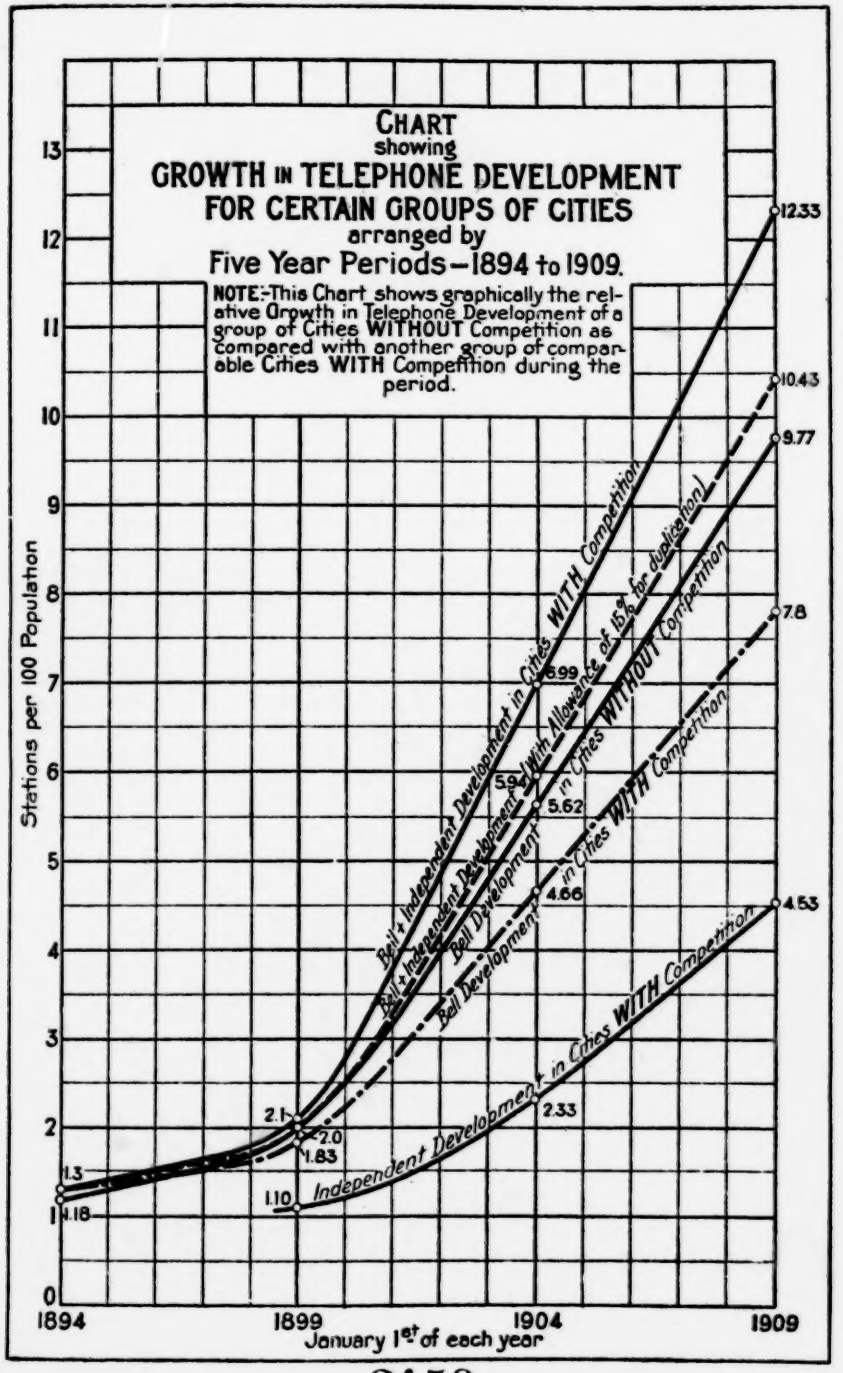
The average revenue per exchange station in competitive and non-competitive Bell exchanges each year for this period is shown in diagram on page 26. The slightly higher average revenue in the non-competitive cities is due to their larger size.

The two curves showing the reduction follow almost exactly the same lines, and the percentage of reduction is almost the same.

Competition certainly had no effect on the Bell revenue, was of no benefit to the public, compelled all to pay two subscriptions instead of one for complete service, besides all the other disadvantages of dual exchange systems.

(Here follows chart marked pages 2149 and 2150.)


CHART
showing
REDUCTION IN THE AVERAGE YEARLY
"BELL" EXCHANGE REVENUE
derived from
CERTAIN GROUPS OF CITIES
arranged by
Five Year Periods — 1894 to 1909.
NOTE.-This Chart shows graphically the relative changes in the Average Bell Exchange Revenue derived from a group of Cities WITHOUT Competition as compared with another group of comparable Cities WITH Competition during the period.
The figures represent the Average Exchange Revenue per Station which would have been obtained for the year ending on January 1st of each period if the number of Stations on that date had been maintained during the entire year. Toll Stations and Commission Pay Stations were eliminated in arriving at the average figure.
Average Yearly Revenue per Station
$80
70
60
50
40
30
$76.41
$71.17
$65.51
$57.02
$40.06
$36.89
$35.71
$31.32
Group I-"Bell" Exchanges WITHOUT Competition
Group II-"Bell" Exchanges WITH Competition
1894
1899
1904
1909
January 1st of each year


CHART
showing
GROWTH IN TELEPHONE DEVELOPMENT
FOR CERTAIN GROUPS OF CITIES
arranged by
Five Year Periods—1894 to 1909.
NOTE:-This Chart shows graphically the relative Growth in Telephone Development of a group of Cities WITHOUT Competition as compared with another group of comparable Cities WITH Competition during the period.
Stations per 100 Population
January 1st of each year
1894
1899
1904
1909
0
1
2
3
4
5
6
7
8
9
10
11
12
13
12.33
10.43
9.77
7.8
6.99
5.94
5.62
4.66
4.53
2.33
2.1
2.0
1.83
1.3
1.18
1.10
Bell + Independent Development in Cities WITH Competition
Bell + Independent Development (With Allowance of 15% for duplication) in Cities WITHOUT Competition
Bell Development in Cities WITH Competition
Independent Development in Cities WITH Competition

2151 The development—that is, the number of exchange stations per 100 population—for Bell exchanges without competition and for the Bell and opposition exchanges in cities with competition, is given on page 27. The same cities are used as for page 26.

The combined Bell and opposition development in the cities with competition in 1909, allowing 15 per cent. for duplication, was 10.43 per 100 population. The average duplication is probably nearer 20 per cent. than 15 per cent.

The Bell development in cities without competition was 9.77—only three-quarters of one station per 100 population less.

The Bell development alone in cities with competition is 7.8 stations per 100 population, or only 2.5 stations less than the combined development, as against the opposition development of 4.53 stations per 100.

The opposition figures are taken from opposition statements and include all the larger places where there were such exchanges and those of the largest development.

Minimum Rates.

For Bell exchanges aggregating some 700,000 stations with no opposition, the mean minimum rates for 1909 were $36.00 per year for business, and $23.75 for residence, as against the mean minimum rates in 1894 of $68.10 for business, and $56.00 for residence.

In cities with competition, where there were Bell exchanges aggregating 550,000 stations and opposition exchanges aggregating 322,000 stations, the mean minimum rates for Bell service were $41.25 for business, and $22.80 for residence; for the opposition service, the mean minimum rates were $37.15 for business, and $23.25 for residence.

2152 Averages of Operating Units of Associated Operating Companies, 1895 to 1909.

(See table, next page.)

The table on page 30 shows the averages of the revenue, expenses and other average operating details of the associated operating companies for the years 1895, 1900, 1905 and 1909.

Taking the years 1895 and 1909, the average exchange revenue per station for exchange service was reduced from $70.00 to $31.50, or 55 per cent.; the total revenue including toll revenue per exchange station reduced from $81.00 to $41.00, or one-half; the operating expenses including taxes reduced from $31.50 to $17.10, or 45 per cent.; maintenance per station reduced from $26.20 to $13.00, or one-half. Total operating expenses were reduced from $57.70 to $30.00 per station, or not quite one-half,—that is, reduction of operating expenses of about one-half brought about a reduction in cost to the public of exchange service of over one-half.

The other figures show the various costs and expenses. The average plant cost, including toll and exchange construction, was reduced from $260 to $145 per exchange station, about 45 per cent. All plant costs show a decrease per unit, although there has been an increase in both labor and material.

These statements, statistics and diagrams should establish the claim already made that reduction in rates followed closely reduction in expenses, and that reduction in expenses was the result of the broad policy of development and improvement, the policy of the Bell system from the beginning, and not forced upon it by competition;

That competition in the telephone business is not a beneficial competition; and

That there is within the reach of every one needing it a connection with the Bell telephone system.

2153 Averages of Operating Units of Associated Operating Companies, 1895 to 1909.

Average per Exchange Station.	1905.	1900.	1905.	1909.
Earnings:				
Exchange Service	$69.75	$44.68	$33.31	$31.37
Toll Service	11.35	12.60	9.95	9.42
Total	$81.10	$57.28	$43.26	$40.79
Expenses:				
Operation	$29.15	$21.63	$16.96	$15.14
Taxes	2.23	2.37	1.49	1.93
	$31.38	$24.00	$18.45	$17.07
Balance	$49.72	$33.28	$24.81	$23.72
Maintenance and Depreciation	26.20	17.68	13.91	12.93
Net Earnings	$23.52	$15.60	$10.90	$10.79
Per Cent. Tel. Exp. to Tel. Earnings	71.0	72.8	74.8	73.6
Per Cent. Maint. and Depr'n to Aver. Plant, Supplies, etc.	9.1	8.4	8.9	8.4
Per Cent. Incr. Exchange Stations†	15.7	26.5	24.5	11.6
Per Cent. Incr. Miles Exchange Wire†	15.9	33.2	27.2	7.1
Per Cent. Incr. Miles Toll Wire†	21.3	25.2	12.4	4.4
Average Plant Cost per Exchange Station (including Exchange and Toll Construction)	$260.00	$199.00	$145.00	$145.00
Average Cost per Mile of Pole Line (Toll), including Wire	$219.00	$348.00	$438.00	$610.00
Average Cost per Mile of Wire (Toll), including Poles	$81.00	$71.00	$62.00	$63.00
Per Cent. Gross Tel. Earnings to Average Constr.	33.4	31.7	31.7	29.6
Per Cent. Net Profits to Aver. Capital Stock	10.11	9.44	8.34	8.14
Per Cent. Dividends to Aver. Cap. Stock	5.07	6.19	5.75	5.95

†Increase during year shown, over previous year.

2154 Western Union Telegraph Company.

In taking over a substantial interest in the Western Union Telegraph Company, this company assumed a substantial obligation to the public in addition to that which it already had. To make clear the extent of this obligation and the resulting advantages, and to illustrate the various shades of relation between the telegraph and the telephone, some explanations will be interesting and instructive.

The connection or relation between the telephone and the telegraph is not in any sense one of substitution, it is supplementary; one is auxiliary to the other. Telegraphy eliminates the time of transit of correspondence, by the electrical transmission of the text from office of origin to office of destination, but it is incomplete in that the methods of collection and delivery are slow and primitive.

Telephony eliminates distance by placing parties at distant points in direct personal communication with each other, but the expense prohibits its use for the transmission of written messages over long distances.

Telegraph operation as carried on must have a separate, distinct and entirely different operating organization and equipment from that of a telephone company.

Line construction and maintenance are common to both the telephone and the telegraph, and can be combined or performed jointly with economy. The same wires may be used for both telephone and telegraph circuits and at the same time. The differentiation between telephone and telegraph construction and operation begins with the stringing of the wires.

Where there is density of message traffic sufficient to keep busy an expert telegraph operator, the telephone cannot be used in
2155 competition with the telegraph in the handling of message traffic, but at some point of less density of traffic the telephone will gradually supersede the telegraph in handling message traffic.

The elementary differences in the scope and operation of the telephone and the telegraph in the handling of telegraph traffic indicate that each will occupy a distinct and a well-defined field.

The telegraph between centres of density and for long distances.

The telephone for short distances and for the collection and distribution between the customer and such centres. About 65 to 70 per cent. of the telegraph traffic is between, that is, both originates and ends in, about 550 cities and towns of 10,000 or more population. The Western Union telegraph lines reach over 22,000 smaller cities and towns and villages, at most of which the commercial telegraph traffic would not of itself support a telegraph office. This business is now being performed necessarily under some joint arrangement, for the greater part with the railroad companies. While these arrangements will be continued, a greatly extended and improved service will be given in connection with the Bell system with over 5,000,000 stations located in 50,000 cities and towns, most of which will be put in immediate connection with telegraph offices at central points. In this way the electrical transmission of

messages will be extended from the actual point of origin to the actual point of destination.

There are comparatively few places where there is business enough to warrant a "night and day" telegraph service, but there is no place where "night and day" telegraph service is maintained that is not in the centre of a "Bell system." Practically no Bell
2156 exchange is ever closed—therefore there are few subscribers of the Bell system who cannot be placed within reach of night and day telegraph service.

Under the new conditions, when in full operation, each service, the telephone and the telegraph, will find its level of use, its field of best usefulness, with a distinct improvement in, and advantage to, both services.

Such economies as follow will be taken advantage of to increase the facilities and where possible reduce the cost to the public.

Before any change can be made in the existing rates for existing service, it will be necessary to await the result of studies now being made, as it is claimed that the irreducible cost of handling is so near the revenue received for each commercial message that no reduction in rates would be justified by any probable increase in business.

Improvement and extension of existing service and introduction of new classes of service will be the first effort of all interested. The first of these will be the introduction of the "Night Letter" and others will follow.

The benefits and advantages from this complementary operation will come, but not all at once. Careful study and consideration are being given to all questions by all interested. Existing plant will have to be rearranged or reconstructed, new plant constructed on proper lines. The necessary safeguards for the protection of the company and the public will have to be worked out.

The idea of operating the telephone and the telegraph in accord, each supplementing the other, is not a new or untried one, but has been ineffective because of the lack of common influence in the control of the operations. With the employes of both companies actuated by a common purpose, this can be effectively done; without a common influence in the operation it has been practically impossible.

2157 General Considerations.

It is the duty and obligation, as well as self-interest, of a public service corporation to give efficient service up to the limits of reasonable practicability and to furnish such service at a reasonable price.

As a rule all capital invested in any public utility is permanently invested. It cannot be salvaged to any extent, nor can it be used for any other purpose. The chance of any return upon the capital is entirely dependent upon inducing or educating the public to make use of the service so offered. To do this, whatever is offered must be offered at a price which leaves the user a margin of profit—if not in money, in comfort and convenience—at a price which the public will accept, and that must necessarily be below the actual value of the service to the public.

Although there have been abuses in corporate management and in the manipulation of both property and securities, *for which there is ample remedy if existing laws are enforced*, yet it must be admitted that the tremendous development of utilities in this country as compared with other countries, with their contribution to the comfort and convenience of the public, is to a certain extent due to the lack of prospective restrictions.

The profits that have been realized by public service corporations in the development of new and beneficial facilities are insignificant in comparison with, and are certainly justified by, the enhancement of values and the unearned increment which have accrued to the public and which could not have existed but for this development.

The one attracts more attention because of its corporate character, while the benefits are of a private character, widely dispersed in smaller units and as a rule to individuals.

2158 It is but natural that corporations should have some misgivings about a control of internal management by a body *without any responsibility that could be called accountability*, and without the practical knowledge or experience or information which comes from the daily dealings with questions; a control which would undertake to decide upon questions widely different, complex and far-reaching, over which expert managers of life-long study and experience are sometimes at a loss; a control over methods of business which usually are the evolution of years of practice, and are so interwoven with the fundamentals of business that they cannot be changed suddenly without great disturbance.

Too much importance is apt to be attached to claims of theorists or inventors, as any one can judge by comparing the wonderful promises and claims made with the results achieved.

All great developments in any line of industry have been from crude and imperfect beginnings by a process of evolution, by improvement in detail the result of suggestion from association, operation, or study.

The original idea upon which may be founded great development may be revolutionary but it never springs full-fledged or perfect into the world.

Public utility companies have obligations and are responsible both to the public and to their shareholders. It is a responsibility with accountability. Prevent them from imposing upon the public with fictitious issues of securities, or with exactions on the public with which to pay dividends on those fictitious securities.

As to their internal management, operating methods, leave something to their self-interest, to their responsibiltiy with accountability; do not impose upon them such control as might force upon them

2159 new methods, new apparatus, new ideas which have not been tried out, which have not been put through the crucible of practical experience. Theories and new ideas will be welcomed by any progressive corporation for without them development would be stayed, but all that is improvement must come through a process of evolution, by the gradual elimination of the useless and

adoption of the useful, through experimental application modified to existing conditions.

We believe that if there is to be control, there should be protection, and that beyond the lines set forth above, any control ceases to be control and becomes management or operation. We believe that management or operation by a body without any accountable responsibility would be prejudicial to the best interests of the service and of the public, and destructive of property and the rights we are supposed to possess.

Our company has a vital interest in the proper solution of the telephone problem, and we believe that we are working the problem out on the broad lines of the greatest benefit to the public as a whole.

For the Directors,

THEODORE N. VAIL, *President.*

	Dec. 31, 1895.	Dec. 31, 1900.	Dec. 31, 1905.	Dec. 31, 1908.	Dec. 31 1909.	Increase, 1909.
Miles of Exchange Pole Lines	25,330	30,451	67,698	108,539	113,893	5,354
Miles of Toll Pole Lines	52,873	101,087	145,535	161,452	164,111	2,659
Total Miles of Pole Lines	78,203	131,538	213,233	269,991	278,004	8,013
Miles of Underground Wire	184,515	705,269	2,345,742	4,909,449	5,337,436	427,987
Miles of Submarine Wire	2,028	4,203	9,373	19,906	22,698	2,792
Miles of Aerial Wire	488,872	1,252,329	3,424,803	4,901,363	5,119,892	218,529
Total Miles of Wire	675,415	1,961,801	5,779,918	9,830,718	10,480,026	649,308
Comprising Toll Wire	215,687	607,599	1,265,236	1,732,039	1,804,552	72,513
Comprising Exchange Wire	459,728	1,354,202	4,514,682	8,098,679	8,675,474	576,795
Total	675,415	1,961,801	5,779,918	9,830,718	10,480,026	649,308
Total Exchange Circuits	237,837	508,262	1,135,449	1,668,211	1,829,942	161,731
Number of Exchanges	1,613	2,775	4,532	5,043	4,968	75†
Number of Bell Stations	281,695	800,880	2,241,367	3,215,245	3,588,247	373,002
Number of Bell Connected Stations*	27,807	55,031	287,348	1,149,384	1,554,445	405,061
Total Stations	309,502	855,911	2,528,715	4,364,629	5,142,692	778,063
Number of Employees	14,517	37,067	89,661	98,533	104,956	6,423
Number of Connecting Companies	.....	.....	.....	7,721	10,354	2,633
Exchange Connections Daily	2,351,420	5,668,986	13,543,468	18,499,376	19,925,194	1,425,818
Toll Connections Daily	51,123	148,528	368,083	463,021	517,341	54,320

*Includes private line stations.

†Decrease.

2161 American Telephone and Telegraph Company.

Balance Sheet, December 31, 1909.

Assets.

Stocks of Associated Companies..	$306,948,309.10	
Bonds of Associated Companies..	3,527,000.00	
Capital Advances to Associated Companies	49,990,850.38	
		$360,466,159.48
Telephones	$10,510,702.91	
Real Estate	2,181,728.67	
Long Distance Telephone Plant..	44,295,659.76	
		56,988,091.34
Cash and Deposits	19,654,016.04	
Temporary Cash Loans	11,418,000.00	
Short Term Notes	12,022,466.52	
		43,094,482.56
Special Demand Notes		26,775,000.00
Current Accounts Receivable		6,766,073.28
		$494,089,806.66

Liabilities.

Capital Stock		$256,475,300.00
Four Per Cent. Collateral Trust Bonds, 1929	$53,000,000.00	
Four Per Cent. Convertible Bonds, 1936	48,139,000.00	
Four Per Cent. American Bell Bonds, 1908	1,000.00	
Five Per Cent. Coupon Notes, 1907	5,000.00	
Five Per Cent. Coupon Notes, 1910	25,000,000.00	
Indebtedness to Western Union Teleg. Co. for New York Tel. Co. Stock, payable 1910 to 1915	22,500,000.00	
		148,645,000.00
Dividend Payable January 15..	$5,137,528.00	
Interest and Taxes accrued, but not due	2,634,039.49	
Current Accounts Payable	714,996.91	
Reserve for Unearned Revenue..	102,334.93	8,588,899.33
Depreciation Reserve	$33,693,547.78	
Surplus	46,687,059.55	80,380,607.33
		$494,089,806.66

C. G. DU BOIS, *Comptroller.*

2162 American Telephone and Telegraph Company.

Comparative Statement of Earnings and Expenses.

Earnings:	1908.	1909.
Dividends	$13,280,127.54	$15,949,213.73
Interest and other revenue from Associated Companies	9,720,466.04	10,661,431.03
Telephone Traffic (net)	3,976,512.07	4,360,104.94
Real Estate	160,007.95	95,723.97
Other Sources	761,856.45	1,694,867.76
Total	$27,898,970.05	$32,761,341.43
Expenses	2,003,956.06	2,570,575.57
Net Earnings	$25,895,013.99	$30,190,765.86
Deduct Interest	7,773,306.73	7,095,377.34
Balance	$18,121,707.26	$23,095,388.52
Dividends Paid	12,459,156.00	17,036,275.64
Balance	$5,662,551.26	$6,059,112.88
Carried to Reserves	$3,000,000.00	$3,000,000.00
Carried to Surplus	2,662,551.26	3,059,112.88
	$5,662,551.26	6,059,112.88

C. G. DU BOIS, *Comptroller.*

2163 American Telephone and Telegraph Company.

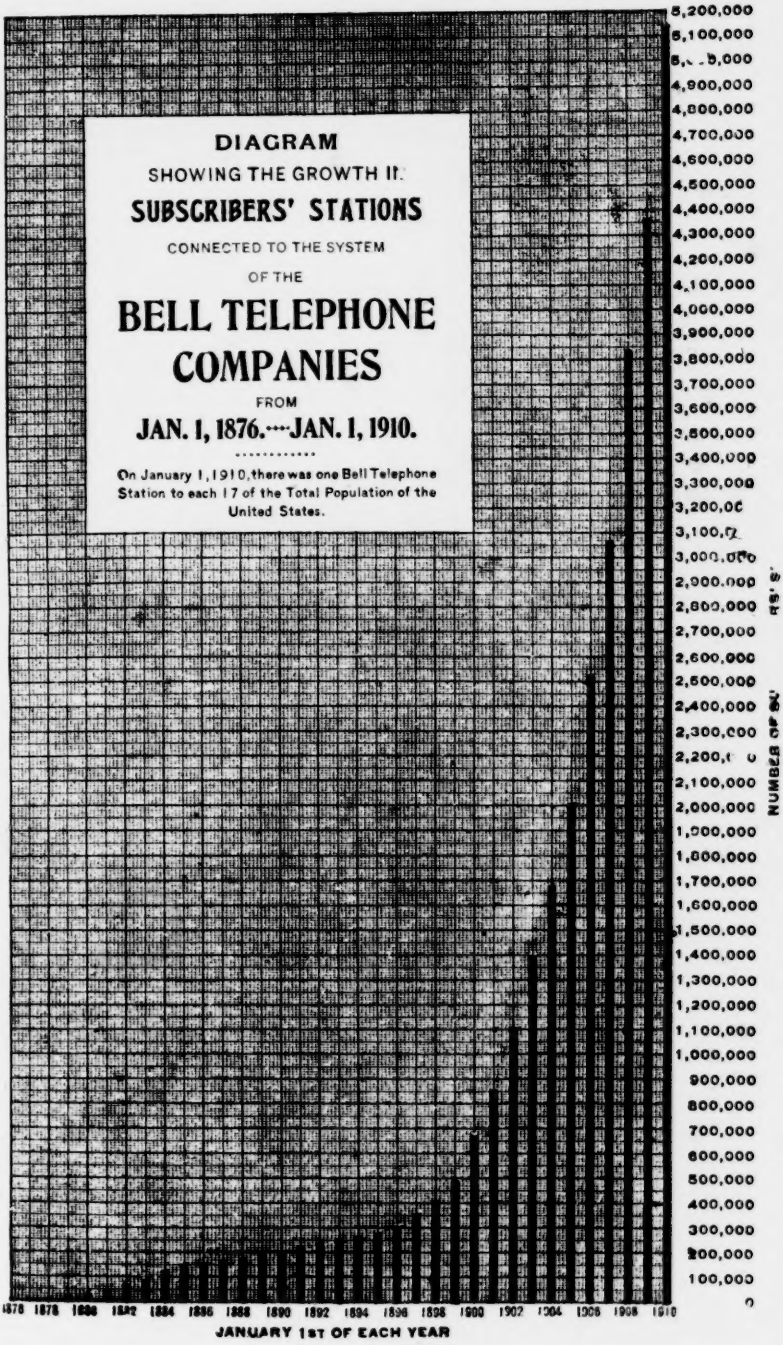
Annual Earnings and Dividends.

Year.	Net revenue.	Dividends paid.	Added to reserves.	Added to surplus.
1900	$5,486,058	$4,078,601	$937,258	$470,198
1901	7,398,286	5,050,024	1,377,651	970,611
1902	7,835,272	6,584,404	522,247	728,622
1903	10,564,665	8,619,151	728,140	1,217,374
1904	11,275,702	9,799,117	586,149	890,435
1905	13,034,038	9,866,355	1,743,295	1,424,388
1906	12,970,937	10,195,233	1,773,737	1,001,967
1907	16,269,388	10,943,644	3,500,000	1,825,744
1908	18,121,707	12,459,156	3,000,000	2,662,551
1909	23,095,389	17,036,276	3,000,000	3,059,113

C. G. DU BOIS, *Comptroller.*

(Here follows diagram marked page 2163*a*.)

[End of Volume I.]


DIAGRAM
SHOWING THE GROWTH IN
SUBSCRIBERS' STATIONS
CONNECTED TO THE SYSTEM
OF THE
BELL TELEPHONE COMPANIES
FROM
JAN. 1, 1876.---JAN. 1, 1910.
On January 1, 1910, there was one Bell Telephone Station to each 17 of the Total Population of the United States.
5,200,000
5,100,000
4,900,000
4,800,000
4,700,000
4,600,000
4,500,000
4,400,000
4,300,000
4,200,000
4,100,000
4,000,000
3,900,000
3,800,000
3,700,000
3,600,000
3,500,000
3,400,000
3,300,000
3,200,000
3,100,000
3,000,000
2,900,000
2,800,000
2,700,000
2,600,000
2,500,000
2,400,000
2,300,000
2,200,000
2,100,000
2,000,000
1,900,000
1,800,000
1,700,000
1,600,000
1,500,000
1,400,000
1,300,000
1,200,000
1,100,000
1,000,000
900,000
800,000
700,000
600,000
500,000
400,000
300,000
200,000
100,000
0
NUMBER OF STATIONS
1876 1878 1880 1882 1884 1886 1888 1890 1892 1894 1896 1898 1900 1902 1904 1906 1908 1910
JANUARY 1ST OF EACH YEAR

2163-A

71933

15717
17

Vol. II.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 761.

CITY OF LOUISVILLE, APPELLANT,

vs.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

FILED AUGUST 14, 1911.

(22,837)

(22,837)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 761.

CITY OF LOUISVILLE, APPELLANT,

vs.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

VOLUME II.

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VOLUME II.

No. 761.

THE CITY OF LOUISVILLE
vs.
CUMBERLAND TELEPHONE & TELEGRAPH COMPANY.

2164 The Defendant's depositions & exhibits are as follows:

United States Circuit Court for the Sixth Circuit and Western District of Kentucky.

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY,
Plaintiff,
vs.
CITY OF LOUISVILLE, Defendant.

The Deposition of Wm. H. Crumb, Taken on the 11th Day of October, 1909, in the United States Government Building at Louisville, County of Jefferson and State of Kentucky, to be Read as Evidence on Behalf of the Defendant in the Above-Entitled Action.

Present:

For Plaintiff: Messrs. Fairleigh and Granberry.
For Defendant: Mr. C. B. Blakey.

WILLIAM H. CRUMB, a witness called on behalf of the City of Louisville, being duly sworn and examined by Mr. Blakey, deposed as follows:

Q. What is your name?
A. William H. Crumb.
Q. Where do you reside?
A. Chicago, Illinois.
Q. What is your business?
A. Telephone engineering and contracting.
Q. How long have you been in that business?
A. Fourteen years.
Q. Are you a graduate of any school of technology?
A. I took a course in electrical engineering at Cornell Univer-

sity. I did not complete that course, however. I completed
2165 about three-fourths of it, three years of the four.

Q. In connection with your engineering in the telephone line, what class of companies—I mean by class of companies, Bell or Independent company, have you done work for?

A. I started my experience in the telephone business with the Central Union Telephone Company, a Bell Company, nearly fourteen years ago; to be exact, the first day of February, 1896. I was employed by that company for nearly five years. After that time I was employed by the Pittsburg & Allegheny Telephone Company, an independent telephone company, operated at Pittsburg and Allegheny and in that vicinity, for a period of one year and a half as Superintendent. Since that time I have been engaged in general engineering and contracting work, devoting myself to telephone construction and engineering work almost exclusively.

Q. Have you been engaged as Chief Engineer for any company, constructing telephone plants, and, if so, at what places?

A. Well, the nominal title I had with the Pittsburg & Allegheny Telephone Company was General Superintendent and Assistant Engineer. I had charge of the construction and operating of that plant during my employment with them. Since then my work has been that of—in the line of construction—has been constructing telephone plants under contract for various firms and corporations. I have acted, also, in the capacity of consulting
2166 engineer for different concerns and municipalities covering specific work.

Q. Is there any difference between constructing a telephone plant for what is known as an independent company and constructing a plant for what is known as a Bell Company?

A. The construction, and by that I mean that portion of a plant which is not ordinarily termed equipment or equipment applying to the apparatus which is used at the central office and at the subscribers' sub-station—the construction of independent and Bell class is essentially the same. The details of construction specifications are somewhat different for Bell companies and for independent companies, but they both seek to arrive at the same results in essentially the same way. The equipment for central office and sub-station for Bell or Independent companies essentially accomplish the same results. The essential difference being in practically all cases the equipment for Bell companies is manufactured by the Western Electric Company and the equipment for independent companies is ordinarily manufactured by so-called independent manufacturers.

Q. Is there any difference in the cost of constructing conduit systems, cable lines of poles and aerial wires between the two systems?

A. Under like conditions the cost should be and undoubtedly are practically the same, where the conditions are the same, pro-
2167 viding, however, the same class of work is done.

Q. What is the difference, if any, in the cost of procuring and installing central office and subscribers' equipment in the two systems?

A. That is the difference in cost which is pretty hard to arrive

at for the reason that the Western Electric Company up until a very short time ago, a period of one or two years, assumed a policy of refusing to sell their apparatus to independent telephone companies so that the ordinary independent telephone companies were unable to secure quotations or to purchase apparatus from the Western Electric Company, their apparatus being sold exclusively to operating Bell Telephone Companies. Since that time and recently the Western Electric Company has entered into competition with various independent telephone companies, and has bid against them on certain small jobs of equipment and quotations that I have known of have been along in the same—about the same prices for the same apparatus from the Western Electric Company as from the various independent telephone companies—the differences being the ordinary differences which you would find that different manufacturers would be willing to sell the same class of goods at.

Q. Now when was the common battery system of switch-board first installed?

A. It was first placed in operation along about the year
2168 1896. I could not give you the exact date, but about that time what was ordinarily called the common battery method of operation was developed and placed upon the market.

Q. Do both the independent system and the Bell system use that common battery arrangement for their switch-boards now?

A. They do.

Q. What is the difference in the patents for those two systems, if you know?

A. I am not very familiar with the deails of the patents under which each of the companies—various systems are constructed? I do know this, however, that when the so-called battery system was first developed by the Western Electric Company, they being the first to offer a common battery apparatus for sale—that their patents covered the operation of a telephone system from the central office or exchange, the current for operating the transmitters both at the central office and at each of the subscribers' stations being furnished by one common storage battery located at the central office, and it is my opinion that their patents covered the operation of the system whereby the current should be furnished from one common battery located at the central office. That system being put on the market and being popular and receiving the approval of telephone engineers generally, both Bell and independent, the independent telephone people set about providing the means for accom-
2169 plishing the same results. The Kellogg Switchboard & Supply Company, an independent manufacturing concern, was one of the first independent telephone manufacturers that offered for sale a common battery or what they call a central energy equipment, and it was my information at that time that in order to secure or accomplish the same results which were accomplished by the Western Electric Company, and avoid infringing upon their patents that they employed instead of one battery at the central office, two batteries which gave practically and essentially the same results as the common battery system which was installed by the Western

Electric Company and obviated the necessity of infringing upon their patent. They have since continued to manufacture that apparatus, and are now offering it for sale. They have never been restrained from selling it. Other telephone manufacturers have offered apparatus which accomplishes the same results, either from one or two batteries located at the central office.

Q. Is the apparatus used by these two systems different or substantially the same?

A. They differ very widely among different manufacturers in detail, whereas the results accomplished in all cases are practically the same.

Q. Now, in 1899 the City of Louisville had substantially 190,000 inhabitants. It had a telephone system in use here which had 3,221 subscribers or 3,221 subscribers' stations as of the first day of
2170 September, 1899. It had its wires and conduits in the central business part of the city extending over an area of practically a mile square—three-quarters of a mile square and had a switchboard installed with that common battery system. It had about two thousand metallic circuits in use and the balance of its circuits were attached to grounded circuits. The common battery switchboard had been installed in 1896, and the plant generally was said to be in fair condition. What would you say was the value of that plant, eliminating real estate and supplies?

A. I can only judge of the value of that plant by my knowledge of general plants of about that size at that time. Not having seen the plant and knowing its specific condition from observation my estimate would be a matter of judgment based upon knowledge of other plants of approximately the same size operating under approximately the same conditions, and I would place an estimate of the value of this plant under the conditions you have mentioned, under the conditions at that time, as valued at between $100 and $120 per station, the price falling within those limits. I don't think it would be less than $100 per station, or exceed $120 per station. It is a matter of computation to arrive at what that figure would be.

Q. Now, if the telephone plant was in the condition that I have described, say at the beginning of January, 1900, and if the
2171 company operating that telephone plant should extend during the next four years in construction work $700,000 and in maintenance, reconstruction, between $100,000 and $120,000 and increase its subscribers only about 4,000, what would be your explanation of the expenditure of that amount of money in construction work?

A. I should judge from the statements given, that that amount of money was expended to add new material or construction work and equipment sufficient to furnish facilities to provide for the additional number of subscribers.

Q. What would you say would ordinarily be the cost of sufficiently equipping the plant, both for equipment and outside work for adding to the plant, such as I have described sufficient equipment to take care of 4,000 subscribers.

A. Taking those 4,000 subscribers in that group and extending the period of installation over four years as you have mentioned in my judgment those subscribers could be added and should be added for approximately $100 per subscriber's station each.

Q. What would you say about the amount that would ordinarily be required over that period of time in reconstruction work?

A. That would depend entirely on the character of the plant at the beginning of that period.

Q. What if the plant was in a run-down condition, how much ordinarily would it cost?

2172 A. If it was entirely run down—if it was so much run down as telephone plants sometimes get where they have not received proper maintenance, it might have required an entire reconstruction of the plant during that period which would have necessitated the expenditure of probably fifty or seventy-five per cent of the original investment, or the estimated value of it at the beginning of that period. If, for instance, the plant had been in good or first-class operating condition at the beginning of the period which you have mentioned I should not estimate that the amount necessary for reconstruction during a four-year period would run over the sum of—twenty to thirty thousand dollars a year in excess of the ordinary maintenance and repairs—about that way.

Q. To what extent are telephone plants now installed in the United States?

A. Do you mean as regards the—what we ordinarily call development of the popular use of the telephone? I don't understand what you mean.

Q. I mean to what extent in so far as to towns and cities have telephone plants been installed?

A. I, myself, to my knowledge, don't know of a city or town of a thousand inhabitants or more in the United States that has not a local telephone plant established in it. There may be, but

2173 I don't believe there is in the country a city or town of a thousand inhabitants or more but what has a telephone plant established in it.

Q. Has the construction of telephone plants, so far as the constructing work is concerned, ever passed the experimental stage, or is it now in that experimental stage?

A. So far as the construction work is concerned, construction standards are very well established in the telephone business, that is, the methods of building what is ordinarily termed an outside plant, that portion of the plant extending from the central office to the subscriber's station.

Q. When an engineer is consulted on the subject of drawing plans and making specifications for the construction of a telephone plant in a particular city, is there any basis on which he makes his estimate or his plans?

A. The estimate or plans are usually, in fact, altogether made upon the estimate of the number of telephone users that may be ex-

pected to be served in that location, and the manner in which they shall be served.

Q. Is there any such thing as a unit of cost of construction recognized among telephone engineers in making such an estimate?

A. Yes sir; there is. For certain classes of plants, such as are ordinarily built in cities of specified classes, it is common practice among telephone people to consider the cost of constructing
2174 the plant in that town on the basis of so much per station installed in that town. That amount will vary according to the character of the location in which the plant is installed and according to the size of the city in which the plant is built, and according to the character of construction which is used.

Q. Are you familiar with the area of Louisville and its general conditions as would have any bearing upon the construction of a telephone plant?

A. I am.

Q. What would you say about the general condition and general situation here in Louisville in so far as the construction of a telephone plant here is concerned?

A. I should say that it bears a very close relation to other cities of approximately the same size—averaging up. There is nothing in regard to the location of subscribers' stations or the lay of the land, the topography of the city, the routing of streets and alleys, which would make the cost of constructing a telephone plant here any considerable amount more than it would in the average city or the majority of cities of this size that I am familiar with.

Q. What cities of this size are you familiar with?

A. Toledo, Detroit, Kansas City, Milwaukee, Pittsburg, St. Paul and Minneapolis. I take those approximately in the same
2175 class as Louisville, Omaha and others that I do not think of at this time.

Q. Would it cost any more to construct a telephone plant here than it would in any of those cities?

A. No, on the contrary, less than it would in Pittsburg for instance, and about the same and probably less than in Kansas City. I should put the unit at about the same for Toledo or Milwaukee or Detroit.

Q. Have you made any sort of an inspection of the property used by the Cumberland Telephone Company in connection with its plant in the City of Louisville and the immediate sections of the county surrounding Louisville where telephone subscribers have connection with the Louisville exchange?

A. I have made a very careful inspection of the plant of the Cumberland Telephone Company as it now exists within the City of Louisville, both central office equipment, conduit system, underground cables, aerial cable, pole lines and wires, and the wires extending to the subscribers' stations at their various locations. I have done that both individually and through an assistant.

Q. If you were called upon to construct a telephone plant in Louisville, Kentucky, such as is installed and in operation by the Cumberland Company, what would be your estimate, basing it on

the unit of cost of the number of subscribers that company has, and assuming that that company has between nine and ten
2176 thousand subscribers' stations?

A. I would base it upon the estimated cost of $100 per station.

Q. Now have you gone into any sort of detail for the purpose of determining what the various parts of the Cumberland Telephone System could be produced for new throughout?

A. Yes, sir; I have.

Q. I wish you would take up the various parts of that system as you have found it and inspected it and state in detail what the company has and what it could be reproduced for.

A. I have made an examination of the central office equipment contained in the main exchange at Louisville, located on Jefferson Street. I find that it consists of twenty A operators' sections, five operators' positions to every two sections. Six multiple jack panels to each A operators' section. Forty-eight hundred multiple jacks to each section; from 260 to 300 answering jacks to each section, averaging 280 answering jacks to each section; thirty six pair of cord circuits to each section which because essentially—and the other necessary apparatus for the construction of an A operators' switchboard. In addition to the A operators' switchboard, they have what is ordinarily called a B switchboard, which consists of four B operators' sections, two operators to the section with thirty trunks to each operator's position; forty-eight hundred multiple jacks
2177 in each section, which board I was advised, was originally installed in 1896 or 1897. Since the installation of the board, it has been changed at various times, various parts of the apparatus taken out and remodeled and new apparatus put in. The board in general is in first class operating condition at this time, particularly so for a board that has been in service for so long, and that is due to the amount of new apparatus and the high state of maintenance that has been put upon the board. In connection with that apparatus there is the necessary main and intermediate distributing frames, fuse boards, etc. There are two chief-operators' desks—and a two position Trouble Desk. Their power plant consists of a gas engine which is directly connected to a 110 volt generator for charging storage batteries. In addition to that there is a 500 volt ten-horse power motor; also a twelve-horse power 110 volt motor; duplicate ringing machines for ringing subscribers' stations and duplicate charging machines, a full set of storage batteries necessary for the operation of such a plant or such a switchboard. The entire equipment of that office I estimated to be valued at $110,000.

Q. Does that include all inside wiring and connections of various kinds connected with subscribers' stations?

A. It includes all of the apparatus which extends from the terminal of the underground cables into the switchboard and
2178 the auxiliary apparatus which is there installed for the operation of the main exchange.

Q. When you say you place a value on that of $110,000, do you mean a present value or the cost of reproducing it as it is?

A. The replacement value.

Q. By replacement value you mean what?

A. That similar apparatus could be produced which would accomplish essentially the same results that that apparatus does there. I would not say that that particular apparatus could be placed there for that amount of money because that particular apparatus is manufactured by the Western Electric Company and the cost which they would place on that would be entirely in their own power.

Q. Do those figures include the cost of installing it as it is?

A. Yes, sir; the cost of installing it for operation.

Q. Have you made any inquiries of manufacturers of equipment of that character to ascertain at the present time what the cost of installing such a switchboard would be?

A. I have, and find that the prices would come within the price that I have set there.

Q. I will ask you to take up the other exchanges used by the Cumberland Telephone Company and detail the facts in regard to those in a similar manner.

2179 A. The exchange, which is ordinarily known as the East Exchange, has an A board which is composed of four sections, consisting of ten operators' positions; has 1200 multiple jacks, 1200 answering jacks and 17 cord circuits per operators' positions, two special cord circuits to each operator's position. In addition to the A board there is a B board consisting of two and one-fifth sections of four operators' positions; 27 cord circuits per position; 2700 multiple jacks in the B board. There is a chief-operator's desk installed there, also a main distributing frame, intermediate distributing frame, relay rack, fuse board wire, chief's desk, ten-horse power gas engine, charging generator, fifteen-horse power motor and a 225 ampere 30 volt charging generator used for charging the storage batteries; duplicate ringing machines; 24 volt storage battery.

2180 In fact all the apparatus which is ordinarily used and which is necessary for successful operation of the telephone lines common battery exchange the value of which I place—the replacement value of which I place at $20,000.

Q. Have you made a similar inquiry to ascertain from manufacturers of equipments of this character what the cost of installing such an exchange would be?

A. I have.

Q. What did that inquiry develope?

A. That the cost would be within the limit that I have set here.

Q. Would that amount you have named replace that switchboard new throughout?

A. It would with similar or equally good apparatus.

Q. Now will you take up one of the other exchanges?

A. The south exchange has an A board consisting of eleven sections, seven panels to a section, three operators' positions to each section, thirty one hundred multiple jacks per section, seventeen cord circuits per position, a total of forty-one hundred and twenty answering jacks; two position chief operators' desk-. The A board,

that being for the A board—the A board contained such other necessary apparatus as is usually found in a similar installation.

The B board consists of four sections, five panels to each
2181 section, two positions to each section, twenty-seven cord circuits per position; thirty-one hundred multiple jacks per section and such other necessary apparatus as is usually found in an installation of that kind. In connection with the south exchange there is a main distributing frame, intermediate distributing frame of ordinary power; two fuse boards and power plant similar to the power plant found in the east exchange; wire chief's desk, and in fact such other apparatus as is necessary in the successful operation of a common battery switch board suitable for furnishing service to thirty-one hundred subscribers' lines.

Q. What do you name as the replacement value of that switch board?

A. Fifty-five thousand dollars.

Q. Have you made a similar inquiry of manufacturers of switch boards of that nature to ascertain what it could be replaced for?

A. I have.

Q. What was the result of that inquiry?

A. That it could thoroughly be replaced within the limit set in my figures.

Q. What would that mean in its present condition, or new?

A. New throughout.

2182 Q. Now as to any other main exchange that they may have?

A. I made a similar examination at the west exchange. I find there an A operator switchboard consisting of five sections of five panels to a section, ten operators' positions; twelve hundred multiple jacks per section; twelve pairs of cord circuits per position; two special cord circuits to each position; ten hundred and eighty answering jacks and two position chief operator's desk. I find on information from the Cumberland Telephone Company's Superintendent of equipment that this board was rebuilt—the major portion of the A board was rebuilt from sections which were taken from the main exchange switchboard. The B board consists of two and one third sections and four operators' positions. Thirty pairs of cord circuits for operators' position; twenty-eight hundred multiple jacks in the B board. There is the ordinary main distributing frame, intermediate distributing frame, power board fuse board, gas engine, duplicate charging generators, ten horse power motor, duplicate ringing machines and storage batteries. In fact all apparatus that is necessary for the successful operation of a common battery switchboard of its size, the value of which I place at $15,000—that is the replacement value.

Q. Have you made similar inquiry to ascertain from manu-
2183 facturers of switchboards of a similar character the cost of switchboard?

A. I have.

Q. What was the result of that inquiry?

A. That the cost of replacing such an equipment with new ap-

paratus of similar or equilly good character could be made within the limits of that figure.

Q. Do you know of your own knowledge that the switchboard equipment to which you have been testifying could be procured and installed in a similar manner to that which you have found in the Cumberland Telephone exchanges for the amount you have designated?

A. I would be willing to take a contract to do it, and deposit a bond to carry out the contract. I have no actual tenders of any one who is willing to do it, but I am positive in my own mind that it can be done for that amount of money.

Q. Are there any other switchboards such as the ones you have been testifying about used by the Cumberland Telephone Company in Louisville?

A. Not to my knowledge with the possible exception of private branch exchange switchboards, but I assume you are not including that class?

Q. Is the telephone plant of Louisville operated through these four exchanges, about which you have testified?

2184 A. The exchange service for the city of Louisville is given through these four exchanges, the four switchboards being connected each one with each one, and the others by trunk lines extending from each switchboard to each other switchboard.

Q. Now under what head generally speaking do the parts of the telephone plant naturally distribute themselves?

A. Ordinarily into equipment, consisting of central office equipments and subscribers' station equipment, underground conduits where underground conduits are used in connection with the plant, underground cables, pole lines and wires, aerial cables, wagons, tolls and supplies, furniture and fixtures and real estate where real estate is owned.

Q. Are there any other parts of the central office equipment used in connection with the Louisville exchange of the Cumberland Telephone Company which you have not already testified about and placed the value on?

A. No, sir.

Q. What other part of their plant would be classified as part of their equipment?

A. The sub-station equipment or subscribers' telephone equipment including that part of the equipment which is used in connection with the operation of the plant not located at the Central office or exchange.

2185 Q. What does the subscribers' station equipment consist of?

A. Telephones and private exchange switchboard, auxiliary telephones and other minor things which ordinarily form a very small portion of the subscribers' station equipment. I would include, if I may, in that, such protective apparatus as is needed at the telephone.

Q. What usually goes to make up for these subscribers' station equipments?

A. Simply a telephone. If the subscriber has a single line tele-

phone his sub-station equipment consists only of his telephone, the plant being ordinarily divided between equipment and line. These central station equipment, including all the apparatus which is used for a certain subscriber's circuits which extends from the switchboard to the main distributing frame where it connects with the underground cable or cable going out aerially, the line being considered that portion of the circuit which extends from the main distributing frame to the subscriber's telephone including the underground cable, aerial cable, open line wire, drop wire and interior wiring from the place where the circuit enters the subscriber's building to its attachment to the telephone or to the private branch exchange switchboard.

Q. Assuming that the Cumberland Telephone Company has in use in the city of Louisville and in the immediate vicinity of
2186 Louisville and connected with one of the Louisville exchanges about ninety-six hundred subscribers' stations, what would you say would be the value of that part of the equipment?

A. I have not made an estimate on that part of the equipment taken individually. I have made an estimate upon the sub-station equipment in total, consisting of the telephones and private branch exchange equipment—including private branch exchange switchboards and slot machines which are used on pay station telephones.

Q. Are you familiar with the number of subscribers and the number of private branch exchanges and pay stations which the Cumberland Company has in use in the City of Louisville and the vicinity surrounding Louisville?

A. I have that from their records.

Q. What value do you place on that from a reproduction standpoint?

A. $100,000.

Q. Could that part of their equipment be reproduced new throughout for that amount of money?

A. It could.

Q. Would that include installing the subscribers' stations as it is now installed?

2187 A. That includes installing the telephones in place, yes, and the other sub-station apparatus.

Q. Now coming to the underground conduit, have you made any inspection of their underground conduit system?

A. I have made a sufficient inspection of it to satisfy myself as to the general character of the construction of the work which has been used in constructing the conduit. In addition to that I have been furnished by the manager of the telephone company here—the Cumberland Telephone Company, with a map showing the extent of the conduit system, from which I have computed the number of duct feet which is comprised in the conduit system, and the various routes and locations of the conduit together with their various distributing points.

Q. Have you the map with you?

A. Yes, it is here.

Q. In how many sections did this map appear?

A. Six sections.

Q. Will you file those six sections of that map and make same a part of your deposition?

A. Yes, sir, and mark it Crumb exhibit No. 1.

Q. Did the manager of the telephone company tell you that the maps which you have filed here was a complete map of their underground conduit system?

2188 A. He said it was essentially complete, that any changes or additions which had been made since that map had been prepared were very trifling and would not materially effect the total extent of the conduit system shown by the map.

Q. Have you made any calculations based on those maps, and based on the extent of the conduit system as shown by those maps to ascertain the extent of the conduit system of the Cumberland Telephone Company in Louisville?

A. Yes, sir; I have.

Q. Do you know the cost of constructing such a conduit system as appears on those maps?

A. Yes, sir; I do.

Q. What would it cost to construct such a conduit system and put it in the condition so far as the ducts and wires and cables or whatever may be proper as a part of that conduit system—what would it cost to reproduce that as it is?

A. Wires are not included in the conduit system. To replace or to construct a new conduit system similar to the one which is shown by the map and place it in good operating condition along the route shown and as specified as the conduit system which is shown, could be done for $100,000, and that is sufficient to take care of such

2189 minor additions as were mentioned by the manager of the exchange when he gave me the map.

Q. What did you take into consideration in reaching the figure you have just named?

A. The number of duct feet, the number of manholes, the character of conduits laid, the sizes of the manholes and the number of conduits in each trench.

Q. Did you take into consideration the cost of labor placing that conduit system in its proper position?

A. Oh, yes, all material and labor, and repaving and repairing the streets which would be disturbed in the laying of the conduit.

Q. In your business connection with the engineering and constructing telephone plants have you had to deal with conduit systems such as the one the Cumberland Telephone Company has installed in the city of Louisville?

A. Yes; I have actually constructed several conduit systems similar to this one in such a manner—under contract in such a manner that I know how much it has cost me to do the work and how much I have received for it.

Q. Would you be willing to take a contract to construct and place a conduit system such as the Cumberland Telephone has in the city of Louisville as shown by those maps for $100,000?

A. I would. I would furnish bond to complete the work
2190 in accordance with the work as outlined by those maps.

Q. Now coming to the question of cables. What are cables and what are their use?

A. Cables as used for telephone companies ordinarily called telephone cables are groups of small copper wires, each wire being insulated from the other, all of the wires of the group being stranded in to the cable, and incased in a lead sheath or pipe, the object of the lead sheath being to protect the insulation of the wires.

Q. Are cables under ground or over head?

A. They are used both underground in conduits and aerially or overhead on pole lines.

Q. Do the wires through the cable constitute a part of the cable in your classification given of the cost of the plant?

A. Yes, sir.

Q. Now to what extent has the Cumberland Telephone Company cables in use in connection with this telephone system in Louisville—have you any map showing the extent of those cables?

A. I have maps showing the extent of the underground cables and also maps showing the extent of the aerial cables extending from the various exchanges.

2191 Q. From what source did you get these maps?

A. From the manager of the Cumberland Telephone Company.

Q. What did the manager tell you in regard to the maps which he gave you covering their entire system of cables, if anything?

A. He said that they were essentially correct; that there had been some minor extensions to the cable plant made, particularly to the aerial cable plant made since the maps had been prepared, but they were not very extensive and that there had been no additions to the underground cable plants made since the maps were prepared.

Q. Will you file those maps and make them a part of your deposition?

A. Yes, sir; I will and mark them exhibit Crumb No. 2.

Q. Now did you inspect those cables to any extent?

A. Yes, sir; I did.

Q. To what extent?

A. The aerial cables—I drove over practically all of the aerial cable routes in an automobile and saw practically all of the aerial cables and saw the underground cables where they left each of these central offices where they terminated on underground distributing poles and where they appeared in the few manholes, also the
2192 cables that have been used for distribution purposes in some of the larger office buildings. I examined the plant to satisfy myself as to the character of the construction work which was done.

Q. Now are you familiar with the part- that go to make up the cable system of the Cumberland Telephone plant and the cost of placing it in its present position?

2193 A. Yes, sir.

Q. Have you made any calculation to determine the reproduction cost of those cables as they now appear?

A. Yes, sir.

Q. What is the result of that calculation?

A. I estimate that the aerial cable plant could be reproduced new for $225,000, the underground cable plant could be reproduced for $200,000.

Q. What character of wire is used in the cable?

A. Copper wire.

Q. Is that the usual wire used in such construction?

A. Yes, sir.

Q. How does the cost of copper wire compare at the present time with the cost of copper wire over the period extending from 1900 down to date?

A. Copper wire is just now a little cheaper than it has been at some times during that period. I have based my estimate of cost upon this, figuring copper wire at an average cost of fifteen cents per pound, which averages up very well during the period which this cable was constructed.

Q. Could copper wire be purchased at the present time at that price?

2194 A. The market price of copper wire at the present time is in the neighborhood of about fifteen cents a pound. I have not seen a quotation on copper wire for some little time so I could not say what the market price is at this date.

Q. Now does the value you have place on this cable system include all of the cables used by the Cumberland Telephone Co. in connection with this Louisville plant?

A. It does—all of the aerial and underground cables.

Q. Now are there any other parts of the plant which properly distribute themselves under the head of cables?

A. None which are not included in this estimate that I have given you. The figure I have given includes the terminating, splicing and placing the cables in the service ready for operation.

Q. Now what other parts of the plant used by the Cumberland Telephone Co. are there and about which you have not already testified in detail?

A. The pole lines and open wire circuits, their wagons, tools, supplies, etc., furniture and fixtures also their real estate and buildings.

Q. Now are there any parts of the Cumberland Telephone

2195 Company's plant in Louisville which you did not inspect in detail?

A. I inspected the whole—about the only part of the plant that they use in operation here that I know of that I did not inspect in detail were the teams and wagons. Practically all of the other, in fact all of the other portions of the plant that are used I have made a general inspection of sufficiently in detail to satisfy myself as to the nature of the general make up of that particular portion of the plant. The horses and wagons I did not get to a place where they were all in one place at one time, and I did not get to see them, not being a fixed part of the property.

Q. Were you able to get any sort of a detailed statement from the

manager of the telephone company in regard to its poles and aerial wire?

A. The manager advised me that they had no map or record on file at their office showing the extent and locations of all of their pole lines and open wire circuits. He further advised me that such a map had been in the course of preparation, a portion of which had been completed and a portion of that which had been completed was on file at the office. Other portions of it had been de-
2196 stroyed in a fire which had occurred in their store room where the map and information was being compiled, so that the records of their pole lines are shown by maps and records on file in the office were not furnished me because they were not available—because they didn't have them.

Q. Then were you able to make any sort of appraisal or inventory of the poles and aerial wire?

A. I made a general estimate of the pole lines, pole fixtures and aerial wire, based upon and inspection of the different poles routes, information for which was gained by driving over practically all of them to and beyond the city limits—considerably beyond the city limits in a number of directions, from which inspection I was able, based upon my judgment and experience to formulate an estimate of the value of that portion of the plant.

Q. How did you know where their lines of pole and aerial wire was?

A. From experience in the telephone business. Telephone people—from observation become able to judge and in practically all cases correctly judge as to the ownership of telephone poles and wires as between two offices. There are only two general sets of tele-
2197 phone wires and poles in use here, that operated by the Cumberland Telephone Company and that operated by the Home Telephone Company. It is very easy to tell the difference between telephone wires and cables and poles as distinguished from telegraph wires, so that it was simply a matter of distinguishing as between the Cumberland Telephone Company and the Home Telephone Company. In fact doing most of our inspection of
2198 the poles, lines and wires the superintendent of construction of the telephone company was with me, and in any other cases where there was any doubt as to the ownership of poles and wires the proper ownership was pointed out to me by the company's superintendent of construction.

Q. Now do you know the costs of poles of the character used by the Cumberland Telephone Co?

A. Yes.

Q. Do you know the cost of wire such as it has in its aerial system.

A. Yes.

Q. What class of poles has the Cumberland Telephone Co. in use in Louisville?

A. They have two general classes of poles or poles of three kinds, creosoted pine poles, red cedar poles and chestnut poles. Practically all of their poles will fall into those three classes.

Q. What kind of wire have they in their aerial system?

A. For their exchange wire is practically all iron wire. The open wire is practically all iron wire.

Q. Do you know how many poles and how much wire in a general way it would require in the aerial part of the telephone

2199 system such as the Louisville system and—how many poles and how much wire would be required to serve the patrons that the Cumberland Telephone Company serves in Louisville Ky.?

A. I don't know that definitely. I have made an estimate however of it, which based upon my inspection and judgment and experience in the business, I am confident is approximately correct.

Q. In that estimate have you made any calculations to determine the reproduction costs of those poles and aerial wire?

A. I have.

Q. What is the result of your estimate?

A. That that portion of the plant which is ordinarily termed "pole lines, open wires and pole fixtures" could be reproduced for $150,000.

Q. As an original proposition when the telephone engineer desires to estimate the cost of building a plant such as the Louisville plant to accommodate subscribers in number substantially the same as are accommodated in Louisville and in a city the topography of which is substantially the same as Louisville, what would be the estimate of the poles and the aerial wire? What percentage of the

2200 total cost of the plant?

A. Well that would vary largely upon conditions—how extensive the underground or cable system was, how extensive the outside subscribers were. Usually it has been found from experience, and especially from my observation in a large number of telephone plants that the number of poles employed in the construction of the telephone Exchange bears a very close relation to the number of stations in that exchange, and will run almost or very close to one pole per station. That has been borne out in the observation of a very large number of telephone plants that I am familiar with, that there is on an average of about one pole per station. I have based my estimate on about the same average of the number of poles in connection with this plant, which is further corroborated by the superintendent of construction of the company in order to get his opinion approximately the total number of poles that are used in connection with the exchange plant by taking into account the number of poles that lay without the city limits used for country exchange subscribers which are called country subscribers, and he expressed it to me as his opinion that there are a total of about 10,000 poles used in connection with the exchange here.

2201 Q. Well, what about the aerial wire, is that usually considered in connection with poles in distributing the parts of a telephone plant?

A. It may or may not be. Some people take the pole lines, including the pole lines—in mentioning the pole line, including only the poles, cost of erecting them with their fixtures and hardware and using that as a separate item, and taking open wire as a separate

item, and the open wire plant being confined strictly to the open wire erected in place and with its insulators. In this estimate, having no particular data—there being no record of either, I have seen fit to put it all into one estimate, calling it poles and wire plants.

Q. From your experience as a telephone engineer and contractor, state whether or not you would be willing to make a contract to reproduce, to replace their pole and aerial system here for the figure you have named?

A. I would.

Q. I don't recall whether you stated how much you placed as the estimate on this particular part of the telephone system, what was it?

A. $150,000.

2202 Q. Now in what sort of a physical condition is the plant of the Cumberland Telephone Company as it now appears in Louisville?

A. In what I would call good physical condition, capable of producing good telephone service and a plant which has been well maintained.

Q. How much less valuable is the plant as it now appears if it were replaced new throughout?

A. I should estimate that the present value of the plant is from seventy-five to eighty per cent of the value of the plant new. That is due to the way in which the plant has been maintained. It has been kept up in good order and wear and tear has been repaired and kept in good order so that the present value is from seventy-five to eighty per cent of its new value.

Q. Now what value did you place on the tools and teams and office furniture and fixtures?

A. I made an estimate of the value of such supplies that I considered would be necessary for the proper operation and maintenance of a plant of this kind, together with the estimate of the value of such tools as would be necessary and such teams and wagons that are now owned, based upon the statement of the teams and wagons which was made to me by the company's su-

2203 perintendent of construction. Taking those three items together with their automobiles I estimate that the value of the teams, wagons tools, automobiles and supplies to be $18,000. The furniture and fixtures I estimate to be valued at approximately $2,000—at $2,000.

Q. Have you ever conducted a telephone plant yourself?

A. Yes, sir; I owned and operated the telephone plant in the city of Hot Springs, Ark.

Q. Do you know how much supplies are needed to conduct a plant of the size the Cumberland Telephone Co. has in Louisville?

A. Approximately, yes, sir.

Q. What would you say that amount should be?

A. $10,000.

Q. Do you know how much working capital in money a plant of this size would ordinarily require to conduct its business?

A. In a general way, yes. A telephone plant or a telephone com-

pany in practically all cases, as they do here, bills their telephone service in advance, and collects the majority of their telephone rentals in advance, so that the amount of capital which is necessary to have in excess of the revenue is reduced to a minimum.

2204 In a plant of this kind I should judge that $10,000—a working capital of $10,000 if that were available, at the time that the company began to give service and make its collections in advance, that the working capital of $10,000 would be sufficient. That of course is in excess of the current revenues which are coming in.

Q. Now it is claimed by the officers of the Cumberland Telephone Company, who have testified in this case, that the telephone business is an extremely hazardous business. I wish you would state in a general sort of a way what hazards there are, if any, connected with the telephone business?

A. The principal hazards in connection with the telephone business is due to the fact that the telephone company's plant is extended over a wide area, over which it is difficult to keep right close care and supervision. The outside plant, especially the poles, aerial cables and wires are exposed to the elements and particularly to wind and sleet storms which often when they occur cause considerable damage to the plant. The outside plant is also exposed to damages from fire which may occur, not upon the property itself, but on adjacent property, and thereby burn and destroy poles aerial wires and cables. Another hazard is the hazard which

2205 is due to accidents to the public through coming in contact with wires which may accidentally break and come in contact with the electric wires and thereby injuring people who come in contact with them by giving them a shock from the electric current.

Here an adjournment was taken until 9:30.

2206 9:30 A. M. parties met pursuant to adjournment.

By Mr. BLAKEY:

Q. Now Mr. Crumb is there any hazard from the last mentioned item, namely the damage to the public from coming in contact with the wires or the apparatus of the telephone plant unless such wire or apparatus happens to come in contact with some other electric wire of a strong voltage?

A. There would be no serious injury unless the telephone wires were in contact with electric light wires or wires of a higher voltage.

Q. I believe you said you live in Chicago Mr. Crumb?

A. Yes, sir.

Q. I will ask you whether in the City of Chicago you in connection with anyone else ever made any examination into the telephone situation in Chicago?

A. In connection with D. C. Jackson and George Wilder, I was engaged by the City of Chicago in the early part of the year of 1907 to make an investigation of the telephone situation in that city, looking into the condition of service, cost of producing service, etc.,

as applied to the plants and property of the Chicago Telephone Company, which was there operating at the time and also to look into and investigate a proposition which was made to the City of Chicago by another Company called the Manufacturers' Telephone Company, which was seeking a franchise from the city of
2207 Chicago at that time.

Q. Over what phases *are* the telephone situation did your examination extend?

A. The investigation which we made was divided about as follows: It consisted of an investigation of a proposition which was submitted by the Manufacturers' Telephone Company together with an investigation of certain plans and estimates which they had submitted to the city of Chicago to establish or outlining their views of the cost of constructing a telephone plant in that city—a plant to have a capacity of one hundred and ten thousand subscribers' stations. We also took up and investigated their estimates for revenue which such a plant would be able to earn, also their estimates of the expenses which would be incurred in the necessary operation of such a plant. In addition to that we investigated very carefully in regard to the methods of operation of the Chicago Telephone Company, especially with regards to attempting to determine a fair classification of cost of producing telephone service as among the various classes of subscribers which the Chicago Telephone Company was serving at that time. We very carefully went into the theory or basis of rate making, that is looking into the items and expenses which go to make up the cost of producing tele-
2208 phone service, and investigating the different methods of charging for telephone service as for instance the flat rate method of charging and measured service method of charging. We further made a study of the depreciation of the plant, and property of the Chicago Telephone Company which included the original cost price of that property. We investigated an audit of the Chicago Telephone Company books which had been made by the comptroller of the city of Chicago. We conferred with the special counsel engaged by the city of Chicago for that purpose upon methods of rate regulation which we considered would be desirable to be embodied in an ordinance which it was proposed or which was under consideration for the Chicago Telephone Company. Those are the principal things which we considered. There are probably some more that I do not think of just at the present time.

Q. Did you consider the question of the hazards of the business such as you have mentioned?

A. Yes, sir; in our study of the depreciation proposition.

Q. What amount, if any, did you arrive at as the proper amount in the city of Chicago which should be devoted towards taking care of this extra hazards?

A. The amount which we arrived at approximately was one and one tenth per cent, which we designated as a special insur-
2209 ance fund in connection with—we lumped that together with the reconstruction fund or the fund for reconstruction of parts of property which were not worn out in actual service or were not necessary to reconstruct as the means of providing better

or improved service, and I mean by that a reconstruction fund to cover portions of the plant which it would be necessary to reconstruct on account of changes in pole lines, on account of ordinances which the city might pass compelling the telephone company to abandon a part of its useful plant before its life had been worn out. We took that special reconstruction fund and lumped it together with what we called an insurance fund, or a fund which would be established to take care of these special hazards, and estimated after a careful study of the situation that the two together should be approximately two and one quarter per cent, and it was our judgment that that two and one quarter per cent should be divided about half and half between what would be necessary for these reconstruction conditions which I have mentioned, and to cover the special hazards which I have mentioned.

2210 Q. Was this 1 1-10 per cent which you speak of in connection with the insurance fund, a fund to be used in procuring insurance, and if not, explain what you mean by that?

A. No, I mean by that that was intended to cover a fund which it was thought desirable or thought necessary for a well-regulated operating telephone company to set aside to cover the hazards which I have mentioned and outside of the ordinary fire-insurance which could be purchased at reasonable rates from underwriting fire-insurance companies, there being no companies which assumed the extra hazards which I have mentioned at the rates which in our judgment were economical to purchasers. We considered it would be cheaper for the telephone company to set aside that 1 1-10 per cent, which over a period of years in our judgment would compensate them for any loss which they might stand along that line, and if they did not have that and purchased such kind of insurance from other companies it would be more expensive to them to do it in that way.

Q. Now, in the course of that investigation, did you ascertain the value of the Chicago plant and the number of subscribers' stations it had in use?

A. We ascertained the value of the Chicago Telephone Company's plant from records furnished to us by the Auditor of the Chicago Telephone Company, and also by the audit which was made by the City Comptroller.

Q. Now, what did the record show at that time to be the

2211 book value of the Chicago Telephone Company's plant?

A. The Auditor of the Chicago Telephone Company furnished us a statement stating that the book value of the Chicago Telephone Company's plant, including their real estate as of January 1st, 1907 to be $14,240,728. That figure was arrived at by the Chief Engineer of the company making an estimate of it from figures which were furnished by the Auditor of their company, showing not only the plant within the City Limits of Chicago but the plant which extended somewhat beyond that, and it was our best judgment that that price was fairly representative of the book value or the value of their plant at that time.

Q. How many telephone stations did they have installed in connection with that part of the plant?

A. At that time there were approximately in round numbers 132 telephone stations in operation within the City of Chicago at that time.

Q. Did that fourteen million and odd dollars include the real estate and supplies and cash funds necessary to properly conduct the plant?

A. It included the real estate and buildings but not the supplies and working capital.

Q. What was the value of their real estate and buildings?

A. The value of their real estate and buildings as of one
2212 year previous to that, and there had been no additions to the real estate during the year, so that it would apply as of January 1, 1907, was given to us by their company at $933,000.

Q. Deducting that from the fourteen million and odd dollars you first mentioned leaves a balance of how much?

A. $13,307,726.

Q. How much would be the investment then of the Chicago Telephone Company for subscribers' stations at that time?

A. $100.82.

Q. Now in a plant of that size as compared with a plant the size of Louisville exchange at the present time what would you say would be the difference in so far as constructing the plant new was concerned?

A. I would say that the cost of constructing a plant in a city like the City of Chicago or that particular plant as it was in the City of Chicago at that time would undoubtedly cost more per station to construct than a plant such as there was in the City of Louisville or is in the City of Louisville at this time.

Q. To what do you ascribe that difference?

A. To several causes, one of which is that in the City of Chicago—like the City of Chicago a plant built there has a larger portion of its plant underground in underground conduits—
2213 underground cables. Underground construction being more expensive than aerial pole lines and cable construction. Such underground construction as is in force there is more expensive to construct on account of the heavier traffic, more congested streets than it would be to construct underground conduits in a city like Louisville or in Louisville. Another reason that makes it more expensive for the construction of a telephone plant in the City of Chicago than in the City of Louisville is that the total number of telephones served is much larger. In order to serve that economically they must be served from several central offices which are considerably in excess of the number of central offices in a city the size of Louisville, thereby increasing very largely the cost of the plant which is called a trunking plant for connecting the central offices; also that the units of equipment in the central offices are ordinarily larger units of equipment than those that are found in the City of Louisville, and therefore cost more per line or station.

Q. Do you know Mr. Douglas C. Jackson?

A. Yes, sir.

Q. Is he one of the men mentioned by you as having assisted in this Chicago investigation?

A. Yes, sir.

Q. Do you know anything about his having made an inventory and appraisal of the property of the New England Telephone and Telegraph Company recently?

2214 A. Yes, sir.

Q. Have you talked with him in regard to that, and have you seen his report to the Massachusetts Highway Commission?

A. I have both.

Q. What was the method pursued by Mr. Jackson in arriving at the value of the telephone property of the New England Telephone and Telegraph Company, if you know?

A. Mr. Jackson was engaged by the Highway Commission to make an inventory appraisement of the plant and property of the New England Telephone Company. In doing that he had the cheerful co-operation of that company. They furnished or detailed one of their very competent engineers to assist him in every way possible in making that inventory. In addition to that they placed at his disposal the services of a large number of—of several of their employees who were familiar with the business to go over all of the plant and property, make a careful inspection of it and list each part and parcel of it in detail upon forms which had been prepared by Mr. Jackson. That was all done—in the matter of listing the details—that work was performed in the summer of 1908, a year ago last summer. From the inventory which was made in this way Mr. Jackson with his own skilled employees made a careful check-up of 10 per cent of each of the items which had been reported to him by the employees of the New England Telephone Company. Wherever or whenever the check-up showed a variance from the original report, that portion of the plant, or the plant in the

2215 district from which that report was made, was entirely re-inventoried by Mr. Jackson's own men. In that way a complete inventory of every part and parcel of the New England Telephone Company's plant was got, and, in my opinion, was gotten as complete and accurate as it was possible to get it, and it was from that data that he made his estimates or his compilation, showing the value of the plant.

Q. Does Mr. Jackson's report show what the value of the plant of that company was at that time in the City of Boston?

A. Yes sir.

Q. What does it show to be that value?

A. It shows the value in the City of Boston to be $4,463,843.00.

Q. Does that amount include real estate, supplies and working capital?

A. It does.

Q. What amount per station did the real estate in the City of Chicago represent?

A. $7.07 per station. That is on their book value.

Q. If the books of the Cumberland Telephone Company show that its real estate and buildings are valued at, approximately,

$150,000.00, what would be the amount per station represented by the book value of that property?

A. Approximately $10.00, figuring at 10,000 stations connected to the Louisville exchange.

2216 Q. I wish you would read that question.

Question read.

A. I should say $15 instead of $10. It is the result obtained by dividing the number of stations into the book value of the real estate.

Q. Does the report of Mr. Jackson show the value of the real estate used in connection with the Boston plant?

A. No, it is not segregated as regards the Boston plant. It shows the value of the real estate used in the total plant, but not taking it out for the Boston plant alone.

Q. Does the report of Mr. Jackson show the amount of supplies—the value of the supplies and the amount of working capital apportioned to Boston?

A. No, sir; it shows that in total for the total property.

Q. What amount would you say should properly be apportioned to the Boston plant which would be necessary to be invested in supplies and working capital?

A. I should think that the Boston plant ought to be operated on a working capital of $50,000, and the supply in material of approximately the same amount, $50,000.

Q. Now, how many stations does that report show that the telephone company had in use in the City of Boston at the time the report was made?

A. In what was called the metropolitan district of Boston
2217 which includes practically the Boston city limits, it showed 42,749 stations.

Q. Does that include all stations connected with the exchange, and for which no toll was charged?

A. It does.

Q. Now on the basis of $10 per station for the value of real property and buildings used by the company, what amount would be represented as the value of the real property used in connection with the Boston exchange?

A. $427,490.

Q. And the items of supplies and working capital I believe in your judgment you state to be about $100,000?

A. Altogether, yes, sir.

Q. Now, deducting these three items, from the value of the plant as found by Mr. Jackson, what amount would be left as the value of the plant proper?

A. A little less than $4,000,000. I can deduct it for you in one moment, $3,936,353.

Q. And how much would be the investment then per subscriber's station, according to the figure you have given?

A. $92.08 per station.

Q. You spoke yesterday of being unable to procure a map or

any sort of a blue print showing the number of poles and aerial wire and the location thereof used in connection with the Cumberland Telephone Company's plant, I will ask you whether you
2218 made any attempt to procure such a map or blue print or record from the Cumberland Telephone Company other than by inquiring of the officials of the Company at the Louisville office?

A. Yes, sir; I did. I wrote a letter to the attorney for the company, Mr. Fairleigh, I believe his name is—or to the Cumberland Telephone Company in Louisville, and it was replied to by the attorney for the Company saying that the maps were not at hand and could not be furnished.

Q. I will ask you to file a copy of the letter you wrote and a copy of the letter which was a reply to that letter, and make it a part of your deposition?

A. This is a copy of the letter which I wrote, and this is a copy of the letter which came to me in reply, which is marked "Exhibits Crumb No. 3 & 4.

Q. Now, ordinarily would a properly operated and conducted telephone plant have such data as you requested from officers of the company and mentioned in those letters?

A. A properly or a well-conducted operating telephone company would have that. It is shown here that an effort had been made toward getting them. They have a map which was furnished me showing the portion of the pole lines in the exchange and further told me that a start had been made toward collecting and compiling that data, but on account of other work and a fire which had burned a great many of the notes that they had temporarily discontinued to work on it, so that it was incomplete at that time.

2219 Q. Now, in connection with the Chicago investigation, did the Manufacturers Telephone Company submit to the three gentlemen engaged in that investigation, any estimate showing the figures on which they based their proposal to construct a telephone plant in the City of Chicago?

A. They did, they furnished two estimates, an estimate which had been originally filed with the City Council and was later revised to meet some changes in the plans which they *supposed* to make.

Q. I believe you stated that their proposition was to construct a telephone plant to provide for 110,000 subscribers' stations?

A. Yes, sir.

Q. Now from those figures submitted by them, did they show what the different parts of the plant would cost, for instance, the conduits and the cables?

A. They did, they classified them in the several classes—the different portions of the cost were classified in the several different items.

Q. What did their estimates show as the percentage of the total cost which would be required on account of the poles and wire—poles and aerial wire?

A. 15½ per cent of the total cost was estimated to be necessary for furnishing the poles and wire for their exchange.

2220 Q. What percentage of the total value of the plant does the valuation of the poles and wires of the Louisville plant show to be?

A. Fifteen per cent—15½ per cent.

Q. When did you make the figures ascertaining this to be the cost, and how did you happen to do it?

A. I made those figures last night at your request in order that I might show figures which would substantiate the estimate which I had made on the cost of constructing the plant in Louisville. You asked me to make such figures from other known estimates and cost which I had known of which would be comparable to the estimates I had made here and last night I made those figures from data which I took from the report of the City of Chicago.

Q. Now, referring again to the switchboard equipment in the main exchanges of the city used by the Cumberland Telephone Company, as I understand you, those are switchboards which are of the class furnished by the Western Electric Company, is that correct?

A. Yes, sir.

Q. Now, I wish you would state more in detail the difference between the switchboards constructed and installed by the Western Electric Company—switchboards of that character, and switchboards which are made and installed by manufacturing companies who furnish switchboard equipment to what is known as inde-

2221 pendent companies?

A. The difference in the results accomplished by each of these switchboards is nil.

They both accomplish practically the same results in largely the same way. The different ways in which the results are accomplished consist in different circuits—actuating different relays in different manners by electric currents from the central storage battery or batteries. Both the switchboards furnished by the Western Electric Co. and the various independent companies are intended to provide a means for connection to subscribers' lines or circuits so that they can talk together over those circuits, and to provide means to signal the telephone operator when the conversation is completed so that the connection can be taken down and those circuits may be made available for other conversation. These results are accomplished by each of the classes of manufacturers. The essential difference in which these results are accomplished lay largely in different circuits for signalling the operator when the subscriber wants a connection, different circuits for signalling the operator to let her know when the connection is completed. Different circuits for cutting out auxiliary apparatus which is needed for that signal. Those are quite technical and practically accomplish the same results so that

2222 one manufacturer of switchboard does the same thing, or the independent manufacturers of switchboards do the same thing and accomplish the same results as the Western Electric Co. switchboard in just as good and efficient way.

Q. Can the Bell system of telephones procure from the manufac-

turers of switchboards other than the Western Electric Company's switchboards such as independent companies make use of?

A. Yes, sir; I never have known of an independent manufacturing company refusing to sell their apparatus to any Bell Telephone Company.

Q. Is there any difference in the cost of constructing and installing a switchboard similar to the one used by the Cumberland Telephone Co. and the switchboard used by independent telephone companies of a similar nature.

A. Those costs should run approximately the same because the cost of producing the apparatus—because the apparatus and equipment is essentially the same. I am not familiar with the prices which are charged by the Western Electric Co. Among the independent manufacturing companies, of which there are several, there is rather sharp competition and a tendency to make the selling price as low as is consistent with good business management, and leave a fair margin of profits, whereas with the Western
2223 Electric Co. they are the exclusive manufacturers of apparatus used by the various Bell Telephone Companies.

Q. Now how about the subscribers' equipment? What is the difference between the subscribers' equipment furnished by the Western Electric Company and the subscribers' equipment furnished by the companies who manufacture that equipment for independent companies?

A. They are essentially the same. They accomplish the same results in practically the same way.

Q. Is the equipment, either inside switchboard equipment or subscribers' equipment furnished by the Western Electric Co. any better or serves its purpose any more satisfactorily than the same equipment manufactured by the companies who furnish the independent companies their equipment?

A. No, sir.

Q. Do you know whether the independent manufacturers of subscribers' equipment sell the telephones and the transmitter outright or whether they rent them?

A. They sell them outright.

Q. Do the independent companies pay any royalty or any rents to the manufacturers of that telephone and transmitter—
2223½ receiver and transmitter?

A. They do not.

Q. Do you know what is the value—what the telephone receiver and transmitter can be purchased for?

A. Approximately yes.

Q. How much would you say.

A. The usual market price for the telephone receiver runs about a dollar and the transmitter about a dollar and a half.

Q. Now is there any more complication about the receiver and transmitter used by the Bell Telephone Companies than there is about those used by the independent telephone companies?

A. They are essentially the same.

Q. Now referring to the question of depreciation of the plant, are

you sufficiently familiar with the construction and replacement or reconstruction of telephone plants to know what amount the telephone companies should set a-ide each year to provide for the depreciation of the plant?

A. I have devoted a good deal of study to that subject and I believe that I have arrived at a figure which is considered fairly accurate for that charge, especially with regards to the investigation which was made for the city of Chicago.

2224 Q. Have you operated telephone plants yourself?

A. Yes, sir.

Q. What would you say would be the amount that should be set aside for depreciation of a plant such as the Louisville plant here, and by depreciation I mean depreciation strictly speaking without taking into consideration any item of reconstructing plants before the useful life of the plant has been reached?

A. Six percent.

Q. Now in your Chicago report I notice that you place that depreciation at about five and seventy-four one-hundredths percent, and you say that for reconstruction and insurance on account of hazards and additional amounts of two and twenty-nine one-hundredths percent I believe should be set aside?

A. Yes, sir.

Q. What do you mean by reconstruction in that connection and does that apply and should it apply to the Louisville plant?

A. I mean by reconstruction the rebuilding and changing of such portions of the plant as it was necessary to reconstruct or change to comply with various city regulations which were made necessary by removing pole lines and putting lines into conduits along streets which were newly made boulevards, changes which it would

2225 be necessary to make on account of track elevation and other causes which were beyond the control of the telephone company. In my opinion there should be in a plant like Louisville—there should be a provision made for that because undoubtedly from time to time the city will require changes or there will be other causes for making changes in the plant which are beyond the control of the telephone company. Although here I should not put that figure so high as I would for a plant like the city of Chicago.

Q. In valueing the Louisville plant, have you included in your valuation the toll line equipment or the wires and poles used in connection with the toll line business of the company?

A. I have not.

Q. Is it a practical matter to separate construction of the exchange proper and the toll equipment and constructions proper?

A. It is practical. A number of items can be definitely fixed or classified as between exchange and toll. There is a number of items in the construction cost such as conduit lines and pole lines which are used both for toll line purposes and for exchange purposes, the expense of constructing which or the value of which can be classified upon a fair basis.

2226 Q. If there are any toll lines used in connection with the cables and conduit system of the Cumberland Telephone Co. is that included in your valuation?

A. No, sir.

Q. Can you from their records tell what toll lines are included in the cables and conduits?

A. I have none of their records which show that.

Q. Then if any of these lines are within the cable conduits how do you separate the two?

A. The lines are practically upon their pole lines.

Q. The toll lines you mean are?

A. The toll lines are brought to their main exchange on pole lines, and in estimating the value of the pole line plant I exercise my best judgment to take off that portion of it which was properly chargeable to toll line construction.

Q. Now when it comes to operating the toll system is it a practical matter to separate the operation—the expense of operating the exchange proper and the pole department?

A. It is practical.

Q. What are the difficulties, if any, in connection with separating those expenses?

A. The principal difficulties are in establishing a basis
2227 for classifying the expenses of employes and general expenses which are incident to the operation of toll and exchange service both, and that classification must be made upon the—should be made upon a fair basis which would have to be made arbitrarily based upon knowledge of the work which is done and experience.

Q. Insofar as employees engaged strictly in toll line operations is there any difficulty?

A. No, sir.

Q. What operators—what employés are engaged in the strictly operating department of the toll line system in the city of Louisville?

A. The toll operators and those employés in the operating department who devote their time exclusively to toll line work.

Q. What other class of employés are there who devote any of their time towards the operating department of the system?

A. The manager, book-keeper, collectors, exchange operators, exchange repair men who are available for both toll line and exchange repairs, or spend their time dividedly upon toll line exchange repairs also equipment repair men and the general expense which is incident to the supervision of those employés together with the gen-
2228 eral expenses for rent, light, heat and similar expenses which are divided between the toll and exchange service.

Q. Now you say exchange operators, in what way are exchange operators connected or engaged in the work for the toll system?

A. In producing telephone exchange service it is ordi-
2229 narily contemplated that that service is for the connection of lines for the communication of messages within the limits of that exchange whereas toll line service—and its specific charges made for that service. Toll line service contemplates the connection of the exchange of subscribers' lines to other subscribers' lines which extend outside the limits of the exchange, and for which an additional specific charge is made. In order to make these connections it requires the service of both an exchange operator and a toll oper-

ator, the call originating from the subscribers' station is answered by the exchange operator, who being informed that a subscriber wants to talk to a toll line point, is connected with the toll board where he makes his wants known and the toll operator proceeds to establish the connection for him and call him to his telephone when the connection is established, in which operation the services of an exchange operator are again required. That is true in all cases except where special provisions are made for heavy toll users who may have direct lines to the toll board.

Q. What would be the practical method of determining what part of the wages of the exchange operator should be charged to the operation of the toll system?

A. That in my judgment should be based upon the pro-
2230 portion of toll traffic to the total traffic of both toll and exchange, meaning by that that the exchange operators handle both toll and exchange connections. The connections which are handled for exchange operators only—the expense of handling those should be charged to the exchange and the expense of handling the connections which come to the toll board should be charged to toll operation, and that proportion can be found by keeping record of the traffic, both toll and exchange for a certain limited period and going upon the assumption that it follows the same general lines throughout a longer period.

Q. Now when it comes to maintaining the toll lines and the exchange lines what would be the practical method of apportioning the expense of maintaining those two sets of lines?

A. If at a given exchange there is enough toll line maintenance or repairs to employ the exclusive time of one or more individuals the most practical way would be to set those employés aside for that particular purpose and keep them engaged upon it continuously, but there comes times even if it is possible—generally there come times when there is an excess of toll line repairs or maintenance,

for which it may be advisable to temporarily engage the
2231 services of other employés who are ordinarily employed exclusively for exchange work, in which case the time or expense of their services should be proportioned between the toll and the exchange in proportion to the time which they have been employed.

Q. What should be done in connection with the material used in maintaining the respective line?

A. The material that is used for the maintenance and repairs of toll lines should be charged to the toll line maintenance and repair, and that which is used for exchange maintenance and repairs is a proper charge and should be charged against the maintenance and the repairs of the exchange.

Q. Is it a difficult matter to determine the amount of time used by any employé and working upon any particular line, be it toll or exchange line?

A. As specifying between toll and exchange it is not difficult.

Q. Why is that?

A. Because it is simply a matter of keeping a very small record on your pay roll or work report.

Q. Is the power used for transmitting exchange messages at the Louisville plant also used in connection with transmitting toll messages?

2232 A. The power comes from the same source, yes.

Q. Now what is the theory, Mr. Cromb—what is the logical theory for establishing rates to be charged the subscribers for the use of telephones?

A. The logical theory for establishing rates which should be charged for telephone service should be based upon the expense of producing that particular class of service plus a reasonable amount of profit.

Q. Now if the telephone system in Louisville has practically five classes of subscribers, one of direct business, one of two party business, one of direct residence, and one of two party residence and one of pay station business—the pay station business presumably receiving and transmitting the fewest number of calls and the other classes which I have named receiving and transmitting and increasing number of calls in the order named by me, on what theory should the rate for those various classes be established?

A. It is my judgment borne from experience the lines or stations—lines and stations producing the originating or maximum amount of traffic should pay the maximum rate and that other lines or classes of service which originate a decreasing amount of traffic should pay a decreasing rate down to the class of service which produces the minimum amount of traffic. In establishing tele-

2233 phone rates there are two elements which go to make up the expense of producing service, the first element being the expense of investment, a fixed charge which it is necessary for the telephone company to put itself to, to provide the subscriber with the facilities for service. Then the producing service—after that fixed charge has been made—the expense for producing the service is almost directly proportional to the amount of service which is rendered.

Q. Now if we assume that those five classes of service practically cover the service rendered by the Cumberland Telephone Company over a period of the last four years, of course bear in mind that there were extension sets, and if we assume that the books of the company show that for those four years the general expense was in round numbers $37,000., that the operating expenses—average operating expenses for those years were substantially $63,000, and the maintainance and repairs for those four years were an average of $50,000, and the average number of subscribers for those four years were ninety three hundred, what would be your opinion as to the cost based on those figures of operating the class of service which require the greatest number of calls, and the cost of operating the class of service which require the minimum number of calls, in other words on what basis would you reach the conclusion

2234 from your knowledge of the telephone business as to the ratio on which the cost of operating those classes of telephones should be calculated?

A. The question as you have stated it—there is insufficient data to classify the cost of service among those particular classes with fairness for the reason that you have not stated or assumed a traffic for the different classes of service. It would be necessary to know what relation the difference—what traffic relation the different classes of service had one to the other?

Q. Well what would be your opinion of the traffic relations existing between those various classes?

A. The figures that you gave me for operating general and maintenance were per year, were they not?

Q. Yes.

A. It would be necessary to make some computation to get at an estimate of that. In replying to this question, it will be necessary to have or assume the number of telephones in each class.

Q. Assuming then that there are nine hundred and sixty-six business direct telephones, nine hundred and fifty-three business two-party telephones, nine hundred and thirty-eight residence direct, two thousand and nine residence, two-party, practically fifteen hundred pay stations, one hundred and ninety four country resi-
2235 dence party lines, seventy-eight country residence direct lines, thirteen business direct country lines, seventeen business party lines in the country, and would you want the extension sets and private branch exchange trunks?

A. To make up the ninety three hundred stations.

Q. Two hundred and fifty seven private branch exchange trunks, two thousand, six hundred and seventy-seven extension sets, and by extension sets, I mean to include what is termed stations connected with private branch exchanges.

A. I take it that the number of subscribers in each class of service shall bear the same relative proportion to the total average of ninety three hundred stations, which this particular portion bears to that average. The total of the number of stations which you have given me totals ninety-six hundred as against ninety-three hundred which you gave me as the average.

Q. Yes, make your estimate on that basis.

A. This is practically fixing the rate for an exchange, and it will take considerable time, it will take probably a course of an hour to arrive at an answer to that question as you have put it.

The further taking of this witness's deposition was adjourned until two o'clock in order to give the witness an opportunity to answer the question.

2236 *Afternoon Session.*

Parties met pursuant to adjournment.

Mr. William H. Crum resumed the stand and the direct examination was continued by Mr. Blakey as follows:

Q. State what you have endeavored to ascertain from the computations you have made?

A. In reply to your question as to the relative rates which should

be charged during the period of four years upon an assumed plant in the city of Louisville with an average of ninety three hundred stations operating at an average annual expense of $37,000 for general expense, $63,000 for operating expense and $50,000 for maintenance expense as to what should be the relative rates for the different classes of service specifying single business, two party line business and other classes of service I have made computations upon which I should base my judgment as to the relative rates, which it would be fair to charge for each class of service. I only extended this however, to bear upon the traffic feature or the traffic
2237 which originated from each station, basing that traffic upon an arbitrary figure which I exercised the best judgment I could in establishing without having actual traffic data at hand, and which in my opinion represents a relative fair average traffic for the exchange of this kind.

In order to extend these rates to the gross charge which should be made for each class of telephones it would be necessary to fix upon a rate of profit which it would be fair to allow an operating company to earn and that rate of profit I made no attempt to fix and so has stopped the computation with that portion of the service charged which bears its relation to traffic only, the remainder of the charge which should properly be charged for service to be made up of fixed charge which is composed of a reasonabe profit on the investment on a particular class of plant which is used for the particular class of service in proportion to what that plant bears to the total plant and also another charge which would be a charge to cover the depreciation upon the plant. That often is or may very correctly be proportioned upon a fixed basis—should be proportioned upon a fixed basis and the plant investment employed in each class of service.

2238 Taking the figures which I extended to the traffic end of the business I estimate that the charges to cover the traffic which might be expected to originate from the different classes of services to be as follows:

For a single line business telephone $32.30 per year;
Two party line business telephone $24.32 per year;
Single and residence telephone $20.00 per year;
Two party line residence telephone $14.70 per year;
Pay station telephone $5.80 per year;
Two party line country residence telephone $15.00 per year;
Single party or direct country line telephone $20 per year;
Direct line country business telephone $25 per year;
Party line country business telephone $20 per year;

Private branch exchange stations $20 per year and extension sets I put in arbitrarily at 12.00 a year; without any elaborate course of reasoning I made that arbitrary figure. There being few of them or comparatively a few of them I did not think that that
2239 would be any hardship on any particular extension set users.

Q. I notice you place more against private branch exchanges than against extension sets, what is the occasion for that?

A. That is based upon the theory that the private branch ex-

change is used largely or almost entirely by subscribers who have large demands for telephone service and therefore creates an excess amount of traffic whereas extension telephones as a class are usually installed for subscribers for their convenience more especially than for the large amount of traffic which they require, and that the extension telephone does not ordinarily originate so much traffic as the private branch exchange telephones.

Q. Does the private branch exchange station, or rather the item appearing as its portion of the cost include the private branch exchange and the trunk line leading to it?

A. No; that comes in under the fixed portion of plant for which the telephone company expends a fixed sum of money in placing itself in position to serve the private branch exchange subscriber, and thereby take care of the traffic which he originates.

2240 Q. Now what was your basis for reaching the conclusions that you have detailed here?

A. The basis which I used was a purely arbitrary basis based upon my judgment of the amount of traffic which would be originated from each class of service in calls per day from each class telephone, extending that to the proportion of the calls through the entire year, and from that figuring the portion of the general operating and maintenance expense which you gave me which that service should earn.

Q. What did you take as the figures representing the number of calls over each class of service?

A. This is an arbitrary estimate, which in my opinion is fairly accurate as regards one item as compared to the other or the whole. The traffic experience here may be entirely different from the number of calls per station per day which I give, but it is my belief that no matter how different it is each particular class of service will bear about the same relation to all of the others and the total as I give here, and I estimated the single line business telephones on an average would originate twelve calls per station per day; two party line business ten calls per station per day; single line

2241 residence, eight calls per station per day; two party line residence six calls per station per day; pay station telephone two calls per station per day; country line residence two party seven calls per station per day; country line residence direct nine calls per station per day; country line business direct thirteen calls per station per day; country line business party line eleven calls per station per day. I arbitrarily increased or I arbitrarily set a higher figure for the country line—for all country line telephones because they ordinarily have much longer lines than the exchange subscribers, and therefore have more expensive maintenance. That is a case of trouble on a country line takes a man longer to repair it and costs more money, and to compensate for that I arbitrarily increased the number of calls which I ordinarily should estimate would go over those lines, to compensate for that increase maintenance expense. In addition I estimated the private branch exchange stations to originate seven and one half calls per station per day.

Q. And your extension sets I believe you said you fixed arbitrarily——

A. I fixed a price without estimating the traffic.

Q. Then by what process did you reach the first figures
2242 you gave as to the total cost for each plant of traffic?

A. I concluded the total number of calls for this class of service, that is, multiplying the number of telephones by the number of calls per day for each telephone, then add up the total number of calls per day—from that I found the total number of calls per day. I then computed the percentage of calls per day which was originated by each class of service, and as all classes of service necessitated the general operating and maintenance expense of $150,000 per year I computed the proportion of that expense which was properly chargeable to each class of service. Dividing that result by the number of telephones in that class of service I found the proper charge as estimated for each telephone in that class of service.

Q. Now this is the total of the general expense the operating expenses and maintenance repairs aggregated $150,000 what in a general way would be the cost of operating each of the telephones of the Cumberland Telephone system per year.

A. Read that question.

Question read.

2243 Q. I mean without separating one class of telephones from another.

A. Do I understand you to mean actual net costs or costs plus the profit to the company?

Q. I mean actual net costs assuming that there are between nine and ten thousand telephones in use or assuming there are ten thousand telephones?

A. Assuming there are ten thousand telephones and operating general and maintenance expense of $150,000 there should be added to those expenses the sum of money based upon the actual cash investment in the plant sufficient to cover the depreciation. Taking the actual cash investment in the plant at approximately one million dollars and figuring depreciation at seven per cent would be $70,000, which should be added to the $150,000, making $220,000 which it would be necessary for the telephone company to earn to cover the actual cost of operation, maintenance general expense and depreciation. Distributing these among ten thousand telephones would mean that the average earning of each telephone would need be $22 per year in order to meet these expenses.

Q. Now for the present eliminating the question of de-
2244 preciation, what would be the amount that each telephone would have to earn on an average to pay the costs of expenses?

A. General operating and maintenance as given by you, it would mean that in round numbers each telephone would have to earn $15 per telephone per year on an average.

Q. Now as I understood your testimony before noon the classes of service that have the greatest traffic costs more to operate and

maintain and a larger percentage of general expense as well, then the telephones having a smaller amount of traffic, is that correct?

A. Yes, sir.

Q. Now, what in your opinion would be the cost of operating the class of service having the smallest degree of traffic if the average cost be $15 per year?

A. $5.80, assuming the smallest degree of traffic to be two calls per station per day.

Q. If the traffic was equal to or greater than two calls per day, either incoming or outgoing, could the company operate its plant here as you know it and have each telephone pay its cost of operating unless each telephone earns at least $5.80 a year?

2245 A. I would like to have you read that question.

Question read.

A. Oh, it would be necessary that each telephone should earn $5.80 per year or more under those conditions in order to allow the telephone company to collect enough revenue to pay its operating expenses.

Q. Now taking into consideration that the pay stations have the slot in the machine apparatus connected with them, and that a portion of the expenses are made necessary by the collectors who go monthly to these pay station apparatus and collect from them and settle with the people in whose places of business or residence the pay stations are installed, would you say that $5.80 was a fair proportion of the expenses of the company to be charged against the pay station?

A. Will you read that question?

Question read.

A. If the amount of traffic assumed is correct, it would be a fair amount, yes.

Q. Now if the company pays $13,722.52 to the owner of the transmitter and receiver and has an average of ten thousand sub-

2246 scribers' stations how much per telephone would it pay on account of each of its telephones?

A. $1.30.

Q. And that added to $5.80 makes a total of how much?

A. 7.10.

Q. Do the pay stations have a transmitter and receiver such as the other telephones?

A. Yes, sir.

Q. Is that a proper way to apportion the rental paid on account of instrument expense?

A. That is the proper way to apportion it, yes.

Q. Now if the company had in round numbers 1500 pay stations and half of which are party lines and considering the fact that — have a slot-in-the-machine apparatus attached to them, what portion of the total amount invested in the plant should be apportioned to each one of those pay stations?

A. The amount of investment is based, or should be based upon the relation which the number of lines actually used for pay sta-

tions, bears to the total number of lines in use, thereby giving you the fraction of the total plant which is used for the pay stations in
lines—as expressed in telephone circuits. The pay station
2247 lines are circuits with their equipments having a slightly
excess of investment over the single subscriber's line, it would be necessary to add to the fixed cost for that line the amount which was invested in the slot machine, which added to the investment in the proportion of plants for pay stations divided by the number of paystations would give the average investment in each pay station with its line.

Q. Will you make that calculation and ascertain what in your opinion should be charged against each of the pay stations as its proportion of the value of the plant.

A. The average investment in plant per pay station I estimated to be or compute to be $152.50.

Q. How did you arrive at that?

A. I took the total number of lines in the exchange. By that I mean as single lines plus an estimate of the number of single lines that are required for the party line subscribers. Dividing that into the total plant investments assume- to be one million dollars I arrive
at an average investment per line whether that line has to
2248 party line equipment on it or single line equipment. There
being 1500 pay station telephones, one half of which are assumed to be on straight lines and the remainder on party lines, I have estimated that for the total number of lines required for the pay stations at 1250 lines. Each line with a pay station on it has equipment somewhat in excess of the equipment which is necessary for the ordinary telephone subscriber's station. I therefore arbitrarily put on a slight excess charge making the average cost of line $180. Multiplying 1250 lines by $180 and adding thereto the excess cost for equipping the 250 additional pay station telephones which go on to party lines, I arrived at a total cost—the relative total cost of plant investment for the pay station equipment and lines. Dividing that by the total number of pay stations I get the average cost for plant investment per pay station to be $152.50.

Q. Making the basis of your calculation $150 for the sake of convenience and assuming that the company must earn seven per cent to take care of the depreciation on that part of the plant, which is devoted to pay stations and also assuming that it is entitled to
earn seven per cent on the value of that part of its plant as a
2249 a dividend to its stockholders, what would a calculation show
as the total amount to be covered by those two items?

A. Twenty-one dollars.

Q. And if you add the seven dollars and ten cents, being the cost of conducting those pay stations and the instrument expense, what total would you arrive at?

A. Twenty-eight dollars and ten cents.

Q. Well, what would you say, taking all of those items into consideration as to what each pay station should be required to earn in order that the pay station should not be operated at a loss?

A. Twenty-eight dollars and ten cents.

Q. Do you mean twenty-eight dollars and ten cents per year?

A. Per station per year.

Q. Now that the Cumberland Telephone Company has installed nine hundred and sixty-six direct business telephones, nine hundred and thirty-eight direct residence telephones, two hundred and ten direct country telephones, two hundred and fifty-seven trunks, leading and private branch exchanges, about six hundred and fifty extension sets and about two thousand and twenty-eight extension sets attached to private branch exchanges, and all of the balance of its subscribers' stations being on what is known as party lines, what would you say would now be the excess equipment for new subscribers?

A. I don't know that I understand exactly what you mean. Do you mean for new subscribers to be added to the plant?

2250 Q. Yes.

A. The company with its plant in its present condition has ample facilities for taking care of a large number of subscribers in addition to the subscribers which are now being served without making very expensive additions to its plant.

Q. How do you arrive at that conclusion?

A. From knowledge of the approximate number of—from the knowledge of the number of switchboard lines installed in each exchange and the approximate knowledge of the number of switchboard lines which are now in use, from the knowledge of the number of cable lines that are installed in each exchange and an approximate knowledge of the number of cable lines which are now in use, thereby showing a considerable number of vacant switchboard lines and cable lines which can be used for new subscribers, the switchboard and cable lines being a principal part of the plant which would be used for new subscribers, it being simply necessary to install the telephone, and connect it to the cable which extends over various routes throughout the city and connects that to the switchboard in order to place a new subscriber in service.

Q. Well, can you approximate the number of new subscribers that the company is now in position to take care of if they

2251 were distributed as the company seems to have thought they would be distributed when it built its plant?

A. Under ordinary conditions of growth which might be expected in this city I should place as an estimate that the company has facilities for an addition of at least two thousand subscribers' lines, which if a very considerable number of them were on party lines, would mean more than two thousand subscribers' stations or individual subscribers without making very extensive or expensive additions to its plant. There might be isolated cases where a new subscriber would be secured whose location was some little distance from a present pole line, but the pole lines are sufficiently extensive throughout the city so that there is almost no district which is populated which is very far removed from a pole line, so those few instances which might occur would not make necessary very extensive constructions for the company on that number of subscribers.

Q. Now I wish you would explain the theory on which it is some-

times said that a telephone company's operations are different from all other classes of business in that the more telephone subscribers the company has the more it costs per subscriber, and state what are the actual facts in regard to that proposition?

A. That is a theory which is rather prevalent in the tele-
2252 phone business, which in my opinion is based upon a wrong premise due to the fact that telephone rates have been established upon a flat rate basis for charging for service, permitting the company installing a telephone at a subscriber's—permitting him to use that telephone as much as he desires. The more opportunities that a man has to use his telephone through having more telephones connected with his exchange, the theory is, that the more connections he will require from the telephone company, and therefore the more expense he will put the telephone company to, in producing him his service. This theory does in fact operate to a certain extent among the subscribers who are large users of service, and those are the subscribers that are ordinarily the first to take service from any telephone exchange—that is the people who have the greatest need for the service. After this demand has been satisfied by the telephone company if they then extend their plant to the localities where the possible subscribers have less demand for service and place service within their means, they ordinarily take on a class of subscribers, namely, residence subscribers who have ordinarily a rather restricted demand for telephone service so that as the plant increases above a certain limit the traffic per station does not increase. Another reason for the theory that it costs more to pro-
duce telephone service in large quantities than it does in
2253 small quantities is the cause of the practice of comparing localities where telephone service is produced in small quantities with localities where it is produced in large quantities.

The small exchanges located in small cities almost without exception have a smaller investment per station than a large number of stations connected with exchanges in large cities. Based upon the flat rate service of charging for telephone service in my opinion there is a slight increase in producing telephone service in a given locality in large quantities over that which it costs to produce telephone service in moderate quantities, but I believe that that cost is often considerably over estimated, and in fact very generally over estimated by telephone people; that the cost is not so great as is usually believed to be. On the other hand, if the measured rate basis of charge, which I have always contended is the proper way to charge for telephone service, measuring the telephone service by traf-ic and not by the facilities, and charging in proportion to that, then it becomes cheaper to produce telephone service in large quantities or it becomes cheaper as the plant extends and the traffic increases, it becomes cheaper to produce the service on the basis of message cost.

Q. When a telephone company is equipped for accommodating
twelve thousand subscribers' stations of a given character,
2254 is there any more cost for a subscriber where the company has connected with its exchange the entire twelve thousand

than there would per subscriber if the company only had ten thousand subscribers connected with its exchange?

A. Will you read the question?

(Question read.)

A. That would depend—I take it that you are referring entirely to the general operating and maintenance expense and not investment expense?

Q. Yes.

A. Then that would depend upon whether the twelve thousand subscribers have the traffic directly in proportion to the ten thousand subscribers, equal in proportion to the ten thousand subscribers, or whether it was greater or less than the exchange with the ten thousand subscribers. Taking an exchange similar to this one and assuming that it was connected with ten thousand subscribers and that those ten thousand subscribers were the ten thousand who have the greatest need for telephone service and that the additional two thousand came on from among people whose demands were relatively not so great, then with a fixed plant I should estimate it would be cheaper for a station to furnish the telephone service to the twelve thousand telephones than to the ten thousand telephones.

2255 Q. Well, from your knowledge of the telephone business, what would be your opinion as to the character of subscribers who would go to make up the two thousand additional subscribers who might now be induced to become subscribers to this exchange, due to the reduction in rates made by the company.

A. I believe that the addition of two thousand subscribers such as might be had to the present plant of the Cumberland Telephone Company in Louisville would tend to reduce rather than to increase the amount of traffic per station per day or per annum, and thereby tend to decrease the cost of operation, maintenance and repairs per station per annum.

Q. Are you familiar with the effect of a telephone company reducing its rates?

A. Yes, sir.

Q. What is that effect?

A. It has almost always resulted in an increase in the number of subscribers.

Q. Is there any basis on which to estimate the number of subscribers which a telephone company should have in a given community of a given population?

A. It is practice among telephone people to figure what is called percentage of development—the telephone development in

2256 any city or locality. That percentage is derived by dividing the total number of telephone stations in the city by the population of that city, arriving at a percentage of population who use telephones. Ordinarily in cities of this size a telephone development of ten per cent is common—that is one telephone in service for every ten people of population. There are various cities where the percentage of development is higher than that and various where it is lower, but in the cities of this size, take for [illegible]tance

Toledo, Indianapolis, Kansas City, Omaha, St. Paul and Minneapolis, for the average development approximate very closely ten per cent. In the city of Chicago it is something over five per cent.

Q. Where there are two telephones in service, in other words where there is competition, does that tend to increase or decrease the number of telephone subscribers per hundred of population?

A. In most cases it has tended to increase the number of subscribers or percentage of development.

Q. If Louisville Kentucky has a population of approximately two hundred and fifty thousand and has two telephones with approximately ten thousand subscribers each, with one telephone company charging as high as eight dollars a month for direct business service and four dollars a month for direct residence service, what would you say as to the probable increase in the subscribers to the
2257 Cumberland Telephone Company were its rates reduced so that it only charged five dollars and fifty cents for business direct lines and three dollars for residence direct lines?

2258 A. In my judgment there is a demand and a possible development under those conditions of approximately twice the present development, if those rates were put in force and an effort made to extend the service and the business of the company.

Q. Do you now what the area of Louisville is?

A. Yes, sir.

Q. What is it?

A. Approximately 20½ square miles.

Q. Now testimony brought out from an examination of the Auditor of the Cumberland Telephone Company showed that it had on various occasions numerous plans for charging the cost of the subscribers' equipment to construction account. Will you please explain what is the logical system of charging the cost of subscribers' equipment to construction?

A. When a new telephone is installed all of the construction and equipment work done in the installation of that telephone is properly chargeable to construction account. There is a portion of the investment in each subscribers' equipment of line which can only be used for his individual service—that is, that portion of the line which is on his premises and used exclusively by him, and is not of service to any other subscriber or any other location. So long as that portion of the line and
2259 equipment is in use by him it should remain a proper charge to construction account, and should that subscriber discontinue the use of the service and the company remove the telephone and line from the subscribers' premises, then the company has decreased the amount of its capital investment by an amount which is equal to the original cost of installing that portion of the subscribers' circuit and equipment which was dedicated to his particular use, and which cannot be used for any other subscriber in any other location. If, however, a subscriber moves from a location and a new subscriber comes to take his place, then the charge for the equipment and circuit which is on the premises should properly remain charged to construction account, but where telephones are

taken out and the individual portion of the circuit removed, the cost of removal or the original investment for installing the individual part of the subscriber's circuit should be taken from the construction account.

Q. If the company charge to construction account for installing an instrument in a subscriber's residence, including in that not only the cost of labor but also the cost of material and then that station being discontinued, if the instrument was removed and no credit given to construction for its cost price and then if that instrument should be installed in some other subscribers' station, would it be proper to charge to construction account the cost of that sub-
2260 scriber's equipment so installed the second time?

A. No, sir.

Q. If that policy were pursued what would be the effect of it?

A. Of building up the false or erroneous charge to construction on the books of the company.

Q. Now it has been testified to by the Auditor and President of the Cumberland Telephone Company that its plant here in Louisville cost $1,702,000, and by plant I mean the plant excluding real estate, supplies and working capital. If their books show that they have spent that much money here in constructing that plant what would be your explanation of it?

A. I should say that the plant had either been very extravagantly constructed or that the books had been erroneously kept.

Q. Now if their books show that at no period during the last ten years has the company expended more than $42,000 in maintenance, reconstruction, and that for ten years prior thereto say from 1890 to 1899, the reconstruction charges have been on an average of $19000 a year, and if for four years from 1905 to 1908 inclusive the amounts expended for maintenance reconstruction had been $41,000, $40,000, $41,000 and $31,000 respectively, what would be your explanation of the fact that only that much money had been expended in maintenance reconstruction, assuming that the plant on the first of January 1905 was shown on the books to have cost $1,535,000?

2261 A. Will you read that question?

Question read.

A. I would strongly suspect that reconstruction maintenance work had been done and charged to some other account than maintenance reconstruction. Knowing the character of maintenance work and maintenance reconstruction work that has been done upon this plant, as shown by its condition, I am led to the conclusion that in order to acquire the result in maintenance and maintenance reconstruction, or maintenance reconstruction particularly, that a greater amount of money than the amount which you have mentioned as having been spent during the past four years, would be required for that work.

Q. Now, if the voucher, the pay-roll vouchers of the Cumberland Telephone Company show that the pay-roll of practically all the laborers engaged in work of the Cumberland Telephone Company for at least two years, were charged up to the construction account,

and if the construction account for those two years appeared on the books as $166,000 and $178,000 respectively, and only 1500 or 2000 subscribers were added to the exchange, what would be your inference from those facts?

A. I would infer that maintenance expenses had been charged to the construction account.

Q. You testified on yesterday that in your opinion, based on such facts as were stated to you in regard to the Ohio Valley
2262 Telephone Company in 1899, that it would be your opinion that the value of the Ohio Valley's plant at that time would be from $100 to $120 per station. You also have testified in this case that the value you placed on the Cumberland Telephone's plant as it is today is in the neighborhood of $100 per station. Please explain on what theory you place the value of the Ohio Valley in 1899 at a higher value per station than you now place the Cumberland Telephone Company's property?

A. Principally on the fact that in 1899 the telephone plant, as I believe it existed at that time, covered a territory in which the telephone users were not so densely located, as they are with the plant as it now exists, and in addition, the fact that at that time the telephone users were served from one exchange, thereby necessitating a longer average length of line, both of those conditions necessitating a longer average length of line, leads me to the conclusion which I have stated to you.

Q. I show you a copy of a report made by E. W. Farnum of the Mutual Audit Company, and call your attention to "Exhibit No. 1" being the first exhibit in that report, and ask you to examine that exhibit and state, what, in your opinion, was the condition of the telephone plant whose accounts were in the condition shown in that exhibit?

A. By telephone plant do you mean the physical plant or
2263 do you mean the condition of the company?

A. The condition of the company, that is what I mean.

A. I find here a large amount of liabilities, bills payable and accounts payable, and no quick assets to off-set the apparently short time obligations of the company, which would indicate to me that the company was in pretty sore financial straits,—at least, needed some financing; and the assets that they show here, especially an item of $100,000 for franchise, don't seem to be very good assets upon which to finance the liabilities.

Q. What, in a general way, is the total of their liabilities which would seem to require immediate attention?

A. As shown here, liabilities amounting to $293,000 which are in the nature of interest, switchboards, royalties, bills payable, accounts due to various companies, totaling $293,000, which, from the statement, would indicate that those accounts were due or soon due, with the exception of the bills payable, and the bills payable could not be considered as a long time obligation as the bonds are standing. I also see an account here, a special account in the liabilities $3,875, which I have not taken into that total, as I know nothing about it.

Q. Will you turn to the assets, eliminating the item of $30,-

215.18, which the Auditor of the Cumberland Telephone Company states is largely made up of bad debts due the company from telephone subscribers, what have they in the nature of assets
2264 with which to pay those liabilities?

A. They have approximately $10,000 of quick assets. Also a supply account which could be turned into a quick asset, $3,299, provided, however, the supplies were on hand as they probably were or should be.

Q. That being the situation as it appears on that exhibit, which you say that the company was at that time bankrupt or a solvent concern?

A. I would certainly say that they were not on a good financial basis, and that their solvency would depend upon their being able to issue or to realize upon securities which might be issued based upon assets which were questionable.

Q. Now, what has been the history of the telephone business as regards the rates decreasing as the art has developed?

A. In general, telephone rates have been quite materially decreased by the Bell telephone companies during the past fifteen years. During that time telephone competition has been very strongly developed throughout the country and as a result of that—partially on account of that—the various Bell telephone companies have reduced their rates.

Q. What has been the experience in Chicago along that line, if you know?

A. The average telephone rate per station in the City of Chicago has decreased very considerably during that period. It is shown in
that report. I cannot call the exact figures to mind now, I
2265 probably can turn right to it.

In 1897 in the City of Chicago, the Chicago Telephone Company had in operation 13,163 subscribers' stations, for which they charged an average rate of $123.50 per station. From that time up to the end of 1906, the number of telephone stations gradually increased up to 113,782, and the average rate per station decreased down to $53.29.

Q. Will you cut out that page of your report from which you have testified and file it as a part of your deposition?

MR. GRANBERY: Do not do that. I am going to ask him to file the whole report.

Q. Did you ever make an investigation of the telephone situation in Indianapolis, Indiana?

A. Yes, sir.

Q. State the circumstances under which you made that investigation.

The further taking of these depositions was adjourned until 10 o'clock tomorrow morning.

2266 OCT. 13, 1909.

Parties met pursuant to adjournment.

WILLIAM H. CRUMB resumed the stand and was further examined by Mr. BLAKEY and testified as follows:

Q. When we adjourned on yesterday Mr. Crumb, I think I had asked you whether you in connection with any one else made any investigation of the telephone situation at Indianapolis, Ind.?

A. I have done so.

Q. What was the occasion of that investigation and what was the extent of it?

A. The occasion of the investigation an attempt was made by the Indianapolis Telephone Co. to secure franchise from the city of Indianapolis which would permit them to increase their telephone rates, in that city. The matter was agitated a great deal through the newspapers and among business men. There are four business organizations or organizations of business men in the city of Indianapolis, namely: The Board of Trade, The Merchants' Asso-
2267 ciation, the Commercial Association and one other I do not happen to recall the name right at this time who volunteered to make an investigation of the telephone situation in that city for their own information and based upon such an investigation to make a report which should be filed with the Board of Public Works of the city of Indianapolis recommending to that Board what action they thought it was advisable for the city to take in passing a franchise which would enable the Indianapolis Telephone Co. to increase its rates. I was employed by committees appointed from each of those four organizations. I worked in conjunction with Mr. Geo. M. Brill, an engineer from Chicago who was employed for the same purpose.

Q. What was the extent of the investigation and inspection of property made by you and Mr. Brill?

A. We made an investigation of the conditions under which the Indianapolis Telephone Co. had been operating since its organization and the organization of the company which preceded it with a view to determine whether the rates that had been charged by that company were sufficient to permit it to conduct a profitable business and in addition to that we made an estimate of the value of the plant, the purpose of doing that being to arrive at a
2268 basis of plant cost upon which earnings should properly be figured. The calculations which we reached as a result of the investigation were that the rates which had been in force up to that time had not been sufficient and were not sufficient at that time to enable the telephone company to properly operate its business and extend its plant and earn a fair profit upon its investment.

Q. Do you know what rates the Indianapolis Telephone Company was charging at that time under its ordinance for direct business lines and direct residence lines?

A. It was charging $40 per year for direct business line telephone and $30 per year for direct line residence telephones.

Q. Do you know whether any audit of their books was made by accountants at that time?

A. There was an audit made by the New York Audit Co.

Q. Did you submit a report to those bodies—you and Mr. Brill?

A. We did.

Q. Did you make use of the report made by the New York Audit Co. in connection with your report?

A. We did.

2269 Q. Do you know what the Indianapolis Telephone Co. was asking of the city of Indianapolis at that time insofar as increasing its rates were concerned?

A. They wanted to increase their direct line business rate from $40 to $48 per year, and their direct line residence rate from $30 to $36 per year.

Q. Do you know how many subscribers' stations they had installed at that time?

A. Approximately 12,000.

Q. Do you know what recommendation the joint committees to which you made your report made to the city of Indianapolis?

A. Among several recommendations which they made that I am familiar with was included the recommendation that the Indianapolis Telephone Co. be permitted to increase its rates as asked. There were other recommendations bearing upon methods of furnishing service and extensions to plant which I do not remember at this time.

Q. Do you know whether the city of Indianapolis permitted that company to increase its business direct rate to $48 as requested?

A. I have been so advised.

Q. In what way did you and Mr. Brill arrive at the value of the plant used by the Indianapolis Telephone Co.?

A. By making a general inspection of the plant and estimating the value of the plant based upon our knowledge and experience of similar plants and the conditions under which the plant had been built in Indianapolis.

2270 Q. What value did you arrive at as the value of that plant at that time?

A. A first cost value of one million two hundred thousand dollars.

Q. What value did you place on it at the time you made the investigation?

A. $800,000.

Q. Was the construction of that plant any more expensive or should it have cost any more than the construction of the Louisville plant as you found it today?

A. No, sir.

Q. Is there any reason why the Louisville plant should have cost any more to construct than the plant of the Indianapolis Telephone Co. at Indianapolis?

A. No.

Q. Now was the valuation or appraisement of the property of the Indianapolis Telephone Co. based on as thorough an inspection

of the property of that company as has been your inspection of the property of the Louisville plant?

A. The inspection of the plant at Indianapolis did not deal with the plant in as much detail as I have considered and dealt with the plant in Louisville in making my estimate here.

2271 Q. Now are you familiar with the rates established by the City Council of Louisville, and which are being attacked in this litigation?

A. Yes, sir.

Q. Considering the value of the Louisville plant the number of subscribers' stations it has and the various classifications of service given can the Cumberland Telephone Co. operate that telephone system under the rates established by the ordinance in question at a profit?

A. It is my opinion that they can.

Q. Can the company operate it at a sufficient profit in your opinion to pay a dividend of, say, six or seven per cent on the value of its property after paying all costs of conducting the plant and set aside a proper fund for depreciation?

A. In my opinion they can.

Q. Do you know of any similar plants to the Louisville plant which are being operated on rates equally as low or lower which are earning such a dividend—such a profit?

A. I do, yes, sir.

Q. What are some of those plants?

A. The plant of the Home Telephone Co. in Kansas City, Mo., is operating in a city of about the same class so far as pro-

2272 ducing telephone service is concerned as the city of Louisville, and is operating under a rate the basis of which or the maximum rate for single line business telephones at $60 a year and the other rates being graded down proportionately according to the class of service. Another similar plant to the plant here so far as Telephone conditions are concerned is the Home Telephone Co.'s plant at Toledo, Ohio, where the single line business telephone rate is $52 per year, and other rates in proportion. I have it on good authority from the Kansas City Home Telephone Co. that their business is being conducted at a good profit, and by that I mean that since their operations began they have paid their regular bond interest and a dividend of six per cent on their stock. I am likewise informed that the Home Telephone Co.'s plant at Toledo is being operated on a profitable basis, and I believe that the statements that I have received are correct.

Q. Do you know about how many subscribers' stations there are connected with each of those telephone companies.

A. Connected with the Kansas City Telephone Co.'s plant there are in the neighborhood of twenty or 22,000 subscribers' stations. With the plant in Toledo I am not familiar as to the exact or approximate number except that I do know that it is upwards of 10,000 subscribers' stations.

2273 Q. What is the life of the transmitter and receiver used in connection with the subscribers' telephone equipment about which you have testified?

A. About eight years—from six to ten years, average about eight.

Q. Can the subscriber's equipment, the telephone and apparatus used in connection with the subscriber's station, which is manufactured by the independent manufacturing companies, and used by the independent telephone companies, be attached to and used in connection with switchboards manufactured by the Western Electric Company?

A. They can.

Q. Is there any difference in the construction of the two switchboards so as to at all interfere with the use of these two classes of subscribers' telephones indiscriminately?

A. No.

Q. Is the receiver and the transmitter manufactured by one company any better than the receiver and the transmitter manufactured by the other companies?

A. Essentially not.

Q. Do the respective subscriber's equipment, including the receiver and transmitter, perform the same service and equally as good service, irrespective of what company manufactures
2274 them?

A. They do, and I should include in the answers to all these questions—I meant answering them upon the assumption that standard or high-grade telephone transmitters and receivers are intended and not transmitters and receivers that are manufactured by various telephone manufacturing concerns and which are of low grade.

Q. You mean to say then that there is practically no difference between the transmitter and receiver manufactured and used by the high-class independent companies, and that used by the high-class Bell companies?

A. That is what I mean exactly.

Q. Now you testified on yesterday that 50 per cent., I believe of the pay stations in use in the City of Louisville by the Cumberland Telephone Company were party lines and 50 per cent. direct lines, that in your opinion the amount of capital invested in these lines would be an average of about $152 per line. I should now like to ask you what in your opinion would be the amount invested in these pay station lines if they were all two-party lines?

A. I should estimate that at $90 or $100 per station.

Q. Mr. Caldwell, the president of the Cumberland Telephone Company, has filed as an exhibit with his deposition a printed pamphlet, the author of which he does not know, in which the
2275 writer of the pamphlet proceeds to go into great detail to explain why it costs a telephone company more per station to operate and conduct its business on say 12,000 lines or 12,000 subscribers than if it had only ten thousand subscribers. I will ask you to read that paper and state wherein you agree with the author and wherein you do not agree with him.

—, ——.

2276 Cross-examined by Mr. GRAVBERY, as attorney for the Cumberland Telephone and Telepgraph Company:

Q. I assume from your direct examination that you have a vast experience and are familiar entirely with every branch and detail of the telephone business, is that correct?

A. Yes, sir.

Q. There is nothing about the telephone business that you do not know?

A. I know about a great many branches of the telephone business in detail, and about practically all branches in a general way.

Q. What experience have you had in the telephone business?

A. I was in the service of the Central Union Telephone Company as an employé in the engineering and construction department in the early part of the year 1896. Since that time I have been continuously engaged in various features—branches of the telephone business. I was employed by the Central Union Telephone Company for approximately four and a half years in various branches of their service, principally—my time being principally devoted in the engineering and construction departments, during which time I had charge of various construction jobs, made plans and estimates for various other jobs, and during the time I investigated and estimated the value of several telephone companies which the Central Union Company was considering purchasing, and had in a

2277 general way general experience on maintenance, construction, and operating of various portions of their telephone plant, which at that time extended into the principal cities of Illinois, Ohio and Indiana, with the exception of Chicago, Cleveland, Cincinnati and some other smaller cities. After leaving the Central Union Telephone Company's service, I was employed by the Pittsburg and Allegheny Telephone Company, an independent telephone company, constructing and operating a plant in the City of Pittsburg, Pennsylvania. I was with them for practically a year and a half in the capacity of general superintendent and assistant engineer. During that time I had supervision of the construction of the plant which was then going on, service having not been started when I entered the employ of the company. During my employment the company had sufficiently completed its plant to begin service, and when that was taken up, I had the supervision and direction of the operation of the plant. Leaving Pittsburg, I entered—established myself in general engineering and contracting telephone work with offices in the City of Chicago, where I have since been, and during this time I have built and constructed several telephone plants, reconstructed portions of others and performed various engineering services for corporations and individuals.

Q. Now when you went with the Central Union, what was your title?

2278 A. Special Inspector.

Q. What is a Special Inspector expected to do?

A. Most everything that he is told to do.

Q. Now what was your next title?

A. For a very short period of time during the latter part of my

service with the Central Union Telephone Company, I had the title of Chief Clerk in the Construction Department.

Q. What was your title in between the time when you were Inspector and when you were Chief Clerk in the Construction Department?

A. I don't recollect that I had any particular title. I was called a Special Inspector when I entered the service, and to my recollection that was the only title that I had—no official title.

Q. How long were you Chief Clerk in the Construction Department?

A. My recollection is not over two or three months.

Q. Then the rest of the time you were Inspector while you were with the Central Union?

A. I was an employé, but I never signed myself as any title.

Q. That was your first telephone experience?

A. That was my first telephone experience, when I entered the service of that company.

2279 Q. Did you voluntarily leave the service of the Central Union?

A. I did.

Q. And you had secured the position with the Pittsburg company prior to your severance or about the time you left, to take that position?

A. Yes, sir.

Q. Now, when you went there, your title was what?

A. General superintendent.

Q. General superintendent?

A. Yes, sir.

Q. What officers were there above you?

A. The officer immediately above me was Chief Engineer and of course the ordinary executive officers who resided in Baltimore, and with whom I did not come in contact to any considerable extent.

Q. Did you have a general manager?

A. Not at that time—no, sir.

Q. How long did you stay with that company?

A. About a year and a half.

Q. Did you voluntarily leave their service?

A. Yes, sir.

Q. Now, during the time that you were superintendent, was that just one plant?

2280 A. It was the plant which was being built, and was built for furnishing service in the City of Pittsburg and the City of Allegheny. It consisted of five separate exchange offices in the City of Pittsburg and two in the City of Allegheny at that time.

Q. Now, that brings you down to about 1902?

A. About 1901.

Q. And from there you went to Chicago and established yourself as telephone engineer?

A. Yes, sir.

Q. In 1901?

A. 1901 I think is the date, pretty close to that date.

Q. Now, then, from that time on you offered your services t
phone people generally who wanted to build plants or want
vice about operating plants, and held yourself out as an expert
telephone business, did you not?

A. Yes, sir.

Q. Now, how many telephone plants did you construct f
Bell people from 1901 down to date?

A. I could not say that I constructed any particular plant for
during that period. I do not recollect of any particular plan
was completely constructed new, except possibly some smaller o
smaller towns where they did not operate exchanges, but d
that period there were a number of the larger telephone
2281 which they operated which were reconstructed, what w
rebuilt, and among those that I was familiar with and w
upon in one capacity or another, I would mention Indiana
Rockford, Illinois, Glazebrook, Illinois; Danville, Illinois;
field, Ohio; Marion, Ohio; Akron, Ohio; Canton; Anderson,
ana; Marion, Indiana; South Bend; Terre Haute; Peoria, and s
others in that class.

Q. Now, all of those you worked on since 1901?

A. No, sir; prior to 1901.

Q. I asked you since 1901 what Bell telephone plants you w
on?

A. Oh, I thought you said when I was with the Central
Telephone Company's service.

Q. No, sir.

A. Since 1901 I have worked on Chicago Telephone Comp
plant. That is the only one that I recall that I have done co
work for—construction contract work.

Q. How did you do that construction contract work, by co
tive bidding?

A. No, sir.

Q. Were you employed directly by the Chicago Telephone
pany to do that work?

A. Yes, sir.

Q. How extensive was that work?

2282 A. Very small job, comparatively small, ran into a
as I recall, in the neighborhood of $1,000.

Q. What was that work?

A. That was the furnishing of labor to perform the instal
of their wires and cables in the Railway Exchange Building
City of Chicago.

Q. Now, when you were Inspector with the Central Union,
was your compensation?

A. It started at $45 per month and my traveling expense
the latter portion of my services were paid for at $100 per m
That was my maximum that I received.

Q. Was it raised to $100 when you become Chief Clerk i
Construction Department?

A. It is my recollection that it was at that time. Previous

going in there I had been traveling and my recollection is, my compensation was $75 per month and my traveling expenses.

Q. Now when you went to Pittsburg, when you were there, a year and a half, what was your compensation?

A. The first year the compensation was $2,500 and the remainder of the period $3,000,—at the rate of $3,000 per year.

Q. And you voluntarily abandoned that in order to establish yourself as an engineer in the City of Chicago?

A. Yes, sir.

Q. Did you become an engineer on your own account or
2283 in connection with someone else in 1901?

A. So far as engineering work was concerned, it was on my own account. My father furnished and advanced me—furnished me some money to help me establish myself in the business, and therefore owned an interest in the business, but he being a man who had had no telephone experience, did not pretend to know anything about it, did not take an active part in the conduct of the business.

Q. Then what was the name of the firm?

A. W. H. Crumb and Company.

Q. That W. H. Crumb was yourself?

A. Yes, sir.

Q. The Company was your father?

A. Yes, sir.

Q. The Pittsburg Company you spoke of, that is what was called an independent company?

A. Yes, sir.

Q. Do you remember what is was capitalized at per station?

A. I do not, no, sir.

Q. That was all done prior to your connection with it, wasn't it?

A. The capitalization of the company had been established prior to my connection with it—yes, sir.

2284 Q. You were there during the time the plant was completed and put into operation, were you?

A. Yes, sir.

Q. Now, do you remember what the capitalization per station was at the time it was completed and put into operation?

A. I do not—no, sir.

Q. I will ask you if it was not above $400 per station?

A. I am not surprised at my opinion that it was.

Q. There is a great deal of antagonism and has been for many years, between what is known as the Independent telephone systems and the Bell system, is that correct?

A. The Independent people do not call it antagonism.

Q. What do they call it?

A. Competition for business.

Q. It has engendered a very bitter state of feeling, has it not?

A. In some cases, but not generally among Independent telephone people, no, sir. I don't think your contention is right.

Q. Well, the Independents have usually built telephone plants

in opposition to the plants of the Bell companies that were in existence, isn't that correct?

A. Yes, sir.

Q. And in order to do that, they have been compelled to reduce the rates in order to get the permission of the various municipalities to construct plants, isn't that correct?

2285 A. It does not follow that they had to do it—no, sir. They did do it in the majority of cases.

Q. Have any of them failed?

A. Yes, sir.

Q. Many of them?

A. I cannot at the present time recall many.

Q. You are not familiar with many that have failed?

A. Not at the present time.

Q. Is it not a fact that they have been persistently endeavoring to raise the rates all over the United States for the last three years?

A. A number of the smaller companies, a number of companies that went into business with an insufficient knowledge of the cost of producing the telephone service, and which companies fixed their rates too low, have been endeavoring to increase their rates.

Q. Did you fix the rates for any companies from 1901 on down to the present time?

A. I would not say that I absolutely fixed rates. I have been consulted by a number of companies as to the rates and the establishment of them, and my advice has been taken with regard to fixing the rates.

Q. Do you know that the rates that you advised as proper have been established and adopted by the owners of the plant?

A. Yes, sir.

2286 Q. Both before and after the plant was constructed?

A. Yes, sir.

Q. Now, has any one of the companies for whom you have fixed rates in the way you have stated met with financial disaster?

A. I do not know of any, no, sir.

Q. Give me the names of the companies for which you have fixed rates as you have above stated?

A. The Newark Telephone Company, Newark, Ohio; the Belvidere Telephone Company, Belvidere, Illinois.

Q. Give the rates as you give the names of the places.

A. That being so long ago, I cannot recall the rates. I cannot state them specifically. I do not carry figures of that kind in my head off hand, and I would say further that the rates which are in operation there would not—I would not take the credit myself for fixing the rates. I was consulted with regard to the rates, and the rates were fixed, and the rates which were fixed I approved of at the time.

Q. Very well, proceed.

A. I do not recall any other at this time.

Q. Have you been connected directly or indirectly, financially or otherwise, with any manufacturers of telephone equipment?

A. No, sir.

Q. Of any kind?

2287 A. No, sir.

Q. Did you build or engineer the plant at Newark, and what was the other place?

A. Belvidere, Illinois.

Q. Ohio?

A. Illinois. I rebuilt both of them.

Q. You rebuilt them?

A. Yes, sir.

Q. Well, you did not originally build them?

A. No, sir.

Q. When did you rebuild them?

A. The plant at Newark, Ohio I rebuilt in 1902 or 1903—1902, I believe is correct. The plant at Belvidere, Illinois, I rebuilt in the year 1905—1906.

Q. When was the plant at Belvidere, Illinois, originally built?

A. About 1895.

Q. When was the plant in Newark, Ohio originally built?

A. About the same time.

Q. Are they still charging the same rates that they did when you—are they still using the same rates that you advised and which they adopted under your advice?

A. I do not know.

Q. Do you know what their financial condition is now?

A. The credit of both the companies is good, and they are

2288 in good financial condition.

Q. Do you know that?

A. That is the reputation that they have.

Q. What information have you on that subject?

A. An acquaintance with the manager of the company at Newark, Ohio, and his statement to me as regards the general results which they have been getting from their business in making a profit. A knowledge of their credit and standing with a manufacturing concern from whom they buy a great deal of apparatus.

Q. When did you last look into the question or have knowledge of the financial condition of the Newark plant?

A. Within the past year.

Q. What is it capitalization at per station?

A. I could not tell you off hand except that it is relatively low, as I would know that Pittsburg was relatively high.

Q. How many stations did they have?

A. At the time I rebuilt the plant?

Q. No, the last time you had a knowledge of their condition.

A. Over two thousand stations.

Q. What was their capital stock?

A. My recollection is that it is less than $100,000.

Q. And their bonded debt?

A. Less than $80,000.

2289 Q. And their floating indebtedness?

A. I am not familiar with it.

Q. You don't know how much that was?
A. No, sir.
Q. I believe you said you do not know what rates they are charging now?
A. Specifically I could not tell—no, sir; except in a general way, they are relatively low rates.
Q. So that all you know about it is that the manager of that company tells you that it is prospering?
A. Yes sir.
Q. Now, then, Belvidere, what about that; what is its financial condition?
A. So far as I know it is the same,—in the same general condition.
Q. What is its capital stock?
A. My recollection is that it is somewhere in the neighborhood of $75,000.
Q. How many stations have they?
A. Ap-roximately a thousand.
Q. What is their bonded debt?
A. Somewhere in the neighborhood of $40,000.
Q. And their floating indebtedness?
A. To the best of my knowledge they have none.
2290 Q. When did you last inquire about that plant and its financial condition?
A. Probably two years ago.
Q. What were its rates at that time?
A. I could not tell you the exact rates, but they were relatively low rates.
Q. You fixed them, did you not?
A. What?
Q. You advised?
A. I was consulted and advised with regard to fixing them,—yes, sir.
Q. You gave them what you believed to be fair rates?
A. In those cases, I would say as a matter of explanation, that the way those rates are usually made, certain rates were proposed to me,—here are the rates we propose to charge, what do you think of them? I think they are too low or too high or all right, as the case may be, so in that way I would not take credit for having fixed the rates.
Q. Did you approve the rates that they were proposing to charge?
A. I don't know what you mean by approving them?
Q. Approve.
A. I don't know what you mean by approve them?
Q. Did you consider them to be fair rates?
2291 A. Yes, sir.
Q. And reasonable?
A. Yes, sir.
Q. What were those rates?
A. I have told you that I do not remember at the present time.
Q. Don't you remember the rates that you yourself advised to be proper?

A. No, sir; I do not.

Q. What rate of return did you estimate for those companies to make on the actual money invested?

A. 7 per cent. I would say this, that I did not in either case, go into a careful study of the situation to get information upon which to advise the rates.

A rate was given or mentioned, and I was asked "What do you think, will that rate prove profitable for us here and I expressed an opinion as to whether it would or not without taking into consideration or passing over in my mind that that rate would earn a particular return upon that particular investment. The opinion was based, not upon an exact calculation, but upon a general information of what other concerns were doing under similar conditions. I would add this, that with regard to the rate at Newark, I was surprised and told them there that I considered the rate too low. I did not think it was high enough.

2292 Q. What was that rate?

A. I carry impressions in my mind and I do not carry figures, but if figures are necessary, they can be obtained.

Q. We are only asking for your information and recollection now. We will get other things in other ways, but you do not recall yourself what those rates were that you thought were too low at the time. Were you paid for your services in connection with the advice you gave those two companies?

A. Yes, sir; I had the contract for reconstructing their plants, and in addition to that I have always, or in those particular cases, did give the officers and managers of the company such information as I had, that I was able to, without additional charge over the amount that was paid me under the contract.

Q. You were not employed then by either of those companies as an engineer or as an expert but as a contractor?

A. Yes, sir; I had previously been employed by each of them as an engineer to plan their construction work for them.

Q. You mean plan their reconstruction?

A. I should say reconstruction—plan their reconstruction yes, sir.

Q. After you planned the reconstruction, you were paid for that planning of the reconstruction?

A. Yes, sir.

2293 Q. After you made those plans, then you got the contract to do the work?

A. To do the work, that is it.

Q. Was that extensive work, that reconstruction of the plants? What was necessary to be done?

A. At Newark it was the building of new pole lines, the rebuilding of old pole lines, the erection of cables, cross arms, pole fixtures, wires and subscriber's drop wires.

Q. What about the interior apparatus?

A. The interior apparatus was furnished by another contractor.

Q. That was reconstructed too, was it?

A. Yes, sir.

Q. Now, was that work of reconstructing the pole routes more expensive than the construction of new routes or less expensive?

A. It was no more expensive than that in any case and in some, less expensive.

Q. Was service given over those pole routes at the time you were reconstructing them?

A. Yes, sir.

Q. Now is the telephone business like railroads in respect to reconstructing a bridge where trains are being operated over it? Does that cost less or more to rebuild that bridge with trains being
2294 operated over it or build it new before trains are operated on it?

A. I have no idea of that.

Q. Take telephone lines then. You are familiar with that. Which is the more expensive, or if there is any difference?

A. If there is any difference, it would ordinarily be more expensive to do the construction work or do reconstruction work while service is being given.

Q. Now, Mr. Crumb, what telephone companies have you operated after you left the Allegheny company—the Pittsburg Company?

A. Southern Telephone & Telegraph Company at Hot Springs, Arkansas, I operated.

Q. What other companies?

A. None.

Q. How long was the Pittsburg plant in service before you left it?

A. About one year. Started to begin service about one year before I left it and continued extending the plant, opening up new exchanges and getting new subscribers during that period.

Q. As superintendent, you were in charge of the construction work or the operating?

A. I had general supervision of both.

Q. Which did you give most attention to?

A. Before the operation—before the plant had very many
2295 subscribers, or up to the time that it had only one central office in operation, I should judge that I devoted more of my time to the construction work. After that it was about equally divided between the supervision of the operating department and the supervision of the construction department.

Q. How long in months would you say that your time was equally divided between the two?

A. About ten months.

Q. How many subscribers did the company have at the beginning of that ten months?

A. I should judge in the neighborhood of 1500 or 2000.

Q. How many at the end of the ten months?

A. Something above 5000.

Q. What were your duties in overlooking the operating?

A. I had general supervision of all the operating employés.

Q. Aside from that experience of 1901 to the present time, the only experience you have had in operating telephone plants has

been in the Southern Telephone and Telegraph Company, did you say?

A. Yes, sir.

Q. At Hot Springs, Arkansas?

A. Yes, sir.

Q. When did you become the owner of that plant?

A. At the time it was built. The construction of the plant was started in the fall of 1903, plant completed and put in operation in the spring of 1904, operation started, to be exact, in April, 1904.

2296

Q. How long did you continue to operate that plant?

A. Until the 1st day of September of that year.

Q. Then what became of it?

A. It was sold. I sold it. I sold the plant.

Q. Whom did you sell it to?

A. I sold it to Mr. ——

Q. I don't wish the name, individuals or some other concern?

A. Three individuals.

Q. Did you build it to sell or to operate?

A. My intention when I built it was to sell it, and probably have an interest in the operation of it.

Q. But as a matter of fact, after operating it from April to September, you sold it out and retained no interest?

A. That is a fact.

Q. How long during that period were you at Hot Springs, Arkansas, from April to September, 1903?

A. I should judge half the time.

Q. And the other half of the time you were in Chicago?

A. Or some other places.

Q. Or other places?

A. Yes, sir.

2297

Q. You fixed the rates for that company, did you not?

A. No, sir.

Q. Who fixed the rates for that company?

A. Mr. P. C. Burns.

Q. Was he associated with you in building it?

A. No, sir.

Q. Did you own it outright, individually?

A. Yes, sir.

Q. And Mr. Burns fixed the rates for you?

A. Yes, sir.

Q. And you are an expert telephone engineer?

A. Yes, sir.

Q. You got someone else to fix your rates?

A. No, sir; I did not.

Q. How come *him* to fix the rates?

A. He secured a franchise there to build and operate a telephone plant in that city, in which the rates were fixed and I bought his franchise, accepting the fixed rates which were mentioned in that franchise.

Q. What were those rates?

A. $33 per year for straight line business telephone, $24 a year for straight line residence telephone, $18 a year for a four party line residence telephone. That is my recollection of the rates. I believe it to be correct.

Q. Those were the only rates that the franchise provided for?

A. According to my best recollection, yes, sir.

2298 Q. Did you charge those rates or less rates?

A. Charged those rates.

Q. How many subscribers did you have when you sold it in September, 1903?

A. 1,000.

Q. What other experience have you had in operating telephone plants since that time?

A. I have had the general experience that comes from a continual association and contact with men who are engaged in that business and the exchange of ideas with them.

Q. I didn't ask you of your knowledge, I asked you of your experience in operating telephone plants. Have you had any experience in operating telephone plants other than that you have stated?

A. No actual of my own.

Q. What telephone plants have you built since 1901, leaving out of course the Ohio, the Illinois and the Arkansas plants, the three plants which you have heretofore testified to?

A. I built a plant at Sioux Falls, Dakota; one at Yankton, South Dakota, and that brings to mind a plant in which I had operating experience, which I had not thought of before. I had operating experience in that plant for some months, being a part owner of that plant.

2299 Q. How many months did you operate that plant?

A. Five or six.

Q. How much of your time were you in that place during that period?

A. Four or five weeks.

Q. Did that company have a local manager?

A. Yes, sir.

Q. Did it have a president and secretary?

A. Yes, sir.

Q. A treasurer?

A. Yes, sir.

Q. All other officers?

A. Yes, sir.

Q. What was your title?

A. I had no title. I was simply owner of a majority interest in the stock.

Q. Did you build that to sell or to operate?

A. To sell.

Q. Go ahead. Those two in Dakota?

A. I rebuilt a portion of a plant at Lafayette, Indiana.

Q. Under contract?

A. Under contract, all of this work being done under contract.

Q. The plants that you owned yourself and built, you did not do under contract, did you?

2300 A. The one at Yankton, I built under contract, and the one at Hot Springs was built under contract. There were two companies, you could call it a contract or not. There was a formal contract drawn in both cases from the Southern Telephone and Telegraph Company—between the Southern Telephone and Telegraph Company and W. H. Crumb & Company, governing the construction of that plant.

Q. So Mr. Crumb as proprietor contracted with Mr. Crumb as contractor to build the Arkansas plant?

A. Yes, sir.

Q. What was the capitalization of the Arkansas plant?

A. $125,000 capital stock.

Q. How many bonds?

A. $125,000.

Q. So that that was an aggregate of $250,000?

A. —. ——.

Q. Take your Dakota plant, did Mr. Crumb as proprietor contract with Mr. Crumb as contractor in that case?

A. No. The Yankton Telephone Company had a separate—was organized, was duly organized before I had anything to do with it, and I subscribed for a portion of the stock and bonds which they proposed to issue—personally did that. Then I secured a contract from the Yankton Telephone Company to construct a plant, more properly I should say, I took the contract from them, taking my payment in stock and bonds of their company.

2301 Q. Then you were not part owner in that plant except by getting the securities in part pay for your work?

A. That is it.

Q. How many subscribers did that company have?

A. Approximately 300.

Q. What was the capital stock of that company?

A. My recollection is that it was $15,000.

Q. How many bonds were issued?

A. $13,000 to my best recollection.

Q. What were the rates?

A. I don't recollect them specifically except they were low rates.

Q. They were not so low that you were not willing to take securities based on the property for your pay in constructing the plant?

A. No, sir; they were not so low but what I was willing to do it. I did do it.

Q. Can you remember what rates they were?

A. I think $12 a year for a residence telephone and $18 a year for the business telephone. To the best of my recollection that was the rate.

Q. Did you regard them as profitable?

A. I did not express myself.

Q. Do you now regard them as profitable?

A. No, sir; I do not.

2302 Q. You thought they were too low?

A. I did at that time—yes, sir; and do now.

Q. Still think so?

A. Yes, sir; in that case.

Q. Now, then, those are the two South Dakota plants. What other experience have you had in constructing plants?

A. We built a portion of the plant of the Independent Telephone Company at Bloomington, Illinois, and Champlayne, Illinois.

Q. How much was the contract at Bloomington?

A. In the neighborhood of $1,500, a small amount of work.

Q. Now, then, at Champlayne, I believe you said?

A. Yes, sir.

Q. How much was that contract?

A. About $6,000.

Q. When was that?

A. That was in 1901 and 1902.

Q. When was the contract in Bloomington?

A. About the same time, during the same year.

Q. Proceed.

A. Laporte, Indiana.

Q. When was that?

A. In 1902—1903.

Q. How much did that amount to?

A. About $6,000.

2303 Q. Very well, finish.

A. Newark, Ohio.

Q. You have mentioned that. I asked you to exclude the Newark, Ohio, plant.

A. Chicago, Illinois.

Q. You have mentioned that.

A. No, not this particular job.

Q. Oh, yes; very well.

A. This was another job of work for George W. Jackson in connection with the establishment of an automatic exchange. The Illinois Telephone & Telegraph Company was the concern that the work was done for in the establishment of an automatic exchange in the City of Chicago.

Q. What work did you do for that company?

A. I wired the principal office buildings in the City of Chicago for them for their service.

Q. Do you remember how much the contract was for that?

A. Each building was taken up as an individual contract, there being several contracts, the contracts running from about $750 as a minimum to $5,000 or $6,000 as a maximum, and aggregating about $90,000 or $100,000.

Q. Was that let by competitive bidding?

A. No, sir. If there were other contractors who bid on it I do not know it.

Q. You were invited to bid and you made a bid as a contractor and you got the work?

2304 A. Yes, sir.

Q. That was all inferior office wiring?

A. Yes, sir.

Q. Go ahead.

A. Lafayette, Indiana. Did I mention that?

Q. No, sir.

A. Lafayette, Indiana.

Q. How much was that?

A. I built a conduit system there under contract, the contract price being approximately $15,000.

Q. When was that?

A. That was in the latter part of 1907 and the early part of 1908.

Q. What did you charge per duct foot for building that conduit system?

A. Approximately twenty cents per duct foot.

Q. How many man holes or rather how many feet of duct to each man hole? In other words, how many man holes and how many duct feet, if you wish to put it that way?

A. There were approximately 75,000 duct feet. My recollection is that there was somewhere in the neighborhod of twenty-five or thirty man holes. The man holes may be considerably more than that.

Q. What was the character of paving on the streets on which this work was done?

2305 A. There was a portion of it laid under asphalt pavement, a portion under brick pavement, a portion under an asphalt block pavement, some of it under cobblestones.

Q. And some of it without any special paving of any kind?

A. There may have been very little.

Q. Did you have to take up the asphalt and the other paving and put it back?

A. Yes, sir

Q. That was included in your twenty cents a foot, was it?

A. Yes, sir.

Q. What kinds of ducts did you use?

A. Vitrified clay, multiple conduit.

Q. Over what area did it extend?

A. The conduits or the trenches extended over a lineal area or a lineal distance of about a mile, and that served an area of about—oh, I should say less than a half a square mile.

Q. What radius would you say from the exchange was that underground system that you built?

A. How far did it extend?

Q. Within what radius of the exchange?

A. The conduit system extended in four principal directions from the exchange. The maximum distance being about five-eighths of a mile and the minimum being about two or three blocks.

2306 Q. What other experience have you had in construction work, telephone construction work?

A. I have built under contract for the government, long distance or toll lines or country lines, lines which compare to long

distance or toll lines to be used by the government in irrigating projects, one at Minnedoka, Idaho, and one at Belle Fourche, S. Dakota.

Q. How extensive were those two plants?

A. The one at Belle Fourche was some sixteen miles in length and the one in Idaho was some twenty or twenty-five miles in length.

Q. What was the cost or the amount of the contract for that work that you did?

A. I have not a very good recollection of the contract prices in those two contracts. I should say the South Dakota contract was in the neighborhood of eight or ten thousand dollars, the other in the neighborhood of twelve or fourteen. That is a very indefinite recollection I have of those particular prices.

Q. What other contract construction work have you done? When was that work done for the government you have spoken of?

A. In the year 1905 or 1906—the latter part of the year 1905,
I believe, if my recollection is right, or the early part of
2307 1906.

Q. Is there any other work that you can think of?

A. Yes, sir; I have constructed a line for a mining company down at Patagonia, Arizona.

Q. When was that and what was the extent of it?

A. That was in 1907, amounted to some three or four thousand dollars.

Q. Now what else?

A. I do not recall at the present time any other actual—or any other contract work that I have done. I have performed various engineering services for firms and individuals during that time.

Q. I am asking you about your construction work.

A. I do not recall any other at this time.

Q. You have stated all of your operating experience in that time, I believe?

A. To the best of my present recollection.

Q. During all the time from 1901 to date you have held yourself out to the world and advertised yourself as a telephone engineer and contractor and constructor of telephone plants?

A. Yes, sir.

Q. Now, changing the subject somewhat. How many times have you been in Louisville, Kentucky?

A. Previous to January 1st last I have been in Louis-
2308 ville a number of times, the exact number of which I could not attempt to say at this time. Since the first of January I have been in Louisville on four different occasions, this being the fourth one.

Q. Prior to January of this year, what was the occasion of your visits to the City of Louisville?

A. Passing through in traveling.

Q. Did you spend as much as a whole day in Louisville prior to January of this year?

A. Yes, sir.

Q. How many times?

A. Probably two or three times and I can say—it comes to me now, that I have come here on business prior to that time in addition to passing through.

Q. Telephone business?

A. Yes, sir.

Q. In connection with the telephone company in Louisville?

A. No, sir.

Q. Well, your acquaintance in the City of Louisville or with the City of Louisville was extremely limited prior to January of this year, was it not?

A. Except for my acquaintance with the downtown business section of the city.

Q. And telephonically, you had no knowledge of the City
2309 of Louisville prior to January of this year?

A. I would not say that I had no knowledge. I had a limited knowledge prior to that time.

Q. Extremely limited?

A. Relatively so—yes, sir.

Q. You made no investigation of telephone conditions in Louisville prior to January of this year?

A. No, sir.

Q. When was your first visit since January, 1909, in Louisville?

A. In March.

Q. How long were you here at that time?

A. Two days.

Q. Two days?

A. Yes, sir.

Q. What did you do during those two days? How did you spend your time?

A. I spent my time going about the town, calling upon Mr. Blakey and I don't remember now—I may have taken an automobile ride at that time. I have had several. I do not recall whether I took a general ride out over the town at that time or not, at those two days.

Q. How come you to be here at that time?

A. I was here at the request of Mr. Blakey.

Q. Now you spent the greater part of those two days in
2310 Mr. Blakey's office, did you not?

A. No, sir; I did not.

Q. Where did you spend the greater part of those two days?

A. It was divided among Mr. Blakey's office, the hotel, the office of a friend of mine and on the street.

Mr. FAIRLEIGH: You mean the City Attorney of the City of Louisville, the gentleman who conducted your examination in this case?

A. Yes, sir.

Q. Had you ever seen him before?

A. No, sir.

Q. You were requested to come here, were you?

A. Yes, sir.

Q. Did you at that time enter into a contract with the City of Louisville?

A. No, sir.

Q. Did you give an affidavit at that time?

A. Yes, sir.

Q. Now I will hand you what purports to be a certified copy of your affidavit. Is that the one that you gave at that time?

A. It appears to be; yes, sir.

Q. Will you attach it as an exhibit to your deposition?

A. I do so.

2311 The affidavit in question was thereby filed with this witness' deposition and marked by the stenographer for identification "Exhibit Cross examination No. 1".

Q. That affidavit seems to have been signed and sworn to on March 13, 1909?

A. Yes, sir.

Q. Was that the first or the second day you were here?

A. My recollection is that it was the second day.

Q. Were you present when this affidavit was prepared?

A. Yes, sir.

Q. How long was that in the course of preparation?

A. It was dictated and then written by a stenographer. It was all done late—the dictation was either made just before or just after lunch, I don't remember. Around there—noon time on that second day, I don't remember—around about noon time on that second day anyhow, and it was written in the afternoon and signed about the last thing I did during that day.

Q You of course discussed the telephone situation with Mr. Blakey and he advised you as far as he could of the telephone conditions and what he wanted, did he, prior to the time this affidavit was dictated, did he?

A. He advised me with regard to conditions.

Q. And you advised him with reference to telephone matters?

A. Matters in general.

2312 Q. And upon that this affidavit was dictated in your presence and you signed and swore to it the second day of your visit?

A. Yes, sir.

Q. Did you make any investigation of the conditions in Louisville on that visit, telephone conditions, other than such information as you obtained from the City Attorney?

A. Yes, sir.

Q. What did you do?

A. I discussed the situation with a friend of mine who has lived here for a number of years and has been familiar with general conditions in the City.

Q. Who was that friend?

A. Mr. R. B. Tyler.

Q. Is he a telephone man?

A. He has been engaged in the telephone business but not at present so engaged.

Q. How long since he has been engaged in the telephone business?

A. To my recollection between one and two years.

Q. What was his business prior to the time he ceased to be connected with the telephone interests—what branch of it?

A. He was a salesman for a telephone manufacturing company.

Q. Covering what territory?

A. He had headquarters in Louisville. His territory was
2313 quite general, is my understanding.

Q. Your conversation with him, was it about telephone conditions in Louisville or telephone conditions in general throughout the country?

A. Telephone conditions in Louisville.

Q. He was posting you on the conditions in Louisville?

A. I was asking him for information with regard to the telephone situation.

Q. He was giving you the information?

A. He was giving me such information as he was able to.

Q. Do you know what part of his time for the last two years he has been in the City of Louisville?

A. I believe the majority of his time has been spent here.

Q. What has he been doing since he severed his connection as a seller of manufactured material?

A. He has been engaged in the road oiling business.

Q. So that he seems to have left the telephone business. Now, then, when was your next visit to Louisville?

A. It was in July. I cannot fix the date exactly. It was in July.

Q. Just going back one moment, you think that you may have taken an automobile ride on that first visit?

A. I may or may not. I have taken several when I have been here.

Q. Was that social or business?

2314 A. Social.

Q. The automobile ride?

A. If one was taken at that time, it was social.

Q. Your next visit you say was in July some time?

A. Yes, sir.

Q. Was it on that next visit in July that you wrote the letter to the company in regard to making an examination of the company's plant in Louisville?

A. I don't know what letter you refer to.

Q. You attached a letter yesterday which you said was received by you but which purported to have been written by Mr. Granbery to Mr. Blakey?

A. Yes, sir.

Q. Was that the time?

A. No, sir.

Q. How long were you there on that visit?

A. Three or four days.

Q. What were you doing on that visit?

A. I was making an inspection of the Cumberland Telephone Company's plant.

Q. Was it three or four days?

A. Three days to the best of my recollection.

Q. Did you then make a contract with the City of Louisville?

Q. What was that, that contract?

A. It was a contract to make an inspection—it was a con-
2315 tract to give them such information as I was capable to in connection with their litigation here, in substance and testify—and give testimony in litigation, that was the substance of it. I cannot recall the wording of it and mentioned a compensation.

2316 Q. What about your expenses on your visit in March, was that paid by you?

A. I was compensated for my visit in March.

Q. How much were you compenasted?

A. I was compensated at the rate of $50 per day and my expenses.

Q. How much did that amount to?

A. $126.00 or there about. It was $100.00 and expenses.

Q. Now the services at that time was the giving of the affidavit which you have attached as an exhibit in your deposition?

A. And conferred with Mr. Blakey with regard to conditions.

Q. And telling him how to get at the facts in the case, outlining to him a course of conduct to be persued in investigating the matter?

A. No, I did not do that.

Q. Now you said you were here then three days in July. When did you arrive, at what time? I mean in the morning or afternoon?

A. In the morning, I came in the morning.

Q. What time?

A. About seven o'clock.

Q. Now then what did you do? I want to find what you did during those three days, how you occupied your time?

2317 A. That particular time, I went first to Mr. Blakey's office.

Q. What time did you get there?

A. Probably about nine o'clock, and had a conference with him. We went from his office to this gentleman's office.

Q. Colonel Fairleigh?

A. Colonel Fairleigh's office, and had a conference with him, and from there, I think the three of us—I think is my recollection—to the exchange office and met your exchange manager. That my recollection is employed the time up to probably about eleven o'clock, and after that—that afternoon——

Q. What did you do from eleven o'clock until afternoon, I mean with reference to the telephone matter? I don't care anything about any personal matter.

A. I spent the time in looking over the plant, or at least some portion of it. I cannot recall at this present time exactly what portion I did do.

Q. That is from eleven o'clock until lunch time?

A. Until lunch time.

Q. You put in the time looking over some part of the plant?
A. Yes, sir.
Q. You do not recall what that was?
A. Not that particular part.
Q. Was it in the central part of the city or out?
2318 A. I rather believe it was out—the outside district. It is my recollection that about that time my friend Mr. Tyler took me out in his car and drove me along some of the pole lines so that I could make an examination of them. He has done that on several occasions and I have made no attempt to fix the exact times or occasions in my mind.
Q. Now you were in an automobile say from eleven o'clock to lunch time?
A. That is my recollection.
Q. What did you do after lunch?
A. I don't remember specifically any more than my time was engaged in making an inspection of the plant.
Q. What did you inspect that afternoon?
A. It is impossible for me to state just what parts I did inspect at that particular time. I can tell you how much of the plant I have seen, not telling you exactly the time that I did see it.
Q. We will get to that later. I want now, if I can, to find out what you did that afternoon?
A. I don't remember specifically what I did that afternoon.
Q. Did you go out inspecting?
A. To the best of my recollection I did.
Q. Probably took another automobile ride with Mr. Tyler?
A. I don't think so, not at that time—no, sir.
Q. Where did you go? Did you stay down in town or did
2319 you go out in the Suburbs?
A. I don't remember that specifically.
Q. Did you go down in any of the manholes that afternoon?
A. No, sir.
Q. Did you go upstairs and look at the switchboards that afternoon?
A. I don't believe I did that afternoon.
Q. Did you examine pole routes that afternoon?
A. Undoubtedly did.
Q. You undoubtedly examined pole routes that afternoon?
A. Yes, sir.
Q. In which direction?
A. I can't tell you. I have not a recollection of that. I made no attempt to keep a recollection of it.
Q. Did you go on the street car, in an automobile, a buggy, or walk?
A. I did not go on the street car for that purpose. I did not go in a buggy for that purpose.
Q. Did you walk?
A. I walked for that purpose and may have gone in an automobile. I don't recall whether I did or not.
Q. That night—you did not give that time to the telephone business, did you?

A. I recollect—no, I did not give that time directly to an
2320 inspection of it.

Q. The next morning what did you do?

A. In a general way, the same thing.

Q. You mean in a general way that you had an interview with Mr. Blake and then with Colonel Fairleigh——

A. No, that I made a further general inspection of portions of the plant which I had not seen before.

Q. What portions did you inspect the next morning?

A. It is my recollection I went to some of the exchange offices, and I call to mind now—it comes to my mind that that first day along about noon time, your manager, Mr. Boardman took me to your East office and your South office and to the West office, between eleven and one o'clock in his automobile.

Q. In his automobile?

A. Yes, sir. That happens to come to me. These things I may not recollect them at once.

Q. Now the second morning?

A. I don't recollect specifically just what I did, except that I did make a general inspection—was engaged upon the general work, of making an inspection of the plant.

Q. What parts did you inspect? Can you recall that?

A. Not the part that I inspected at that particular time—no, sir; I can not.

2321 Q. It was a very general inspection then?

A. Yes, sir; it was a general inspection.

Q. Did you make notes?

A. Yes, sir; I did make notes.

Q. Where are your notes that you made at that time?

A. I don't know which notes I made at that particular time.

Q. Did you put in the whole second day inspecting?

A. Yes, sir.

Q. Then what did you do the third day?

A. The same thing. I told you that my recollection was that it was three days. It may not have been three days. I could by looking at records, maybe by looking at a calendar—I could not say definitely whether it was two or three days or four days.

Q. In thinking about the matter, was it not just two days at that time?

A. It may have been two days. I won't say that it was not two days.

Q. But at any rate you cannot remember any specific thing that you did on that visit?

A. I remember—yes, I can remember a great many specific things that I did. I can not remember the specific things I did at specific times, except I mentioned to you the specific thing I did between eleven and one o'clock on the first day of my visit here. The
2322 specific thing I did along about between nine and ten o'clock. Those are some of the specific things I do remember.

Q. We have got those two specific things. Tell me what other specific things you did on that visit?

A. I drove over several of the pole lines.

Q. Which ones?

A. The pole lines extending in the east section of the city, going out there. If I had the map here I could tell you, show them to you, going out beyond Cave Hill Cemetery and Cherokee Park—lines out towards the Water Works.

Q. Yes.

A. Another one——

Q. How did you go on that trip?

A. I went in an automobile.

Q. Who was with you?

A. Mr. Tyler was with me on that particular trip.

Q. All right, go ahead?

A. Another trip was a pole line off in this section of the city, going out there, a street the name of which I do not remember, but least out there past the work house, I think it is the Work House out that way, out as far as that and coming back over another route.

Q. Who was directing the course of your travels, Mr. Tyler or yourself?

2323 A. I was directing them myself by taking—selecting a route which had an important pole line on it, leading from your exchange office, following that pole line. That directed the route.

Q. Did you count the poles or the wires or the cross lines or the anchors or guy wires or cables?

A. No, sir.

Q. You just simply rode in an automobile down the street and looked up at the pole route?

A. Had a general eye on the class of construction, on the work which was done.

Q. And you went through Cherokee Park?

A. Went through the Park on my way back?

Q. A very pretty park and quite extensive?

A. I enjoyed it very much.

Q. You did not see many poles and wires in the park?

A. No, sir; not in the park.

Q. That was the second day. The third day that you were here what did you do?

A. The third day, if I was here, I was engaged in the same occupation.

Q. Did you press in the service Mr. Tyler's automobile?

A. I don't remember at that time, probably not.

Q. How did you inspect that third day that you were here?

2324 At that time, if you stayed the third day, how did you inspect?

A. I don't recall specifically.

Q. Do you remember being here the third day?

A. No, sir; I do not definitely.

Q. Now that is the second visit to Louisville in this year? When was the third?

A. About two weeks,—I don't know whether it was the week following or the second week following. My recollection is it was the second week after this visit.

Q. That is the time that you wrote the letter is it not?

A. No, sir; it was after that that I wrote the letter.

Q. All right. Then you came back either the next week or the second week after your visit in July?

A. Yes, sir.

Q. How many days were you here then?

A. Three or four days.

Q. Which, do you recall?

A. Probably three.

Q. Well say three days. What did you do on the first day? I presume you reported to Mr. Blakey again?

A. Yes, sir; I arrived in the morning and had an interview with him, went to your central office and met Mr. Boardman. My recollection is I made an appointment at that time—met your Mr. Green and made an appointment with him. Upon my first visit
2325 here I had requested Mr. Boardman to take off for me blue prints from his map which showed the extent of the conduit systems and the cable systems, which blue print was del-vered to me the first day I came on the second visit, in the morning or probably about noon of that day, if I remember correctly, and which was filed here as an exhibit. Those were furnished me at that time and an appointment was made with Mr. Green, the Superintendent of construction.

Q. Just there. You spoke of a Superintendent. Don't you know he is simply a foreman?

A. I don't know. He is an employé. I do not know that he is Superintendent.

Q. Why did you call him Superintendent?

A. Because I probably heard him called that.

Q. Who did you hear call him that?

A. I don't know that I heard him called that. The reason that I did call him the Superintendent of construction was because——

Q. He went with you?

A. No, sir; because a man in that—doing that work, among a number of companies is called—or among companies that own only one plant, is called the Superintendent of construction, and this was the class of companies that I had been calling on more than any other. It is simply a matter of habit, that is all.

2326 Q. Exactly. For you do not know that he is Superintendent, he may have been just a construction foreman?

A. Yes, sir. He was an employé who knew of the plant.

Q. How long did he tell you he had lived in Louisville?

A. He didn't tell me—I don't know but what he did tell me.

Q. He told you he had lived in Louisville just a year, and told you he came here from Lexington, Kentucky?

A. Yes, sir; I recollect that.

Q. When did you strike up with Mr. Green? That was the next work you did on that day?

A. Yes, sir.

Q. What time did you strike him?

A. My recollection is just before noon time, and I met him in the afternoon.

Q. After lunch?

A. After lunch and we drove all that afternoon in one of the automobiles owned by the telephone company.

Q. How long? You say all the afternoon. What time did you start and what time did you get back?

2327 A. We started about two o'clock and got back shortly before six o'clock,—about half past five.

Q. During that time you were inspecting pole lines in the same manner that you inspected pole lines with Mr. Tyler?

A. Pole lines—yes, sir; getting the extent of the plant and the nature of the construction.

Q. Did you stop here and there?

A. Not for purposes of examining the plant,—no, sir.

Q. That brought you up to the night of that day, I presume?

A. Yes, sir.

Q. The next day what did you do?

A. The next day,—it is my recollection the next day I went to the various exchanges, the different exchanges. I met the man who had charge of the equipment or who does that work.

Q. You met Mr. Metzger, didn't you?

A. That is my recollection, that that is the name of the man.

Q. Mr. Metzger is the local electrician?

A. I think that is the title that he was given there.

Q. What time did you go with Mr. Metzger?

A. Probably between half past ten and eleven, along before—late in the forenoon.

Q. Where did you go first?

A. First went into the operating room of the main exchange and through the operating room of the main exchange.

Q. What floor is that on in the building?

A. My recollection is it is on the second floor.

Q. Did you go up to the third floor?

2328 A. I went into the toll room—yes, sir; I went to the third floor.

Q. How long did you stay up there in the second and third floors of the main exchange?

A. Fifteen or twenty minutes.

Q. Then where did you go?

A. Then into the toll room and down into the room where the power plant is, the distributing frames, fuse boards and other apparatus.

Q. How long did you stay in there?

A. Not over ten or fifteen minutes, probably in the neighborhood of that.

Q. Then where did you go?

A. I went to one of the other exchanges.

Q. Did you make any further inspection of the apparatus in the central exchange after that?

A. No, sir.

Q. What floor was the toll apparatus located on?

A. I don't recall, it was either the second or third. My recollection is it was on the third floor.

Q. Where was the main exchange?

A. On the second floor.
Q. The power plant and frames were on the first floor?
A. On the first floor—yes, sir.
Q. Now then you went to the East Exchange?
A. Yes, sir.
2329–2339 Q. How long did you stay there?
A. Probably a half an hour, I should judge.
Q. From there you went to the South exchange?
A. Yes, sir.
Q. How long did you stay there?
A. Probably a little longer than that.
Q. How long?
A. Say forty or forty-five minutes.
Q. Then you went from there where?
A. To the West exchange.
Q. How long did you stay there?
A. Thirty to thirty-five minutes.
Q. Did you make any further inspection of those exchanges thereafter?
A. No, sir.
Q. When you went with Mr. Boardman to the three branch exchanges, did you go into the exchanges or just drive by them?
A. Oh no, we went into them.
Q. How long did you stay in each one of them?
A. Not over five or ten minutes.
Q. You were not inspecting them at that time?
A. Not with a view of taking notes on the inspection of it—no, sir.
Q. At this other time when you were with Mr. Metzger, you asked him what equipment the company had, did you not?
2340 A. Yes, sir.
Q. And he told you?
A. Yes, sir.
Q. And you wrote it down?
A. I asked him in this way, how many pairs of wires, asked him the equipment and he told me and I looked and checked it to see that they were there.
Q. You checked it all off?
A. For the items I took notes on I did—yes, sir.
Q. All of the matters you have testified about, did you ask him about those things? I mean the apparatus?
A. I may have asked him about some not all of them.
Q. That brought you up to what time, after your inspection of these exchanges?
A. My recollection at that time, it was half past twelve or one—late lunch time.
Q. After late lunch, what did you do?
A. My recollection is that afternoon I went with Mr. Green again.
Q. Where did you go that afternoon?
A. Over other pole rout-s we had not been *oth*er the other time we were out.
Q. What time did you start?
A. I should judge about two o'clock?

Q. What time did you get back?
2341 A. About six, I think a little after six that time.
Q. Did the automobile break down?
A. No.
Q. You had no trouble with it at all?
A. Not that I remember.
Q. You were riding all the time?
A. We stopped once or twice, pretty hot day,—stopped once or twice and took a drink.
Q. How many times?
A. I think two.
Q. Did you drink or Mr. Green?
A. We both did.
Q. You set them up?
A. I did.
Q. Then that brought you back about six o'clock or a little after?
A. A little after—yes, sir.
Q. How many miles of pole route did you examine with Mr. Green those two afternoons?
A. I should judge between sixty and eighty, possibly more.
Q. Sixty or eighty miles?
A. Yes, sir.
Q. What kind of an automobile did you have?
A. A little choky, one cylinder Cadillac car. I guess you would call it?
Q. You found all the streets in good condition, did you?
A. No, sir.
Q. Some of them were pretty rough?
A. Indeed.
Q. And in that time you made enough distance to violate all the speed ordinances of the City of Louisville?
A. My estimate was we went at an average rate of ten miles an hour. We would average up. Much of the time we were going much slower than that, and some of the time we were going in my judgment faster.
2342 Q. Taking out the time you spent in taking drinks you estimate that you covered between sixty and seventy miles?
A. Yes, sir; it was a very hot day.
Q. Very hot afternoon?
A. Yes, sir.
Q. Both of them?
A. Yes, sir.
Q. That brings you up to the night of the 2d. What did you do the next time you were here? I believe you said you were here three days on that visit?
A. To the best of my recollection at this time I was. It was work in a general line along the matter looking into the plant.
Q. That don't give me the slightest idea of what you did. I want to know what you did the next day?
A. I do not recall specifically.
Q. Do you remember that you were here that next day?

A. I cannot say that I do exactly at this time.

Q. But whether you were here or not, you cannot recall anything that you did the next day looking to an inspection of this plant?

A. I do recall and know and can state definitely that if I was here that day that I was engaged upon that work and did inspect portions of the plant.

2343 Q. Maybe you went down into the manholes?

A. No, sir; I know that I did not.

Q. Maybe you inspected the cables?

A. Yes, sir; probably did.

Q. Which ones did you inspect?

A. I could not tell you definitely which ones.

Q. Did you spend the next day on your plans that you had obtained from the company the first day?

A. No, sir; I did not.

Q. Oh, you did that after you left——

A. I took those with me and did that away from here.

Q. In Chicago?

A. Yes, sir; I did not devote any time here to that at all.

Q. You cannot recall anything that you did the next day, if you were?

A. Specifically I do not—no, sir.

Q. Did you have an interview with Mr. Blakey before you left on that visit?

A. Yes, sir.

Q. Maybe it was the first day you had an interview with Mr. Blakey?

A. I had interviews with Mr. Blakey each day for a few minutes, a short time.

2344 Q. Did he ask you how you were getting on?

A. Yes, sir; probably did. We discussed things in general. I don't remember specifically the conversation that took place.

Q. He asked you if you were going to be able to bring the value down?

A. No, sir; didn't ask me that.

Q. Now then I am afraid we will have to leave that third day you were here that time without getting any information as to what you did. You still cannot recall anything you did that day?

A. No, sir

Q. Now then you left here and went back to Chicago, did you?

A. Yes, sir.

Q. Did you see Mr. E. W. Farnum on that visit?

A. Here in Louisville?

Q. Yes.

A. Not to my recollection—no, sir; I did not.

Q. You saw him in Chicago?

A. I saw him in Chicago.

Q. When was your next visit to Louisville?

A. I arrived here last Saturday morning.

Q. Last Saturday morning?

A. Yes, sir.

2345 Q. What did you do on Saturday?

A. Worked upon a compilation of some figures and data that I had secured previously.

Q. You were preparing of course on that day for your direct examination beginning on Monday?

A. Yes, sir.

Q. What did you do Sunday, rest up?

A. No, sir; I did practically the same thing and rested.

Q. Stayed in the hotel, however?

A. I stayed in the hotel practically all day.

Q. And Saturday you made no inspection of any kind?

A. No general inspection.

Q. Well, you did not——

A. Well, say no inspection.

Q. On Monday morning what did you do? Did you make any inspection?

A. No, sir.

Q. Still getting ready for your examination beginning at two o'clock that afternoon?

A. Yes, sir.

Q. So that is the extent of your visits to the city of Louisville during the present year?

A. Yes, sir.

Q. And with the knowledge that you have acquired on
2346 those visits you have undertaken to testify in this case?

A. Yes, sir.

Q. When did you see Mr. Farnum in Chicago?

A. When?

Q. Yes, about when. I do not want the date, the exact date.

A. I should judge in March or April. I seen him on two occasions, one along about that time and one later, maybe in June or July.

Q. Now in the first interview, was this matter discussed?

A. The telephone——

Q. The Louisville Telephone situation?

A. In a way—yes, sir.

Q. You told him that you were going to be employed——

A. No, sir; I did not.

Q. He told you he was going to be employed?

A. He told me he was employed.

Q. He told you he was employed?

A. Yes, sir.

Q. You know Mr. Farnum, do you as the general Manager of the Mutual Audit Co., the expert Accountant employed by the city in this case who have made a report?

A. Yes, sir; I know him as that.

2347 Q. You knew at the time that he was the General Manager of the Mutual Audit Co?

A. He so represented himself to me.

Q. And that he was employed by the city to make this expert examination?

A. Yes, sir.

Q. Did you give him any points as to how to get at it, how to do it.
A. No, sir.
Q. Did he ask you for any?
A. He asked me if there was any special information that might develop as a result of his work that I might be interested in and I told him that I did not know of any, that the work which ordinarily was done in making an audit was all that I knew of that could be done that would be of service to me, and that would not be of service to me; that any valuation that I would put on the plant would not be based upon figures in book value but would be based upon a judgment of the plant as the result of an inspection of it.
Q. At that time you had not been employed as you say, I believe?
A. No, sir; I had not been employed.
Q. But you expected to be at that time?
A. I had no expectation. He very kindly hoped that I would be employed. He informed that that somebody would, and
2348 that he would——
Q. He had seen your affidavit that you had given in this case at that time, had he?
A. I do not know, I am sure.
Q. He did not mention it?
A. No, sir.
Q. Did he ask you to recommend him?
A. No, sir.
Q. And you did not ask him to recommend you, of course?
A. No, sir.
Q. How long have you known Mr. Farnum?
A. That was the first time I have met him.
Q. Did he come to your office himself?
A. Yes, sir.
Q. How did he come—did he explain why he came to see you?
A. I think he came to see me at the request of Mr. Blakey.
Q. To get information as to how to proceed with the investigation of the books of the company?
A. To see if I could give him any suggestions which would be helpful to him in doing that, which I could not.
Q. Where did you next see him?
2349 A. Sometime later; probably in June. I think it was prior to my second visit to Louisville and the first time I saw him was approximately soon after my first visit to Louisville.
Q. Where did you see him on that occasion?
A. In my office.
Q. Did he come to see you?
A. Yes, sir.
Q. Did he come to discuss this telephone situation in Louisville?
A. I do not know what he came for, really. We did not discuss it in any particular way—no, sir. It was more of a friendly call.
Q. Did he tell you he had been sent there by any one?
A. No, sir; he did not.
Q. He knew then that you had been employed, did he?
A. To the best of my recollection he did.
Q. Didn't you discuss the matter?

A. No more than I remember stating that I had been employed and was soon coming to Louisville to make an inspection of the plant, and he had told me—one of the things he told me, that he had been engaged in making an audit of the books, and he had been having a hard time getting such information as he needed—talking in a general way.

2350 Q. He was complaining very bitterly at the officers of the telephone company not giving him access to its records?

A. He did not complain very bitterly. He did not complain. He simply said he was getting no co-operation from them.

Q. Was that all he said about it?

A. In substance it is—yes, sir. The words I do not recall.

Q. Did he tell you he was going to be able to make a report that would show us up?

A. No, sir; he didn't show me anything as to the nature of the reports that he would make.

Q. Did he indicate what he thought of the situation?

A. In general terms, if he did; I do not recall. It did not have any impression on me and I considered it more of a little friendly chat. The impressions left me at once.

Q. You were experts of course in different lines of work but engaged on the same particular piece of work, looking at it from different standards. That is correct, is it not?

A. Yes, sir.

Q. And yet you did not discuss it in a general way?

A. I did not feel that his work had any direct connection with my work, and was not interested in it.

2351 Q. And you did not think that what he would show would aid you in any way in giving your testimony on your line of work?

A. I had no idea whether it would or would not

Q. Have you read Mr. Farnum's report?

A. Portions of it.

Q. When did you do that?

A. What is it?

A. What was it?

Q. When did you do it?

A. Sunday.

Q. Did you start to read it all and get tired or did you have certain parts specified for you to read?

A. I had no part specified for me to read.

Q. Just got into it and then got out?

A. In fact I requested myself that I might read it, simply as a matter, as I said at the time—was a matter of curiosity.

Q. It was purely out of curiosity, killing time, that you read Mr. Farnum's report?

A. No, sir; it was not for that; but it was to get the information and see how extensive his work had been done and what facts were brought out in it.

Q. You did discover what facts had been brought out?

A. I saw the figures in it—yes, sir.

Q. Did you look at the joint report that Mr. Farnum and
2352 Mr. Wilkerson signed?

A. I do not believe so—no, sir. If I did, I did not see the signatures to know it was a joint report. This was the report I had found in this book.

Q. That is the only one you did have or look at?

A. Yes, sir; that is the only one.

Mr. GRANBERY: I would like for the stenographer to note that the book indicated by the witness is the separate report of the Mutual Audit Co. signed by E. W. Farnum, General Manager. That is all right, is it, Mr. Blakey?

Mr. BLAKEY: Yes, sir.

The further taking of these depositions was adjourned until 2:00 p. m.

2353 2:00 P. M.

The parties met — to adjournment and the cross examination of Mr. CRUMB was resumed by Mr. Granbery as follows:

Q. Did you write the report of the Chicago Telephone Commission about which you have testified?

A. Portions of it, and co-labored with Mr. Jackson and Mr. Wilder on all of it. It was the joint work of the three of us.

Q. There was no dissension among you about the report, was there?

A. No, sir.

Q. Will you file a copy of that report as an Exhibit with your deposition?

A. Yes, sir.

The report in question was thereupon filed with this witness's deposition and marked by the stenographer for Identification "Exhibit No. 2."

Q. During your direct examination I assumed that you were connected with the investigation or valuation of the New England Telephone Company's plant about which you spoke, but since your cross examination it occurs to me to ask you whether you were connected with that in any way?

2354 A. No, sir; I did not so represent intentionally and do not believe that I did in any way.

Q. When were you last in New England?

A. Probably six years ago—six or seven years ago.

Q. What you have said about that matter is purely hearsay, is it not?

A. A great deal of the information on that, I got from the official report which was filed with the Board of Highway Commissioners, and the other information that I have given with regard to that has come from a personal interview and discussion of the subject with Mr. Jackson.

Q. At least, it is hearsay. You know nothing personally about it?

A. I have not been there to examine it.

2355 Re-examined by Mr. CLAYTON B. BLAKEY, as attorney for City of Louisville:

Q. You have been asked about your trip here in connection with the investigation and appraisement of the Louisville property of the telephone Company. I do not recall whether you were asked specifically by Mr. Granbery in regard to your assistant's work here. I wish you would state who your assistant was and what time he spent here and what he did?

A. I have an assistant, Mr. S. P. Levings, who came here for the purpose of getting such additional data and information that I had not had with regard to the nature and extent of the plant. He made one trip here, was here I believe five days, from Friday morning until Tuesday evening. He went over the plant, inspected various parts of the plant, discussed the construction, the nature of the work and character of the work both with Mr.——

Mr. GRANBERY: I am going to object to that because it is truly hearsay, and I shall have to ask the Master Commissioner to come down and rule on it.

At this point the witness was interrupted by a request on the part of complainant's counsel for a ruling by the Master as to whether the witness had to testify as to the doings and statements of his assistant about which he had no personal knowledge,
2356 pending the Master's arrival this matter is suspended.

Q. Now referring to the Pittsburg plant about which you have testified, do you know how many subscriber's stations that plant was constructed for?

A. At the time I left there it had a capacity of approximately 10,000 subscribers' stations. Approximately 5,000 subscribers' stations were then in operation. The plant was during the time when I was there in process of construction. The plant had not been completed at the time I left. New branch exchanges were being built at that time.

Q. Do you know how much the plant had cost up to that time?

A. I did at that time but I do not recall the figures. We used to make—we knew every month—made monthly estimates of expenditures to that date and those were submitted, but I do not recall the figures.

Q. Is there any difference between the cost of constructing a plant in Pittsburg and the cost of constructing a plant in Louisville, Ky.?

A. Yes, sir; there is, on account of the topography of the city and the way in which it is settled up, that is, built up.

Q. Did that plant in Pittsburg cost the builders of it more
2357 than it should have cost them?

A. In my opinion it did.

Q. To what was that due?

A. Inexperience.

Q. Were there any contracts let for a rate in excess of regular rates for that character of construction, due to political pulls?

A. Yes, sir. The conduit construction work was performed under a contract by a firm of contractors there by the name of Booth & Flynn. The contract price for doing that work was considerably in excess of what the work should have cost had it been let out under competitive bidding to bona fide contractors.

Q. Why was that let out to Booth & Flynn, if you know?

A. My opinion is that it was left to them because Senator Flynn had been of assistance to the telephone company in securing its franchises.

Q. Was that your information at the time the contracts were being carried out?

A. That was the general belief of the people who were employed by the company but who were not sufficiently in the confidence of the executive head to know from him direct.

Q. Now you were asked in regard to the stocks and bonds of the Hot Springs plant. Do you know how much it cost to build the Hot Springs plant?

2358 A. Yes, sir; I do.

Q. How much?

A. Between Seventy-two and seventy-three thousand dollars.

Q. Do you know the method which has in the past been in vogue among independent telephone companies for financing and building and constructing their properties?

A. Yes, sir.

Q. What is that method, generally speaking?

A. Generally speaking, a franchise for the construction of a plant is secured, an estimate of the cost of construction of the plant made, a capitalization for the company decided upon, which capitalization does not of necessity bear any fixed relation to the necessary cost of construction. Ordinarily, it has been the practice among the majority of independent telephone companies to issue bonds which will bring in sufficient funds—provide sufficient funds to pay the expenses of the construction of the plant, and in addition to that, issu- stock to an equal or greater amount than the bonds. Some companies have not been so conservative even as that and issued bonds that considerably more than covered the cost of construction.

Q. What disposition is made of that stock?

A. The Hot Springs Stock?

Q. No, the stock generally of independent telephone

2359 companies?

A. Usually held or sold for the most that the promoters of the company can get for it. Often times it is given as a bonus with the bonds—to the purchaser of the bonds.

Q. For what purpose did you come here in March at the request of Mr. Blakey?

A. For the purpose of discussing with him in a general way the general features pertaining to the telephone business and give an off hand opinion as regards the rates which had been established or which had been mentioned by the city of Louisville in an ordinance

which they had passed, and to discuss in other ways different features of the telephone situation generally and in the city of Louisville.

2360 Q. While you were here at that time did you with Mr. Blakey make any effort to procure from the Court in this case permission to inspect the property of the Cumberland Telephone Company?

A. Not to my recollection I did not.

Q. Do you or not remember that you with Mr. Blakey and Colonel Fairleigh, one of the attorneys for the Cumberland Telephone Company, went before Judge Evans in his office in the Custom House on that first trip, and do you remember at that time the question was up before Judge Evans as to whether you should be permitted to inspect the property at that time?

A. I do, since you recall it, I remember distinctly before of having come to the Judge's Chamber in this building with you and Mr. Fairleigh, but I could not remember what the point at issue was. I do remember now being here and that a request was made that a special order be issued directing the Cumberland Telephone Company to furnish me facilities for examining their plant. It was the contention of the Judge, that that was unnecessary, as I took it, the general features covering it. I had no very general interest in it and I did not pay very much attention to what was going on.

2361 Q. Did the Telephone Company, through its Counsel, Colonel Fairleigh, object to permission being granted for you to examine that property?

A. He objected to the motion that you made or the request that you made before the Judge.

Q. Mr. Granbery has asked you in regard to a letter that you wrote to him requesting maps or plans of pole lines and aerial wire. Did you sign that letter in Louisville Kentucky or Chicago?

A. In Chicago.

Q. What did you do with it when you signed it?

A. I mailed it to Mr. Blakey, City Attorney, Louisville, Kentucky.

Q. And from what source did you get the reply of Mr. Granbery's which you filed as a part of your deposition?

A. From Mr. Blakey.

The Master Commissioner here at this point arrived and heard the objection to the testimony concerning which he was called.

The MASTER: I rule that the objection to the testimony of Mr. Crumb as to what his assistant Mr. Levings reported to him, is sustained.

Q. Did Mr. Levings report to you the result of his labors in Louisville in connection with inspecting the physical property of the Cumberland Telephone Company?

A. He did.

2362 Q. You have stated in your direct examination I believe that among other parts of the physical property examined,

were certain manholes. In your cross examination, I do not recall that you mention having examined those manholes yourself. Please explain what you meant by saying in your direct examination that you had examined the manholes and the conduits as they appear in the manholes?

A. I meant that while I had not made a personal examination of the manholes, that an examination had been made by Mr. Levings, and in my opinion at that time——

Mr. GRANBERY: I object to that on the same ground.

The MASTER COMMISSIONER: Of course his opinion based on what Mr. Levings—if I understand the witness, do you propose to give your opinion based on what Mr. Levings reported to you?

A. Yes, sir.

The MASTER COMMISSIONER: The objection will have to be sustained to that.

Q. Did Mr. Levings report to you that he had examined into the manholes and conduits and cables which could be seen from an examination of those manholes and did he report to you what the condition of those manholes and conduits and cables were?

A. Yes, sir.

Objected to.

The MASTER COMMISSIONER: I think that is competent, that he reported to him.

2363 Q. You were asked at the close of your direct examination to examine exhibit No. 1 filed with J. E. Caldwell's deposition, being the pamphlet entitled an answer to the question "Why do telephone companies charge more for service in large exchanges than in small exchanges" the following reply was made by a practical telephone man. I will ask you if you have read that paper?

A. I have.

Q. Is there anything you desire to say about the contents of that paper that is not already included in your direct examination?

A. No, sir.

W. H. CRUMB.

2364 UNITED STATES OF AMERICA:

In the United States Circuit Court for the Western District of Kentucky, at Louisville.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
THE CITY OF LOUISVILLE, KENTUCKY, Defendant.

Affidavit of W. H. Crumb.

The affiant, W. H. Crumb, says that he is an electrical engineer and contractor, and is now, and has been for many years, engaged in installing and constructing telephone systems or plants; that he

has been engaged in the telephone business for about 14 years and all of said time has had under his charge and management the construction and operation of telephone plants; that he has been connected with the construction and operation of both Bell and Independent telephone plants; that he has been employed by a number of municipalities, private corporations and individuals since 1895, to make examinations and investigations of telephone properties; that he has a thorough knowledge of the construction, operation and maintenance of telephone properties, the cost of installing telephone plants new throughout, the cost of operating and maintaining such telephone systems when constructed, the extent of depreciation of such telephone plants after construction, the cost of the various materials that go into a telephone plant, including the switchboards and various apparatus used in connection therewith; that he has installed and constructed, and assisted to install and construct, telephone plants in the following cities and towns, to-wit:

Chicago, Illinois; Pittsburgh, Pennsylvania; Sioux Falls, South Dakota; Newark, Ohio; Yankton, South Dakota; Hot Springs,
2365 Arkansas; Belvedere, Illinois; Ishpeming, Michigan; Marquette, Michigan; Champagne, Illinois; La Porte, Indiana; Lafayette, Indiana, and other places; that for municipalities, corporations and individuals he has made investigations and reports on telephone properties, and the operations for same for Chicago, Ill., Indianapolis, Ind., N. W. Harris & Co., a large bond house of Chicago and New York; The Central Union Telephone Company, Lafayette Telephone Company of Lafayette, Ind., Delaware & Madison Counties Telephone Company of Muncie, Ind., and others; that he is also engaged in acting in an advisory capacity for corporations and individuals who desire to construct and operate telephone systems in cities and towns.

Affiant says that the construction and use of telephone systems has now extended over a period of more than 25 years; that telephone systems have been constructed and are now in operation in practically every city, town and hamlet in the United States which has a population of more than 500 inhabitants; that the construction of such telephone systems and the cost of such construction has passed its experimental stage, and that among engineers and contractors familiar with the construction of such telephone plants a custom has been reached whereby estimates of the cost of construction are well established; that for the construction of plants similar to the plant operated by the complainant company it is the custom to estimate the cost of constructing such plants by selecting as a unit the number of stations which said plant proposes to operate; that, based on such unit, it is estimated by such engineers and contractors that such plant will cost, when complete, $100.00 per unit, each station being considered a unit. This estimate includes all apparatus, material, labor, etc., necessary for the full and compete operation of the plant, exclusive of real estate and buildings.

Affiant says he is familiar with the general condition in Louisville, Ky., including the area of said city; that, in his opinion, a telephone plant in the City of Louisville, Ky., could be constructed new

throughout to accommodate 10,000 subscribers' stations for the sum of $1,000,000.00, exclusive of real estate, and the buildings
2366 thereon; that such plant, when so constructed at said price, would include the most modern up-to-date equipment; that such a plant constructed at this time, with modern up-to-date equipment, would cost something more than a plant constructed 10 years ago; that affiant is familiar with the conditions in Louisville, Kentucky, and that he is willing to make a contract to construct such a telephone plant with the most modern improvements and equipment for the sum of $1,000,000.00, and furnish good, satisfactory bond for the performance of said contract; that he has had many years' experience in making contracts for the construction and installation of telephone plants and is thoroughly familiar with the cost of all the materials and appliances that go into the equipment of such a telephone plant; that there is practically no difference in the cost of installing and constructing a telephone plant for the use of the Bell system of telephones and the use of the Independent system of telephones.

Affiant says that when he gives it as his opinion that a plant to accommodate 10,000 stations could be constructed in the City of Louisville for $1,000,000.00, he assumes that the wires and cables to be used by such telephone system in the strictly business section of the city for about a mile square should all be placed in underground conduits to the same extent and covering the same territory as that now covered by the complainant company's conduits.

Affiant says that the approximate cost of a switchboard, to accommodate 5,000 lines, is about $110,000.00, and that the approximate cost for switchboards which accommodate 3,000 subscribers' lines is about $60,000.00 each.

Affiant says that, assuming that the central switchboard of the complainant company in its main office on Jefferson Street between 4th and 5th was installed in the year 1896, then affiant is of the opinion that said central switchboard has practically reached the end of its useful life.

Affiant says that, in his opinion, such switchboard cannot be, under any circumstances, worth more than $20,000.00.

2367 Affiant says he is informed that the sub-exchange known as "South" was constructed and placed in operation about eight years ago; that such being the case, said sub-station has probably depreciated in value at least 60% since said date.

Affiant says he is informed that said two sub-exchanges known as "East" and "West" were constructed and placed in operation about five years ago, and that if such is the case then the switchboards in said sub-exchanges have probably depreciated at least 40% since their installation.

Affiant says that he does not know the condition of the general property of the complainant company, such as poles, wires and other apparatus, but that if the said company and its predecessor has been operating a system of telephones in the City of Louisville for 25 years, then in his opinion, the value of said property is from 20% to 30% less than it would be if installed new throughout.

Affiant says that he has read the Bill of Complaint filed herein, and that he is somewhat familiar with the long distance connections which the complainant has, and that the amount named in the Bill of Complaint as the proportion which is earned by the Louisville Exchange, viz: $7,728.00 is much too small; and that, in his opinion, based on his experience with other telephone systems similarly situated, and of practically the same size as this telephone system, the telephone system in Louisville should earn considerably more than $7,728.00 as its proportion of the toll service in and out of Louisville.

Affiant says that he has recently, in conjunction with the New York Audit Company, made an examination of the physical property of the Indianapolis Telephone Company at Indianapolis, Ind. That affiant spent considerable time in making said investigation and made a thorough inspection of said property and examination of its operations; that said plant had been in operation since 1898; that at the time the investigation was made it had 12,260 subscribers' stations in operation; that this affiant, together with George M. Brill,
of Chicago, Ill., an expert in the valuation, appraisement and
2368 construction of telephone properties, valued said property at $800,000.00; that, together with Mr. Brill, he made a report to a committee selected by the Mayor of Indianapolis, which committee was composed of members of the Board of Trade, members of the Commercial Club, members of the Merchants' Association and the Board of Works of the City of Indianapolis; that said company at the time he made said investigation was charging at the rate of $40.00 per year as its maximum rate for business telephones and a considerably smaller sum per year as its maximum rate for residence telephones; that the occasion for said investigation was the request on the part of the said Indianapolis Telephone Company to be permitted to raise its rates from $40.00 as the maximum rate for business telephones to $48.00 as the maximum rate for business telephones, and proportionately for the other class of service which it had in force at that time; that the highest rate charged for any class of service by said company at the time of said investigation was $40.00 per year for an unlimited business line telephone service, and he is informed that as the result of the report made by him and Mr. Brill to this committee said committee reached the conclusion that said Indianapolis Telephone Company was entitled to charge more for its telephone service, and that said company, if allowed to charge the rate requested, could and would be in a position to serve 14,000 subscribers, maintain and operate its plant, provide a depreciation fund of 7% on the total value of its property, pay a 6% interest on the total value of its property, and have a balance of $19,242.00 over and above said dividend.

Affiant says that in his experience as an operator of telephone plants, it has been his universal experience that whenever telephone rates are reduced, it has resulted in the number of subscribers greatly increasing.

Affiant says that during the year 1907, he, together with Prof. Dugal C. Jackson, of Boston, Mass., and Dr. George W. Wilder, of Chicago, Ill., were appointed a Special Commission by the City of

Chicago, to make a thorough investigation and report on the telephone situation in the City of Chicago; that said Commission did make such investigation of the system and operations of the
2369 Chicago Telephone Company; that said Commission spent practically three months in making said investigation; that said Commission, in connection with said investigation, entered into all phases of the telephone business with great detail; that one of the results of said investigation showed that during the year 1897 the Chicago Telephone Company had 13,163 telephones in operation, and that the average price per telephone per year was $123.53; that during the year 1906 said telephone company had in operation 113,782 telephones, for which they received an average rate of $53.29 per telephone.

Affiant says that as the result of the investigation made by said Commission, as shown by the report made to the City of Chicago, and as ascertained from the books and records of the Chicago Telephone Company, there were in the year 1896 seven telephones in operation in the City of Chicago for every 1,000 inhabitants; that for the year 1906 there were 48 telephones in operation for every 1,000 inhabitants in the City of Chicago.

Affiant says from his general experience in the telephone business, and his knowledge of other telephone plants operating under similar conditions to that of the complainant company, it is his opinion and belief that said company can operate under the rates named in the ordinance referred to in the complaint and derive a sufficient revenue to take care of all reasonable charges for operating, maintenance and general expenses, such as named in the Bill of Complaint, and set aside a sufficient sum to cover depreciation and pay a fair interest charge on the investment of not less than 6%.

Affiant says he is familiar with the general operating conditions in different sections of the United States, and that he does not consider the carrying on of the telephone business in the City of Louisville any more hazardous than that in other cities of similar size. Affiant says, moreover, that the conducting of the telephone business is no more hazardous, so far as destruction of property is concerned, due to the elements, such as rain, snow and sleet, and other causes, than is the conducting of an electric light business.

W. H. CRUMB.

2370 Subscribed and sworn to, before me, by W. H. Crumb, this 13th day of March, 1909.

My commission expires January 29th, 1912.

J. F. DAVIS,
Notary Public, Jefferson County, Kentucky.

2371

Witnesses.	Direct.	Cross.	Re
Captain H. N. Gifford	189	207	213
Hardy Burton	217	227	233
John H. Brand	238	244	247
J. E. Settle	249	298	308
Isaac Hilliard	313	323	...

2372 Captain H. N. GIFFORD, called as a witness on behalf of complainant, the City of Louisville, being duly sworn and examined by Mr. Clayton B. Blakey, deposed as follows:

Q. Where do you live?

A. I live in this city. At present, 1233 Sixth Street.

Q. How long have you lived in Louisville, Kentucky?

A. I came to Louisville in the latter part of 1879.

Q. What is your present occupation?

A. I am the Treasurer of the City of Louisville.

Q. Elected by the people Treasurer of Louisville?

A. Yes, sir.

Q. How long have you been City Treasurer?

A. Nearly two years. I was elected two years ago next month.

Q. Were you ever connected with the Ohio Valley Telephone Company in any capacity?

A. Yes, sir.

Q. In what capacity, and how long were you with that company?

A. Well, that company was a sort of a continuous company. It was first the American District Telegraph Company. I was elected manager of it in November, 1879, and I continued i- charge of the business until October, 1899. It went through two reorganizations at that time. First it was "Ohio Valley Telephone Com-
2373 pany," and then "The Ohio Valley Telephone Company." I was retained as General Manager all the time.

Q. To what were those reorganizations due?

A. Well, they were due as a matter of business prudence. I have made a deposition—one deposition that rather outlines the idea, but if you wish me, I can give it to you.

Q. Were those reorganizations due to any insolvency on the part of the companies?

A. No, sir.

Q. As General Manager of the Ohio Valley Company, what were your duties?

A. I had general charge of the business.

Q. Were you a director in the company?

A. No, sir.

Q. Do you know what the books of that company showed du-ing the time you were General Manager of it as the extent of its expenses and earnings?

A. I did at the time. I cannot remember everything now. I opened the books, had general supervision of them.

Q. How much money did the stock holders of that company pay for the stock which they owned in the company at the time the Cumberland Telephone Company began to operate the plant?

2374 A. Perhaps I can explain that and make it a little clearer. The company, when I first took charge of it, the capital stock was $25,000. That was in November, 1879. A month or two, perhaps three months after, we increased the capital stock $25,000 more, and paid it in at $1.20, so we paid in $30,000, but there was $5,000 went to surplus account and the other $25,000 went to increase the capital stock. That raised the capital stock to $50,000.

Then in the course of perhaps a year or so we increased the capital stock to $100,000, and paid that second $50,000 at par. During that time we were called the American District Telegraph Company. Some time previous to the year 1884, I am not prepared to say just what date now—or perhaps I should have said first that during those first years, we were operating under a five-year license from the parent company. At the end of that time they had a right to come in and upon equitable terms take possession of the property, pay us for it. But Mr. Speed and Mr. Clark, who were the two largest stockholders in the company, succeeded in making a new arrangement with the parent company, in obtaining a permanent charter. That was, I think, two years or more after I had come in the company. As I have already stated in another deposition, the agreement further was, that we had to give thirty-five per cent of our capital stock to the parent company as a further considera-
2375 tion of this permanent charter—permanent license, you may call it; and we considered that as a price given for our privilege of doing business. That would amount to $170,000, wouldn't it? We determined to raise the capital stock of the company to $400,000. The business was growing very rapidly, outgrowing our original capital stock, and so we reorganized, and reorganized it as "Ohio Valley Telephone Company." We issued thirty-five per cent of $400,000, that is, $140,000, paid up capital stock to the home company, and the other $260,000 we issued to the local stockholders pro rata according to their previous holdings. We did that because we considered the permanent charter that we had obtained with some considerable money, earnings that we had put in, and the prospects of a permanent business, worth the $260,000 that we issued to ourselves. We continued under that arrangement until I forget what year it was, it seems to me it was 1886. I looked it up. It is in my previous deposition. Whatever it is there, it is here. We got a special charter from the Legislature of Kentucky, and that charter provided for an ordinance—a confirmatory ordinance in cities of the first class, which was intended to cover this city, and we reorganized the company; virtually the same stockholders with the same holdings owned "The Ohio Valley Telephone Com-
2376 pany." We added the "The" to designate it from the previous company, the second company we had been doing business under, and we continued under that company, under that organization, until I left the company.

Q. Was the capital stock ever increased from $400,000?

A. Yes, sir; we first increased it $50,000, paid up at par, and then later it became necessary to put in a new—we had a fire—to put in a new central office system, what is called the central battery system, and we ordered a hundred thousand dollars increase. In my former affidavit or deposition I testified that we increased our capital stock $100,000. I find I was slightly mistaken. We did intend to increase it $100,000 but there were four shares, I think, that were never taken up, so we increased it $99,960. The increase of our capital stock, and that was the capital stock when I left the company.

Q. Now, was there any additional sum of money or other thing of value paid into the Treasury of the Ohio Valley Telephone Company by the stockholders for the stock which they held in that company?

A. Well, we were paying part of the time 6 per cent and part of the time 7 per cent on our capital stock. That did not exhaust all our profits, all our earnings, and the balance, whatever it was, went into the holdings of the company. It was not paid in at any
2377 stated time in any stated amount or under any stated resolution, but as we made money, we just let it go right in.

Q. What I am asking you, was there anything else paid by the stockholders for their stock except what you have testified to?

A. Not as an assessment for stock, no, sir.

Q. Did the books of the Ohio Valley Telephone Company at the time the Cumberland Telephone Company began to operate it, show the value of the plant belonging to the Ohio Valley Telephone Company?

A. Yes, sir; an appraised value, that is, an assumed value that we thought was a fair value.

Q. Did the amount appearing on those books as the value of the Louisville plant in your opinion represent a fair value of the Louisville property?

A. I think so.

Q. Now, will you state what rates were charged by the Ohio Valley Telephone Company during the last seven or eight years prior to June 1899?

A. Previous to two or three years before I ceased managing the property, we used to operate under what was called a grounded circuit system, single wire system. We had a rate—a variety of rates. Under those rates we charged for a special wire, that
2378 is, one wire to each subscriber for business purposes, we charged $6.00 a month. Where there were two on the same line we charged $5.00 a month, and I had a few variations from that. I had a few isolated cases where there were three or four instruments placed on one line, and I sometimes made a rate as low as $4.00 a month for that. Then that was for business houses. For residences they ran from $3.00 to $5.00 a month according to service. I am speaking now of Louisville.

Q. What were the rates when the common battery system with the metallic circuits were installed?

A. A Metallic circuit is one thing and common battery another, but they go together frequently. The metallic circuit was much more expensive, more expensive to put up, required considerable moving of lines, adjusting, so as to get them adjacent on the pole lines, and we charged—we started trying to charge $8.00 a month for that service, but we soon found that the public would not take it, and that $8.00 a month contemplated expense of taking out and putting in and all that sort of thing on a one year contract. We decided to make this proposition, we would furnish them a metallic circuit business service, special line on a three year contract, that avoided any ripping up or further expense for three years instead

of one, for that rate we charged them $6.50 a month, and
2379 that seemed to please the public and they took a good many of them. We were taking them all the time, that is, for metallic circuit service.

Q. Was the $8.00 plan kept in force or abandoned?

A. Abandoned.

Q. And was it abandoned prior to the time the Cumberland Telephone Company began to operate the company in June, 1899?

A. Yes, sir.

Q. What was the general condition of the plant of the Ohio Valley Telephone Company in the City of Louisville at the time the Cumberland Telephone Company began to operate that plant in June, 1899?

A. It was about in as good condition as most any telephone exchange. None of them are perfect.

Q. Had you been sick any prior to June, 1899?

A. Yes, sir: I was stricken with some very serious carbuncles in the early part of April, and I had been unable to give any attention other than by reports of my employés until the latter part of June or the 1st of July, and then I came down a sick man. My neck was done up in bandages, under the daily care of a surgeon to dress it, and broken down nervously to a considerable extent—not able to sleep nights much.

Q. Who was your superintendent of construction and reconstruction at that time?

2380 A. Mr. Featherston, a man who has been promoted to a higher position in the same department since—Jack Featherston.

Q. Was the reconstruction work during the months you were ill kept up to the standard which you were accustomed to keep it up to?

A. It did not progress as rapidly as it would have done if I had been well.

Q. Did Mr. Caldwell or any of the officials of the Cumberland Telephone Company say anything to you or in your presence about the time the Cumberland Telephone Company assumed control and management of the company in June or thereafter, in regard to the condition of the plant, as to whether or not the condition of the plant had been misrepresented?

A. In perhaps an indirect manner Mr. Caldwell did in a conversation at the Tenth Street Depot just after he had notified me that they did not need my services or were ready to accept my resignation as soon as I would tender it—it was very much of a surprise to me and Mr. Speed also. Mr. Speed went with me to the depot to meet Mr. Caldwell and have a talk with him. They monopolized the talk and I didn't have much of an opportunity to say anything. Mr. Caldwell intimated——

The Master Commissioner: I think you had better tell what he said.

A. He did not find things here as he expected.

2381 The Master Commissioner: Use the words as near as you can.

A. I am trying to give them as near as I can. It has been ten years ago and I don't remember exactly what it was. Mr. Caldwell said, "Mr. Speed, you know what you told me there was here?" Mr. Speed said "Yes." "Well," said he "I didn't find it." That surprised me and I did not know what he meant exactly and I replied, "Mr. Caldwell, I made no representation at all in this trade. You surely cannot attribute any misrepresentation to me," and he rather dropped the subject then. Mr. Speed asked him what he meant and he did not say anything very definite. In fact, I never gained a full knowledge of what he did mean.

Q. What was the condition of the pole lines and the wires on the lines of pole in June, 1899

A. From our geographical situation here, the central office being at one side of the city, we unavoidably had long pole lines running through to the remote eastern, southern and western portions of the city. Like any other pole lines, in cold weather the wires tighten up and when it gets warm weather in the spring, they slacken. Then is the time when a good telephone superintendent will have his men out untying those lines or the wires and tightening them up again.

2382 I had early in the year persuaded Mr. Speed and Mr. Clark to buy a lot out here on Ormsby Avenue for a branch exchange. I saw the time would come when branch exchanges would have to be introduced. I had gotten the refusal of a lot up on Baxter Avenue. I taken no steps for a lot in the western part of the city, because I did not think it necessary then. The time had not come, but my intention was, instead of tightening up these pole lines, to put in branch exchanges on Ormsby Avenue and Baxter Avenue and run the main wires that was passing those points and coming into the exchange—to cut them off and run them into those exchanges and carry them in underground, which in my opinion is the only true way to put wires for telephone purposes, and my sickness retarded that work. I at the same time had just been opening a new exchange building putting in some underground work over in New Albany, and that was about as much as I wanted to trust until I could get out and see it myself. So the work was a little delayed perhaps. Some of these long lines, the wires were a little slack. I know we had a terrific tornado and they required my trouble clerk to send daily reports to Nashville, and he reported as to the storm showing a great many crosses and some grounds and Mr. Hume wrote me that Mr. Caldwell would like to have a detailed statement of the cause of that trouble.

2383 Q. This was after the Cumberland Telephone Company took charge that you are now speaking of?

A. I was representing them, still in charge, yes, sir. About all a man could say was that there was a thunder and lightning storm and some of the lines got crossed and some grounded. They said that did not satisfy, and I sat down and tried to explain more explicitly what a ground was and what a cross was, etc., but that did not seem to satisfy them altogether. I explained it as well as I could.

Q. Now how long had there been any dickerings on hand for the

sale of the Ohio Valley to the Cumberland Telephone Company, if you know?

A. I think Mr. Hall knows more about that than I do.

Q. What is your best recollection about it?

A. My recollection is that it was the wish of the home company, that is, the parent company, to unite—consolidate as far as was reasonably practicable, and they had been trying as I understood through Mr. Hall for some time to affect a consolidation between the Cumberland & Telegraph Company and the Ohio Valley Telephone Company, and they had never succeeded in accomplishing anything until I was broken down physically and as I understood it, Messrs. Speed and Clark, the two big owners, felt as though they had a white elephant on their hands, that I was unable to run it, and my surgeon thought that I might not be able to do any business for a long time, and so they reopened negotiations with a view of
2384 getting rid of the concern if they could on proper terms, and they succeeded in doing it. I think Mr. Hall knows more about that than I do.

Q. What was the condition of the plant and the New Albany exchange at that time, June, 1899?

A. The New Albany exchange—I just put up a fine, brand new building there, got a new switchboard there, one of the latest style to use in connection, if necessary, with four signals, on a line with four signals on a line, metallic circuit, everything in first-class order. The lines had not all been reconstructed. Most of them had. Some of them put underground. I should add that I used altogether copper wires. Old iron wire rusts out in a short time. Steel wire is worse yet.

Q. Now the books of the Ohio Valley Company show the properties of that company as comprising a number of exchanges in places other than Louisville, Kentucky, and also toll lines over the State, possibly in Indiana. Do you know in what towns those other exchanges were located, other than in Louisville?

A. I think I could call them off.

Q. What were they?

A. Well, there was an exchange in New Albany, one in Jeffersonville, one in Corydon, Salem, La Grange, Eminence, New-
2385 castle. We connected with Frankfort but we did not own the Frankfort exchange. Then there was an exchange at Bardstown, one at Springfield, one at Lebanon, one at Elizabethtown. I may have omitted some. I know there were ten or eleven of them. The books of the Ohio Valley show all of those exchanges as being of a certain value or rather those properties appear on the books as representing a certain value.

Q. Were the books intended to show what was the fair value of those properties?

A. I did not keep those books.

Q. I am talking about the books of the Ohio Valley now prior to the time the Cumberland Telephone Company took charge of the business?

A. I had our property classified into exchange property, and that

covered all my exchanges. I did not go into details of every exchange. My toll lines—I had them under another classification.

Q. Well, the question I ask is did the amounts appearing on the books of the Ohio Valley and the value of the exchanges and toll lines belonging to the Ohio Valley—did the amount representing those values in your opinion fairly show the value of that property?

2386 A. Mr. Blakey, I think those values have been attached or appended since I severed my connection with the company.

Q. I am talking about the values that you spoke of a moment ago.

A. Oh, the whole thing is a lump?

A. Yes.

Q. Yes, sir; I tried to keep it as carefully as I could.

Q. Did the Ohio Valley Company or the Cumberland Company during the time it was operating the Ohio Valley, and during the time you remained with it, construct an exchange at Morganfield, Kentucky?

A. No, sir; that is, it was not done by my men. I don't know what they did with crews sent up from Nashville.

Q. Did you remain General Manager until you resigned?

A. Yes, sir.

Q. What time did you resign as General Manager?

A. I think my resignation took effect about the 2d day of October. That is the day Mr. Hall reported, is it not, Mr. Hall?

Q. What year?

A. 1899.

Q. And if the Ohio Valley Company or the management at Louisville, Kentucky, after the Cumberland took possession and charge of the Ohio Valley Company in June, 1899—did the

2387 Louisville management construct an exchange at Morganfield, Kentucky?

A. Not to my recollection.

Q. Do you know where Morganfield, Kentucky, is?

A. It is down in the lower portion of the State. I never was there.

Q. Did you have any separate toll lines extending to Morganfield, Kentucky?

A. No, sir.

Q. Why were these small exchanges built by the Ohio Valley Company?

A. Well, they were built to meet a public demand and also for the purpose of making some money. That is, we hoped to make some money out of them.

Q. What was the financial condition of the Ohio Valley Telephone Company in June, 1899?

A. The Ohio Valley Telephone Company was somewhat in debt, but amply good to pay its debts, making money.

Q. What were the extent of its debts, if you know?

A. I have found a little memorandum that will assist me in

answering that,—a thing I did not know of until I made my former deposition. I will state just about what we owed to a cent. I was in the habit of setting aside reserves to meet expenses and expenditures—outside of those which would have gradually
2388 absorbed themselves in the beginning of a year, that is a bookkeeping device, we owed $70,000 borrowed money, we owed more than that, and we had paid off part of it, and then we owed audited accounts, principally with the Western Electric Company for the New Albany equipment and some other things—the books showed that we had unpaid vouchers, $23,605.20. Then we had to offset that, accounts receivable in the shape of rentals, largely rentals, $28,342.76, and we had $146.77 in bank.

Q. On what date was it that you are testifying about now?

A. August 31st.

Q. Do you know whether that was substantially the state of the company's finances on the 1st of June, the 3d of June, 1899?

A. Well, the company was making money all the time, and if we had not been spending too much for improvements, why she would have owed more on the 1st of June than she would on this occasion.

Q. Do you know what that $70,000 was borrowed for?

A. You asked me the other day about that and I told you I could not recall it then, but I have been studying on it since and it has all come clear to me. We borrowed over $100,000, in the year previous when we were making our extensive improvements and we
2389 paid back all but $70,000.

Q. Why were you making those improvements?

A. Well, in New Albany I had been putting up a new building, a first-class exchange building, putting in considerable underground work over there. In fact, all the underground work there was there, and buying some underground cables. Then we had just been to a large expense here with our new switchboards and new cables I put in here, underground cables, and bought a lot that cost over $4,000 down here on Ormsby Avenue.

Col. FAIRLEIGH: When you say here, you mean Louisville?

A. In Louisville.

Q. When had the switchboard in New Albany been installed?

A. That spring, I think. In fact, I just got the building under way and got the board in. I know I went over there when I was not able to go. I was sick. I went to see what the men were doing, made them make some changes in the location of the board, but it was only a short time previous to the time the Cumberland people bought out the Ohio Valley.

Q. Did the Ohio Valley have records and maps and blue-prints of its lines and poles, and also of its toll lines?

A. Yes, sir.

2390 Cross-examined by Mr. GRANBERY:

Q. Mr. Clark and Mr. Speed were the principal owners of the Ohio Valley Telephone Company, were they not?

A. Yes, sir; they owned over fifty per cent a little bit.

Q. Of the stock?
A. Yes, sir.
Q. They were men of high character and prominent standing in this community, were they?
A. Yes, sir.
Q. They were good business men?
A. Yes, sir.
Q. Men of probity of character?
A. I think so.
Q. They were not men who would misrepresent anything, were they?
A. I don't know of them misrepresenting anything. They rather have the reputation of being pretty square men.
Q. Now they also had the reputation of being good business men, didn't they?
A. Yes, sir.
Q. They looked after this property from the beginning, did they?
A. In a general way.

Q. That is, in connection with yourself, the active man
2391 in connection with running the business?

A. Yes, sir.

Q. The Ohio Valley, and its predecessor, were they successful business enterprises?
A. Yes, sir.
Q. Made money from the beginning right straight through?
A. Yes, sir.
Q. And always made more money than they paid out in dividends, did they not?
A. Usually. We had a fire that rather interfered with our profits for a while, but we soon recuperated from that.
Q. When you did that, you cut your dividend down?
A. We passed one-quarter's dividend, I think.
Q. You paid seven per cent at the highest, did you not?
A. Yes, sir.
Q. And never more than that, your average would be less, wouldn't it?
A. Well, we paid,—we at one time owned a carriage business and it sold for $15,000 or $16,000, when our capital stock was $100,000, I think, and we divided that up in about a 15 per cent dividend.
Q. What became of the surplus profits after paying dividends?
A. We used it in improving the business.

Q. And extending your lines.
2392 A. Yes, sir.

Q. You say that these two gentlemen finally concluded to sell, that is, Messrs. Clark and Speed, when your health became bad and they felt that they had no one that they cared to entrust the property with in operating it and running it and it was just at that juncture that they concluded that they would sell?
A. That was the impression I got from what they told me, yes, sir. I was supposed to be broken down and I really had all of the

details of the business to run. I consulted with them on different occasions.

Q. They did not sell a gold brick, did they?

A. No, sir.

Q. They sold a valuable property, did they not?

A. They sold a valuable property—yes, sir.

Q. Did you regard it as worth what the Cumberland people paid for it?

A. Yes, sir; the books of the company at the time showed approximately the valuation of the plant, including that real estate which they bought that Messrs. Speed and Clark owned.

Q. So you think that the property was worth what the company paid for it, what the Cumberland Company paid for it?

2393 A. I do.

Q. Now, then, immediately after that, the Ohio Valley purchased the real estate from Messrs. Clark and Speed, did it not?

A. Well, the Ohio Valley or Mr. Caldwell—someone down there bought it, and I see by memoranda from notes given here for $100,000. I think it was the Ohio Valley—the company that bought it.

Q. They paid $100,000 for it?

A. They paid $100,000 as I understand, for that real estate, the building it occupies—442 4-6.

Q. Who got the purchase price for that property? Messrs. Clark and Speed, did they not?

A. I think Mrs. Clark owned her husband's part.

Q. At any rate, the owners of the property got the $100,000?

A. Yes, sir. As far as I know. I did not receive that.

Q. You did not get any part of it?

A. No, sir.

Q. And you do recall that it was sold either to the Cumberland or to Mr. Caldwell or to the Ohio Valley at $100,000?

A. Yes, sir.

Q. Now, Captain, I show you a little memorandum book which I think is in your handwriting, and I will ask you to state

2394 whether or not it is, and if so, what was the average rate charged by the Ohio Valley Company for telephone service in Louisville on December 31, 1895? I am speaking now of the Louisville exchange?

A. This looks like one of my clerk's writing. I don't remember the occasion for making it. Yes, it is evidently for comparative rates here in some of my tussles with the Council.

Q. Now, state from that what your average rate was on December 31, 1895, in Louisville?

A. Well, it seems to be figured up here. Here is a memorandum which looks to be a list of subscribers in the Louisville exchange. Without going over the figures it is $6.20.

Q. That is the average rate per month?

A. Yes, sir.

Q. Now, I hand you another one and ask you to state what was the average rate as of December 31, 1897?

A. It seems as though I had some long lines running out in the country that I charged a pretty good price for.

Q. That was proper and right, was it not? That the country lines extending far out into the country should pay more than a station in the city?

A. Yes, sir; I think so. I don't remember those connections.

2395 Q. You recognize the book I hand you, do you not?

A. It looks very much like a book that was written by one of my employés, a young lady clerk.

Q. Can you examine it so as to be definite about it? You can look at any part of the book, if you like, if it will refresh your recollection?

A. I don't know where this book came from.

Q. I will state that it is a part of the books of the Ohio Valley Telephone Company that came into the possession of the Cumberland Telephone & Telegraph Company?

A. I was trying to recall the occasion for it. This is for some statistical purpose.

Q. The information given there is undoubtedly correct, is it not, giving the average charge per station as of December 31, 1895?

A. I cannot swear it is correct but I am of the opinion it is, because I know of no reason why a clerk should go to work and get up an incorrect statement, but I do not recall what it was made for. It evidently was gotten up for comparison with some other town. Unless you have got a lady down there in Nashville that writes a similar hand to Miss Nettie Harrell, I assume that she wrote it.

Q. You see nothing about it to indicate that it is anything other than what it purports to be?

2396 A. No, sir.

Q. And it evidently was written a long time ago, was it not?

A. That is my classification of accounts.

Q. What would you say was the opinion of a man who would make the statement that the Ohio Valley Telephone Company was in a very bad financial condition at the time this sale took place in the spring of 1899?

A. Well, I would say he did not know what he was talking about.

Re-examined by Mr. BLAKEY:

Q. What would you say of a telephone plant which owed almost $300,000 in accounts such as bills payable and Western Electric Company and companies of that kind and accounts of that kind, and had a plant which appeared to be of no greater value than $100,000, $37,000 supplies and only $1,000 or $5,000 of what might be termed quick assets?

A. That is rather a conundrum to ask me, what I would say.

Q. What would you say about its financial condition?

A. I would say unless it had a very good business prospect, that it was not in as good a financial condition as the old Ohio Valley was.

Q. You have been asked by Mr. Granbery about this book
2397 which seems to show 2,550 subscribers of December 31, 1895. Did you make any sort of calculation to ascertain whether the average per month as shown on this book is $6.20?

A. Did I make any calculation?

Q. Yes.

A. No more than I see that they state so many at a certain rate and I suppose they have carried it out and divided the sum of the rate by the number of subscribers and got the average rate.

Q. Will you take that book and tell me how many telephones just read to the stenographer the number of telephones that appear in that book and the rates which are set opposite each telephone?

A. You opened here to what appears to be the Louisville exchange. That is the beginning. Then there are a lot of others.

"Exchanges, number of stations and rates as of December 31, 1895, Louisville, Kentucky.

One station at	$15.25
Two stations at	12.50
One station at	12.25
Two stations at	12.00
Two stations at	11.00
One station at	10.50
2398 Twelve stations at	10.00
Two stations at	9.37½
Thirty-seven stations at	9.25
Four stations at	9.00
One station at	8.50
Seven stations at	8.33⅓
Fifty-one stations at	8.00
Eleven stations at	7.50
One station at	7.33
Forty-three stations at	7.00
Sixty-nine stations at	6.50
Seven stations at	6.25
1789 stations at	6.00
Eight stations at	5.50
One station at	5.25
384 stations at	5.00
Thirty-four stations at	4.50
Thirty stations at	4.00
Five stations at	3.00
Ten public pay-stations that seem to have been carried out	61.84

That is probably the average receipts for the month, Mr. Granbery, is it not?

Mr. GRANBURY: I guess so. All right.

2399 A. And thirty-five complimentaries in operating. That is footed up 2,550, average price $6.20 plus.

H. N. GIFFORD.

The further taking of these depositions was adjourned until to-morrow morning at ten o'clock.

2400 October 14, 1909, ten o'clock, a. m., parties met pursuant to adjournment.

HARDY BURTON, being duly sworn and examined by Mr. Blakey, deposed as follows:

Q. State your name?
A. Hardy Burton.
Q. Where do you live?
A. 1243 First Street, Louisville, Kentucky.
Q. How long have you lived in Louisville?
A. The last time since October, 1878. I came here as a boy in 1869.
Q. What is your business?
A. Real estate agent and auctioneer.
Q. How long have you been in the real estate business?
A. Since the 1st day of January, 1883.
Q. Were you ever connected with any trust company in the City of Louisville in connection with its real estate department?
A. I had charge of the real estate department of the Louisville Trust Company from the 1st day of January, 1890 to the 1st day of December, 1897.
Q. Are you now associated in business with anyone, and if so, whom?

A. I am associated in business with Trevor H. Whayne,
2401 being the president of the corporation of Burton, Whayne & Co., real estate agents and auctioneers.

Q. What experience have you had in connection with selling and purchasing real estate for clients and renting and attending to general real estate in the City of Louisville?
A. I have devoted the last twenty-five years of my life to buying and selling and valuing real estate in the City of Louisville.
Q. What experience have you had in connection with renting real estate and collecting rent and looking after the real estate generally?
A. I began with Mr. Priest, as a collector of rents, and had charge of his rent department and also became a salesman while I was associated with him. I had three years' experience with Caldwell & Burton, along the same lines. I valued the property upon which loans were made for the Louisville Trust Company while I had charge of their real estate department, and also looked after all the estates that came into the company, the renting of property, etc., and since going in business for myself under the name of Hardy Burton & Company and Burton, Whayne & Company, and Burton—Whayne, the corporation, I have continued the same line of business.
Q. Are you familiar with the value of the real estate and buildings and improvements thereon in the various localities in the City of Louisville?

2402 A. Reasonably so, sir.

Q. Do you consider yourself as competent to place a value on real estate as any other man in the City of Louisville?

A. I think the question is so asked that it would make me egotistical to answer it in that form. I will say that I do a great deal of valuing of real estate, and as far as the ground is concerned, I feel that I am perfectly competent to place a value on ground anywhere. Our firm is doing most of the valuing upon which the loans of the Kentucky Title and Savings Bank and Trust Company are making their loans.

Q. What about the buildings and improvements on the land?

A. I feel reasonably familiar with that. I think I could give a fair estimate off hand. I know something of construction and have had plans and specifications laid before me, but they vary very much in cost.

Q. Now, have you at the request of the City of Louisville made an appraisement or valuation of the property including the real estate and improvements thereon belonging to the Cumberland Telephone and Telegraph Company in the City of Louisville?

A. Yes, sir.

Q. I will ask you whether you inspected the property of the Cumberland Telephone Company located at 444 West Jefferson Street, in which its main exchange is situated, and if so, what you

2403 consider a fair value to place on the real estate and improvements there used by the Cumberland Telephone Company?

A. I have been through the building by the courtesy of Mr. Boardman. I asked him to let me go through, and he very courteously sent a gentleman with me to go through the building. Basing my valuation of the ground, which is 44x210 feet, upon the general conditions of the market and also upon the last sale which has been made in the square of vacant property, I would value that ground at $1200 per front foot, which would make a valuation of $52,800.

Q. What can you say of the value of the building on the property?

A. The improvements upon this last consist, facing Jefferson Street, of a three story brick, pressed brick front building, running back a distance of ninety feet. Next to that there is an area for lights, with an enclosure so you can pass from the front building to the second building, which second building runs through to Green Street. This second building is exceedingly heavily built, having an arch construction and a truss roof, and it is built for a specific purpose, which is much heavier and more costly a building than most buildings would be if constructed upon a lot in the central portion of the city not for a specific purpose. I valued that building in its present condition at $35,000.

2404 Q. Does that take into consideration the cost of building this heavy work about which you have spoken?

A. Yes, sir.

Q. Would that extra heavy work be of any value to any other occupant of the buildings?

A. The possibilities are that any other person utilizing the building with that vault construction on the first floor which supports the

second floor room now used by the telephone company as an exchange, that it would be a detriment to the using for their purposes because the arches utilize the whole first floor, simply making vault like places which I doubt could be utilized for other purposes.

Q. Eliminating the extra cost for constructing that part of the building just indicated, what value would you place on that building?

A. To eliminate is in a large sense to eliminate the rear portion of the building from the fact that the walls are built heavier on account of this construction, and I expect there would be a difference in construction between the plain construction and this construction of at least $10,000.

Q. Now, coming to the next lot and the improvements thereon, being the lot on the southwest corner of Baxter Avenue and Breckinridge Street in the City of Louisville, did you make a valuation of that property?

A. Yes, sir, I examined that property—went through the
2405 building.

Q. What value do you place on that property?

A. I think the size of that lot is fifty feet, isn't it?

Q. 50x180 feet.

A. I valued that lot, 50x180 feet, at $60 per front foot, making $3,000. The improvements upon this lot consist of a two story brick exchange with stone trimmings, on the corner portion of the lot, being well lighted from the space between that and the south line of the property, and on the rear of the lot is a frame cottage, I think having four rooms, and a stable upon the rear of the lot. The cottage and the outlets from the stable open on Breckinridge Street. I value the improvements at $7,500, making a total of $10,500.

Q. Do you consider that a fair value of that property and improvements?

A. I think it a fair value of the property and improvements at the present time, location considered.

Q. Is there any marked difference between the value of real property now in Louisville than ordinarily within the last two or three years?

A. That question depends upon location very largely. I don't think there has been a great difference in this immediate vicinity.

Q. Now, coming to the third lot, being a lot 50x200 feet
2406 on the north side of Ormsby between Second and Third, did you inspect and examine that property and the improvements?

A. Yes, sir.

Q. Please state what value you placed on that property and improvements?

A. That is a lot 50x200 feet which I valued at $60 per front foot, making $3,000. The improvements upon this lot consist of a cottage from which originally was a residence that they utilize for entrance, and the exchange, which is built in the rear of that cottage. The rear portion of this has been improved with a well built one-story and basement under part of it exchange hall, the dimensions of

which I think are about 30 feet wide by 100 feet. The new portion has a stone foundation, and I think a slate roof. I valued the improvements on that property at $8000 making a total valuation of $11,000.

Q. Now, the next lot is a lot 60x100 feet on the northwest corner of Twenty-second and Jefferson. Please state whether you investigated and examined that property and what value do you place on it?

A. I examined the property on the corner of Twenty-second and Jefferson, lot 60x100 feet, which I valued at $40 a foot making $3400. I think the dimensions of this building are less than
2407 either of the buildings heretofore mentioned, and I valued the improvements at $6,144, making a total of $8,544.

Q. The next lot is the lot 140x170 feet on the north side of Oak between Twelfth and Thirteenth Streets, did you examine that property?

A. Yes, sir.

Q. And the improvements on it?

A. Yes, sir; there is a warehouse on it and a stable on it.

Q. Please state what value you placed on that property?

A. I valued the ground at $4,200—$30 a foot, making $4,200—and the improvements I valued at $4000, making $8,200 for the whole property.

Q. Did you examine the lot in the rear of the lot you have just mentioned, being about 80x170 feet?

A. Yes, sir.

Q. What is that lot used for?

A. That lot is used now for storage purposes—poles and things of that kind.

Q. Was there any building on it?

A. I think not.

Q. What value did you place on that lot?

A. I valued it at $15 a foot, making $1200.

Q. Now, in arriving at the value of this property, please state whether or not you considered—whether you placed your
2408 value on the property as a value which it would likely bring at forced sale or otherwise?

A. In valuing property I try to take into consideration and base my valuations largely upon prices of property in the neighborhood which have been sold. It is hard for any man examining property which has been built for specific purposes to separate that specific purpose from the general market conditions. I doubt very much whether the property would sell for any more or as much as my valuation as a whole should it be forced upon the market and should the individuality of the property have to be changed.

Q. State whether or not you took into consideration in valuing this property the fact that it was owned and being used by a going concern?

A. Yes, sir.

Q. Now, coming to the question of the returns which property of this character usually bring its owner, are you familiar with what income owners of real estate of this character are accustomed to getting

in the City of Louisville—I mean property located in vicinities near this property, and property of the value of this property?

A. I should say from eight to nine per cent gross with the exception of the corrugated iron warehouse, which I think would be greater—probably ten per cent, because of the life of a
2409 house of that kind.

Q. My question was whether you are familiar with the income derived from such property?

A. Yes, sir.

Q. Now, on property located in the neighborhood of the Jefferson Street property, what gross income would you say that owners of real property located in that locality are accustomed to obtain from such property?

A. I should say about eight per cent—referring in my answer to the center of Jefferson Street between Fourth and Fifth.

Q. And how much net income are owners of such property accustomed to get—I mean owners of such property as the Jefferson Street property?

A. They all get from four and a half to five per cent. Most of them of course all want five, but it will be from four and a half to five.

Q. What do you mean by net income?

A. The taxes, insurance and repairs all taken into consideration, and vacancies should be taken into consideration. I want to say in this connection that one reason that the percentage is small is that most of the buyers of this central property expect an appreciation in the value of the ground and there is more or less of a spec-
2410 ulative feature connected with the central property.

Q. What net income would you say that owners of property in localities where the other property about which you have testified is located usually derives from the use of such property?

A. Six per cent is the usual calculation.

Cross-examined by Mr. GRANBERY:

Q. The Louisville and Nashville Railroad Company have quite a handsome station at the corner of Tenth and Broadway, has it not?

A. Yes, sir.

Q. Do you think that that property would bring anything like its cost to the railroad if it should be purchased for other purposes than a railway station?

A. No, sir.

Q. In other words, when a property is built for a particular and special purposes, of course its value is very much diminished if it has to be changed to be used for other purposes?

A. As far as the building is concerned, that is so.

Q. Well, of course you only construct buildings, you do not construct land?

2411 A. But the value of the buildings is influenced by the value of the land when the two are joined together so that they cannot be separated.

Q. Is the Jefferson Street property worth less or more than it was in 1899.

A. I think in this location it is worth more.

Q. Do you know Col. J. B. Speed?

A. I do.

Q. Has he been a citizen of Louisville ever since you have been?

A. I cannot answer the question. I have known him for twenty-five years, but whether he has been here all the time I cannot say.

Q. What character of man is he? What is his standing in the community?

A. As good as any business man in it.

Q. A man of the highest character is he, a man of the highest integrity?

A. He has that reputation.

Q. He is not the kind of a man who would take advantage of a stranger in any financial transaction, is he?

A. I don't think he would.

Q. Would you think that his opinion as to the value of property in Louisville would be valuable?

2412 A. I think that his opinion would be an honest opinion, but whether he would post himself up to be as well posted as other men are who are making a specialty of real estate, I don't know. I would not like to take his statement against some others I can mention.

Q. Suppose he had owned the property and had known it for years, what would you say as to his opinion or judgment as to the property?

A. He ought to be pretty well posted.

Q. Isn't he the type of a man who would post himself in regard to his own property?

A. I think so.

Q. Now, you, of course, don't know what these branch exchange buildings cost the company, do you?

A. I do not except what I estimated on my own basis. I did not have any plans or specifications to figure from, neither did I know the sizes except stepping these places from the exterior.

Q. Now, if it should develop that these buildings were put up under competitive bidding at a much higher price than the valuation placed by you, would that affect your opinion as to the value?

A. That would not affect my opinion as to the commercial value. It would affect my opinion as to the specific purpose and

2413 the cost for that purpose in the erection.

Q. Now in giving your opinion of the value of the improvements on all of these properties, are you valuing them for a specific purpose?

A. I tried to.

Q. Are you familiar with the character of construction that telephone people regard as necessary and proper in order to house the expensive apparatus used in giving telephone service in a large exchange?

A. I cannot say that I am. I simply saw the places as I went

through them, and they are exceedingly plain construction, but strong construction.

Q. You realize, do you not, the disaster that would befall both the people of Louisville and the telephone company if anything should happen to these places which would render them improper for the use for which they are being used, do you not?

A. The telephone service would be discontinued for a while.

Q. Well, how would you regard that, as serious or trivial?

A. I don't think that anything could happen to the buildings alone that would be of long standing that could not be repaired, although I say I am not familiar with the telephone business.

Q. You do know of the character of foundations and how
2414 much concrete work and steel work is necessary in constructing those buildings, do you?

A. I presume you refer to the building on Jefferson Street between Fourth and Fifth rather than to all of the buildings?

Q. I am referring to all of the exchange buildings.

A. As I stated, the building on Jefferson between Fourth and Fifth is a special construction. I did not see any special construction in the other buildings other than being strong, well-built buildings.

Q. You know of no reason why the telephone company should have paid more for those lots upon which these branch exchanges are constructed than was necessary to get them, do you?

A. Nothing except the fact that the telephone company wanted certain locations, and wanted them for a specific purposes, and I have no doubt that in some instances they had to pay above the market price for the purchase of some of their lots.

Q. That no doubt in your opinion, was necessary, was it?

A. It seems to have been by what they did.

Q. Now, then, it being a matter in which the telephone company had no option other than to purchase property where it was not necessary to construct the exchange, would you say that it ought to be held and the return made on the usual value or the actual
2415 amount that the company paid to secure the property?

A. To answer that I would have to know the fact whether it would materially affect them to take a square away from the properties that they had absolutely located on.

Q. I assumed in my question that it was necessary that they buy these properties?

A. Then of course they would have to pay a premium over and above the market price provided the owner did not have to sell, and they would have to pay a bonus.

Q. Then under those circumstances, what valuation should the company be permitted to return on the amount returned, on the amount that the property cost, or a less amount?

A. That is a part of a business transaction I think as the running expenses of a business, and whether it ought to be charged off at first cost to come down to an equality with other buildings, is another question.

Q. In other words, it would be a question in your mind as to

whether it ought to be charged to expense or whether all of it ought to be charged to capital accounts?

A. That is it.

Q. But whether it be charged to expense or capital account, the company would be entitled to earn a return on the amount actually invested, would it not?

2416 A. I am not so sure about that.

Q. Where would it get the money?

A. They ought to get a fair return upon the cost, but if by locating in a certain neighborhood where they pay a large bonus to get a specific corner, there being other corners, I don't know that they are entitled to that.

Q. Suppose the people who had the greatest incentive and interest in the matter, selected the corner which in their judgment was necessary and proper to have, would not you say that their opinion and judgment in that matter ought to be accepted.

A. It generally is accepted, but I think this, that to get the true value of the property and not to carry it at a fictitious valuation that they ought absolutely to have been charged off to the expense account—the difference—and in doing that of course it would come out of the dividends or the extension of time before dividends were paid.

Q. So that at last it would be an expense of conducting the business?

A. Yes, sir; or be construction.

Redirect examination by Mr. BLAKEY:

Q. If the L. & N. building were on the corner of Fifth and
2417 Jefferson adjoining the exchange building of the Cumberland Telephone Company, would it be substantially as valuable as it is where it is now or less valuable or more valuable?

A. My judgment is that it would be much more valuable than where it is now.

Q. Now, if Mr. J. B. Speed were the owner of the building wherein the exchange of the Cumberland Telephone Company is now located on Jefferson Street, and if Mr. Speed knew that the Cumberland Telephone Company could better afford to pay him $100,000 for that building than to pay $80,000 for the adjoining building that would serve the same purpose, and if Mr. Speed knew that the company were willing to pay him $100,000 for that building, do you believe that Mr. Speed would ask $100,000 for the building?

A. Most assuredly.

Redirect examination by Mr. GRANBERY:

Q. Would you regard that as a proper thing for a man to do?

A. I know that it is frequently done, and especially so when the building has been constructed for a specific purpose, and it is a part of the consideration in selling that building for that purpose, and has an interest in the corporation that is using the building.

2418 Q. The question I think that you answer implies a little bit more than you seem to think. As I understand the question implies this—that Col. Speed owned a building in which was located the central office apparatus of the telephone company, and if he knew that the expense of the company in moving out and getting other quarters would be much greater than the fictitious valuation that he would put on the property in which the apparatus was located, now the question I think implies, do you think that Col. Speed is the kind of a man who would take advantage of that kind of a situation and exact a price that was exorbitant and unfair for the property, assuming that he wished to sell and the owner of the telephone plant wished to buy?

A. In this case, I, knowing that Mr. Speed was interested in the telephone company, and not knowing anything about the consideration that was paid for the building, and knowing that he was interested in the stock of the company, and really was the starter of the company, I think that he wanted to get a good investment, and in selling the property he simply capitalized the business and the building together. That is my judgment although I don't know the facts. I want to be specific in that.

2419 Q. Now let me correct you. Assume the fact that at the time Col. Speed and Mrs. Clark sold this building to the Ohio Valley Telephone Company, neither Mr. Clark, Mrs. Clark nor Col. Speed had the slightest interest in the Ohio Valley Telephone Company or its stock, I will ask you to assume those facts, which I state to be true, and then will you give me an answer to my other question?

A. In assuming those facts it seems to me that Mr. Speed as a shrewd business man put a bonus upon the value of the property sufficient to anticipate its appreciation, and he made a price to the Cumberland Telephone Company that he was willing to take, he being in a financial condition where he did not have to sell, and left it optional with the parties who made the purchase whether they would accept his offer.

Q. If you had been situated as Col. Speed was, would you have exacted the price of $100,000 for that property?

A. I expect human nature is very much the same, and having the property which I was not anxious to dispose of, which evidently was paying very well, and in a location where values were appreciating, which *has* shown to be the case subsequent to the sale of this property, that I would have wanted a good bonus upon its remarkable value, and I believe Mr. Speed was getting a good bonus upon it dating from 1899. The last sale in this square of vacant property was at the rate of $1600 a foot, which is nearer Fourth Street, ad-

2420 joining the Paul Jones Building, was purchased by Whitcomb about three years ago, and in making my valuation of $1200 I made an allowance of twenty-five per cent because of the distance between the lots which commences one hundred and five feet west of Fourth Street and the Telephone Company being close to Fifth Street.

Q. How far apart in feet is the lot that sold three years ago at $1600 a foot and the telephone lot?

A. I think it is 181 feet.

Q. Would you say that this lot that sold three years ago at $1600 a foot is worth more now or less now than when it was sold three years ago?

A. I think it is worth more money now.

Q. How much more a foot?

A. I should say about $200 a foot.

Q. So that you think that that lot now—vacant lot,—would sell for $1300 a foot?

A. I think so.

Q. Col. Speed is still living in Louisville, is he not?

A. Yes, sir.

2421 JOHN H. BRAND, being sworn and examined by Mr. Blakey, deposed as follows:

Q. What is your name, Captain?

A. John H. Brand.

Q. Where do you reside?

A. Louisville.

Q. How long have you lived here?

A. I have lived here forty odd years.

Q. What is your business?

A. I am in the real estate business.

Q. How long have you been in the real estate business?

A. About twenty years.

Q. What particular branches of the real estate business have you had to do with?

A. Well, I have had a great deal to do with all branches, improved and unimproved and subdivisions, rents and renting.

Q. Have you had to do with selling and buying real estate for clients and yourself?

A. A great deal.

Q. Have you had anything to do with the collection of rents, and are you familiar with the income which owners of real property in Louisville usually receive for the use of real estate and improvements in Louisville, Kentucky?

A. I am.

2422 Q. Now, have you at the request of the City of Louisville made any examination of the property of the Cumberland Telephone Company in Louisville?

A. Yes, sir.

Q. Have you made an appraisement or placed a valuation on that property?

A. Yes, sir.

Q. I will ask you to state whether in that connection you examined the lot 44 x 210 feet located at 444 West Jefferson Street and used by the telephone company as its main exchange, and if so, what valuation you placed on the property?

A. I did and I valued the property at $82,800.

Q. How did you arrive at that valuation?

A. I valued the ground and the improvements.

Q. Separately?

A. Separately.

Q. Now did you consider that a fair valuation of the ground and improvements?

A. Yes, I thought that was a fair salable valuation.

Q. Now how about that lot 50 x 180 feet on the south west corner of Baxter Avenue and Breckinridge Street?

A. I valued that at $10,450.

Q. Did that include——

A. You said Baxter and Breckinridge, did you?

2423 Q. Southwest corner of Baxter and Breckinridge.

A. 50 x 180 feet.

Q. Did that include the real estate and improvements thereon?

A. Yes, sir.

Q. How about the lot 50 x 200 feet on the north side of Ormsby between Second and Third, did you examine that property?

A. Yes, I valued that at $9500.

Q. What about the lot, 60 x 100 feet on the north west corner of Twenty-second and Jefferson, did you examine that property and value it?

A. I did. I valued that property at $10,200.

Q. How about the lot out at Oak——

A. 40 x 170 feet on the north side of Oak between Twelfth and Thirteenth, I valued at $7000.

Q. Did you value separately the lots in the rear of that lot?

A. Yes, do you mean the lot fronting on Oldham there?

Q. Yes, what valuation did you place on that?

A. Yes, I valued that at $1,200.

Q. Do you consider the valuation you have placed on that property a fair valuation of the property and improvements?

A. I do.

2424 Q. In reaching the valuation you have or in reaching your conclusions as to what this property is valued, please state what basis you proceeded on or what considerations were taken into the valuation?

A. I considered the marketable value of the ground and the value of the improvements, and the purpose for which they could be used.

Q. Did you take into consideration the fact that the building is owned and being used by a going concern?

A. I valued the property upon the basis of what I thought the marketable saleable value of the property was and not for any specific purpose.

Q. Was your valuation based on what would be the saleable price at a forced sale or on what the saleable price would be under ordinary circumstances?

A. I appraised it on the basis of the marketable value of property offered for sale in an ordinary way and not at a forced sale. I don't believe this property at a forced sale would bring the prices that I have valued it at.

Q. What experience have you had in the way of collecting rents and attending generally to buildings and real estate owned by other persons?

A. I have had very considerable experience in collecting
2425 rents and in the management of buildings.

Q. Are you at present the manager for any important office buildings in this city?

A. Our firm manages the Paul Jones Building, corner of Fourth and Jefferson, one of the largest office buildings in the city; the Walker Building at Fifth and Market is another large office building, and the Coleman Building at the corner of Third and Jefferson?

Q. What is the name of your firm?

A. John H. Brand and Company.

Q. Now what is usually received by the owners of real estate buildings in the City of Louisville as a net income for the use of such buildings and real estate, based on the value of the property?

A. As I have appraised the values—what properties are you now asking me about?

Q. On properties of that character?

A. Well, I should say a fair estimate of the the gross rental of property such as that on Jefferson between Fourth and Fifth, which is centrally located, would be seven and a half to eight per cent gross.

Q. How much net?

A. On property of such a character as that you ought to get about five or five and a half per cent net on it. The centrally lo-
2426 cated properties that are rentable at all times are sought for, are more desirable because you get a more constant income from it, less vacancies.

Q. How about the properties located in other parts of the city wherein the other exchanges are located?

A. Well, now, those properties are outside of the business districts. I should say in those about nine per cent gross.

Q. How much net on those properties?

A. Well, those properties ought to net about six per cent.

Q. How about property such as the Oldham or Oak Street property where the warehouses and stables are?

A. Well, that property is not so—now I spoke in my answer before of the exchanges. I had not reference to this property. That property ought to bring more rent than the other because it is not so desirable, and there is not as much demand for property of that character, yet it is on a railroad switch, and that would add something to the desirability of it—at least it is adjacent to a railroad switch.

Q. What would you say would be the gross and net?

A. I should say property like that ought to bring—based on the valuation—ten per cent gross. There is a corrugated building on it; there is more wear and tear to it.

2427 Cross-examined by Mr. GRANBERY:

Q. What is the theory upon which business men are willing to invest money in central real estate who only receive five per cent net returns?

A. What is the theory? Because it is safe.

Q. Isn't there also an additional factor which enters into it, that the owners of property expect it to enhance in value?

A. To some extent, yes, that figures very considerably.

Q. Isn't that quite a factor?

A. That is quite a factor, yes.

Q. So that when a man buys central real estate and improves it, he is not content, is he, merely to get his five per cent, but he anticipates in the increased value of the property getting a higher return than five per cent?

A. That cuts some figure in it, and at the same time a great many investors in real estate are glad to get five per cent net.

Q. But when they can buy a perfectly safe five per cent interest bearing bond, they would rather have that than the real estate leaving out of view any question of appreciation in values in the future?

A. That depends a great deal on the investor himself. People differ on that proposition.

Q. Are you connected in any way with the present city ad-
2428 ministration?

A. I am a member of the Board of Works.

Q. A member of the Board of Public Works?

A. Member of the Board of Public Works?

Q. Did you confer with Mr. Burton in regard to valuing this property?

A. I did.

Q. You and he differed somewhat in your valuations?

A. Yes, sir.

Q. Did you know of his valuations and he know of yours?

A. Not until we commenced to compare notes. He examined the property and so did I. I did not know he had examined it.

Q. At what did you value the lot on Jefferson Street per foot?

A. I valued that at $1200.

Q. That is on the same side of the street as the vacant lot just back of the Paul Jones Building?

A. Yes, sir.

Q. And in the same block?

A. In the same block.

Q. Only about 100 feet distant?

A. It is more than that, my recollection is. It is nearer to Fourth Street. I am aware of the fact that that property brought
2429 about $1600 a foot about five years ago. I am also aware of the fact that it was bought for a specific purpose, and bought with the expectation of the party that bought it to put up a dairy restaurant there and get an entrance through the Paul Jones Building, and at the time it was thought to be a very high price for the property.

Q. What would you say as to that price now?

A. I don't think the property is worth any more or as much.

Q. You think it is worth less than $1600 a foot now?

A. I think it is worth $1600 a foot. This property that we are speaking of—telephone company's property, is a good deal farther from the corner of Fourth Street.

Q. Well, how much farther—that does not mean very much.

A. One hundred feet means a great deal. You take Green Street and go down one hundred feet from Fourth Street where property is worth $2000 a foot and Green Street property is *not* worth $200 or

$250, so distance cuts a very considerable figure in the value of property.

Q. I believe you stated, did you not, that you did not value the improvements on these properties with reference to the purpose for which they were constructed and used?

A. No; because all the improvements on these properties, if they were sold, and were to be utilized for other purposes, it would
2430 cost considerable money to remodel them.

Q. They would practically have to be taken down, would they not?

A. Well, they would have to be altered very materially.

Redirect examination by Mr. BLAKEY:

Q. In your valuation of the buildings, did you take into consideration the fact that the buildings would have to be altered if sold for other purposes?

A. If sold and used for other purposes they would have to be very materially altered to make them income producing properties.

Q. Was that a feature entering into your valuation of the property?

A. Yes, that had some influence with me.

Q. Do you know anything about what it cost to construct buildings such as these buildings?

A. Oh, I have a general knowledge. When I want to get any specific knowledge on a point of that kind, if I was going to build or improve or change a building, I would go to an architect.

Q. Now, in valuing these improvements, did the value you placed on them bear any relation to what in your opinion it had
2431 cost to place the buildings there?

A. Yes, sir; that had some influence with me.

Q. Did you place any less value on those buildings as they now are and as they are now constructed than you would have placed on them had they been constructed for ordinary purposes?

A. Well, I took into consideration the fact that if the buildings were not used for the purposes for which they are now used and had to be converted to other uses that a good deal of the present expense and cost of the construction would be lost.

Recross-examination by Mr. GRANBERY:

Q. Mr. Brand, don't you think that taking all these properties as a whole, that if they should be diverted from their special use to ordinary uses, that the new owner or owners would have to spend between forty and fifty thousand dollars to put them in shape for such purposes as they would ordinarily be used for?

A. They would have to spend a good deal of money. I have never figured on the amount they would have to spend.

Q. That would not be an exorbitant estimate of the amount that would have to be spent, would it?

A. Yes, sir; I am inclined to think it would be pretty big.

JNO. H. BRAND.

2432 J. E. SETTLE, being duly sworn and examined by Mr. BLAKEY, testified as follows:

Q. What is your name?
A. J. E. Settle.
Q. Where do you live?
A. 1146 Fourth Avenue.
Q. In the city of Louisville?
A. Yes, sir.
Q. How long have you lived in Louisville?
A. All my life except for three years.
Q. How long have you been here continuously?
A. For twenty years.
Q. What business are you now in, Mr. Settle?
A. I am representing the New York Realty Company.
Q. Were you ever connected with the Cumberland Telephone & Telegraph Co. in Louisville, Ky.?
A. Yes, sir.
Q. In what capacity?
A. Capacity as book-keeper and also as cashier.
Q. When did your connection with that company first begin?
A. April 10th 1901.

Q. In what capacity did you first begin?
2433 A. Assistant book-keeper.
Q. How long did you hold that position?
A. To the 10th of Oct. 1901.
Q. Then what position did you take?
A. I was made cashier.
Q. How long did you remain such?
A. Until Oct. 27th, 1908.
Q. How did you happen to cease your connection with the company?
A. Mr. T. D. Webb, treasurer of the company, came to Louisville and called me in Mr. Hall's office, Mr. Hall also being present, to ask me about such accounts which were not in good shape and his manner being such—his manner being somewhat harsh towards me, I thought it was necessary for me to resign my position with the company, and did so at that time.
Q. Now while you were with the company did the company at any time make any alterations in its building for the construction of new sections to its exchange switchboard?
A. Yes, sir; they did.
Q. Please state what those alterations were?
A. To the best of my recollection the company remodeled the second floor at the north end of the exchange—local exchange room. I believe they tore out a wall and covered over the court like between two buildings. If I remember correctly they also installed several sections of switchboards at that time.

Q. Do you remember about when that was?
2434 A. I should judge about June 1902.
Q. Were any sections of switchboards installed after those alterations were made, and if so, about how long, if you remember?

A. Yes, sir; there were several sections installed after the alteration.

Q. What connection was there between the alteration and the installation of the switchboards?

A. Give me that question.

Question read.

Q. In other words where were the switchboards installed—I mean the sections of the switchboards installed?

A. The sections were installed joining the old switchboard and covering a part of the remodeled building.

Q. What part of the remodeled building did the sections of the switchboard take up?

A. If I remember correctly pretty near the entire length of the new section of the building.

Q. In what did that new section of the building or alteration consist?

A. Which?

2435 Question read.

A. It consisted of tearing down a wall and building a floor across the court.

Q. Were the sections of the switchboard to which you have been testifying placed along that floor?

A. Yes, sir.

Q. About how many sections do you remember?

A. 5 or 6.

Q. Do you remember how long after the alterations of the building and the construction of this floor before these five or six sections or panels of the switchboard were installed?

A. My recollection is immediately after the alterations were made.

Q. Now how long did those sections of the switchboard which were so installed or those panels how long were they allowed to remain in the main exchange?

A. To the best of my recollection they were almost immediately removed after they were installed or about completed. If I remember correctly they were not completed?

Q. What was done with them if you know?

A. I don't know.

Q. Were they replaced?

2436 A. No, sir; not while I was connected with the company.

Q. Were any other sections or parts of switchboards installed to take the place of those that were removed?

A. I don't know of any.

Q. Now what were your duties during the time you were connected with the company?

A. I had general supervision of the office force, charge of the receipts and disbursements and accounts and also cashier for the 13 suburban exchanges under the Louisville office.

Q. Did you have anything to do with making up pay rolls during the time you were connected with the company?

A. Yes, sir.

Q. What were your duties in that respect?

A. When I first was made cashier it was my duty and also my assistant's duty to make up pay rolls and to pay the employes. The pay rolls were made up from the time books furnished by the heads of the different departments.

Q. Did those pay rolls show what class of service the various employès of the company were engaged in?

2437 A. Yes, sir. They did.

Q. Did they show what employes were engaged in the toll department of the company?

A. Yes, sir.

Q. Who made out the sheets or papers from which you made the pay roll from the toll department?

A. The chief operator.

Q. What chief operator?

A. The toll chief operator.

Q. Did you have more than one chief operator—did the company at that time have more than one chief operator?

A. Yes, sir; they had the toll chief operator and the chief operator of the local exchange, who was also the toll chief operator.

Q. Now did the pay rolls as you made them up show what employès were engaged in conducting the toll department of the business?

A. Yes, sir; they did.

Q. Did those employes who appear on the pay roll as being at the head of the toll department render any service except in connection with the toll department?

A. No, sir; they did not.

2438 Q. Now begnining with the toll department proper did I understand you to say there was a toll chief operator?

A. Yes, sir.

Q. What were the duties of the toll chief operator?

A. The toll chief operator had supervision over the toll operators and the messages passing through the toll department.

Q. Did the toll chief operator have anything to do with the operating of the exchange system for subscribers to the Louisville Exchange?

A. No, sir.

Q. Did the toll chief operator have any assistant?

A. Yes, sir; one.

Q. What did the assistant do?

A. The assistant toll chief operator would as I remember receive the messages coming in from the subscribers' lines—from the subscribers and pass them on to some other operator, and thereby assist the chief operator in the general conduct of the business.

Q. What is the proceeding whereby long distance calls are made by subscribers to the Louisville exchange when they desire to call persons over the long distance outside of Louisville?

2439 A. The subscriber would flash the local operator and ask for long distance, and the subscriber thereby would be connected with the toll room.

Q. Who would connect the subscriber with the toll room?

A. The local exchange operator.

Q. Then what would happen?

A. Then the toll operator would ascertain the name of the party talking and the number and also the name and number and address of the party desired at the points desired.

Q. What would be the next step in making the connection?

A. Then the party at the point desired is secured.

Q. How would the party at the point desired be secured?

A. Either by calling through the local exchange to the subscriber if they were a subscriber or by sending a message to the party notifying them of the long distance call.

Q. What I mean is, what does the toll department do when it has connected with that subscriber? What does the chief operator do or the assistant chief operator do when she has connected with the subscriber who wants to talk to the party outside of Louis-
2440 ville over long distance lines?

A. She gets the information necessary, finding out who the party is and who the party desired is and after the party is secured——

Q. You say "After the party is secured," what are the necessary things she does after she gets the information?

A. She gives the call to the operator on the toll board, and the operator calls the point and gives the information at the receiving end.

Q. And then if the party is secured who is desired say at Frankfort, Kentucky, who is notified that the party at Frankfort is ready to talk?

A. The operator at Frankfort would notify the toll operator at Louisville that the party is ready.

Q. Then what would the toll operator at Louisville do?

A. The toll operator would get in touch with the party through the local exchange and advise them that the party was secured and ready to talk.

Q. Would the toll operator notify the exchange operator who was wanted or how would that—that the person called for was
2441 ready to talk to the local subscriber or how would that notification be given to the local subscriber?

A. If I remember correctly the toll operator would notify the subscriber by trumking in on the local exchange.

Q. Now if the person outside of Louisville was at Frankfort and desired to talk to a subscriber to the Louisville exchange, what process would be required at Louisville for this connection to be made?

A. The operator at Frankfort would call long distance and would get a long distance operator at Louisville and advise her that such a party at Frankfort wants to talk to subscriber number so and so in Louisville, and the toll operator at Louisville would ring the subscriber through the local exchange, advising her that the party at Frankfort desired to talk.

Q. Now when it comes to connections over lines belonging to the American Telephone and Telegraph Company how are such connections made?

A. If a subscriber of the Louisville exchange wished to speak to a point, say Chicago, which is over the American Telephone
2442 Company's line, they would ask for long distance, and get the Cumberland Telephone Company's Long Distance operator, and when she learns that the subscriber wanted to talk to a point over the American Company's lines the subscriber would be trunked through to the American Company's office and information would be given to the American Company's long distance operator by the subscriber.

Q. Well, who then would procure the connection that the Louisville subscriber desired the local toll operators—the local exchange operators or the American telephone and telegraph operators.

A. The American Telephone & Telegraph Company's operator would secure the subscriber through the Cumberland Telephone Company's local exchange.

Q. Would the local toll operators of the Cumberland Company be engaged in securing the Chicago—the person at Chicago desired under such state of case?

A. No.

Q. Would the local toll operator have any connection whatever with such a call as that just detailed?

A. The only connection the local toll operator would have with such a call would be to find out what point the subscriber
2443 wished, and after that was ascertained why the call would be transferred to the American Company.

Q. Now when the operator of the American Company at Louisville was notified that connection could be had with the Chicago end of the line what process would the American Telephone Company's operator pursue in order to connect the two persons?

A. The American Telephone Company's operator would call the subscriber through the Cumberland Telephone Company's local exchange and talk direct to the subscriber.

Q. Would that call be made through the toll department of the Cumberland Telephone Co.?

A. No, sir.

Q. Now did the assistant to the toll operator perform any services in connection with any department except the toll department?

A. No, sir.

Q. How many long distance or toll operators were there besides the chief toll operator and her assistant during the latter years you were there?

2444 A. I should say about 15.

Q. Now was there a wire chief engaged in connection with the toll department?

A. Yes, sir.

Q. What were his duties?

A. His title was I believe the "Toll Wire Chief," and his duties were to see that the toll lines were in proper working condition and he had charge of the switchboard in the toll room.

Q. Did he have any duties connected with any of the business of the Cumberland Telephone Co. other than the toll department?

A. Nothing except telegraphing.

Q. What do you mean by the telegraphing?

A. The company frequently sends telegrams over the long distance lines and it was the toll wire chief's assistant's duties to dispatch and receive those messages.

Q. Who were such messages sent by?

A. From Louisville, most of the messages were sent I think by the Louisville office to the Nashville office on company's business.

Q. Did the wire chief in the toll department have an assistant?

A. Yes, he had one assistant and the trouble man.

Q. What did his assistant and trouble man do?

2445 A. His assistant assisted him in maintaining and taking care of the switchboards, and also did the majority of telegraphing—did work of the same nature as the toll wire chief himself did.

Q. How about the toll trouble man, what were his duties?

A. His duties were to repair any trouble which might occur on toll lines in the Louisville district.

Q. Was any of his time taken up in connection with any department except the toll department and the troubles on the toll lines and apparatus?

A. No, sir; I think not.

Q. Do you know of him ever having worked on anything except in connection with the toll department?

A. No, sir; I do not.

Q. Were your duties there as cashier such as to bring you in contact with the people about whom you have been testifying?

A. Yes, sir.

Q. And with the officials who held those positions about which you have been testifying?

A. Yes, sir.

Q. Now were there any clerks employed by the company

2446 whose duties were exclusively in connection with the toll department or the conduct of the toll business?

A. Yes, sir; there were.

Q. Where were the clerks located?

A. In the office.

Q. The same office as you?

A. Yes, sir.

Q. Were they under you?

A. Yes.

Q. How many of those toll clerks were there?

A. Three.

Q. Did they perform any service except in connection with the toll department?

A. No, sir.

Q. Now how did the names of the people holding the positions about which you have been testifying appear on the pay rolls which were made up by you and under you during the time you were there?

A. The toll operators and chief and assistant chief toll operators appeared on the pay roll as toll operators. The toll wire chief

and his assistant appeared as toll wire chief, telegraph
2447 operator and toll trouble man.

Q. How about the clerks?

A. The three toll clerks appeared on the office pay roll as toll clerks.

Q. Now were there any message boys employed by the telephone company during the time you were there?

A. Yes, sir.

Q. What were their duties?

A. Their duties were to notify different people that were called by long distance and who did not have service who could not be reached by telephone.

Q. How did the messenger boys' names and wages appear on the pay rolls?

A. They appear as messenger boys.

Q. Did the messenger boys have anything to do with carrying messages for persons called over the American Telephone and Telegraph Long Distance lines?

A. I think not.

Q. How about the collectors? Did the telephone company have any collectors while you were with them?

A. Yes, sir.

Q. How many?

A. They have had as many as 8 and as few as three.

2448 Q. What were the duties of the collectors?

A. At one time the duties of the collectors were to collect all accounts covering rentals and tolls and later on the system of collecting was abolished and the mail system was used, by which the majority of the accounts or a good portion of them were paid at the office. It was also the duty of the collectors to collect monies from pay stations which cover local and long distance calls.

Q. Did the collectors collect money for toll messages as well as for exchange service?

A. Yes.

Q. To whom would the collectors report their collections?

A. To the assistant cashier.

Q. Were you familiar with the duties of the collectors and the amount of time expended both in collecting exchange messages as distinguished from collecting toll messages?

A. Yes.

Q. How much time would you say the collectors were required to devote towards toll collections?

A. About one-tenth of their time.

2449 Q. Now did the company have a general manager at the time you were connected with the company?

A. Yes, sir; he was known as Local Manager.

Q. Did he have anything to do with the management of the toll department?

A. Yes, sir; he was local manager, and thereby he was managing the entire exchange, both local and long distance.

Q. Now you spoke awhile ago about the chief operator. Has the chief operator any connection with the toll department?

A. Do you mean the——

Q. The chief operator of the entire system?

A. Yes.

Q. Who was the chief operator while you were there?

A. Miss Carrie Minton.

Q. What did she have to do with the toll department?

A. She had general supervision of the toll room and also watched all messages which could not be gotten through, and I believe she also looked through the messages each day—the tickets covering the messages of each day, and looked up disputed messages for the toll clerks, and work of that kind.

2450 Q. Were you familiar with the character of work that she did while you were there?

A. Yes, sir.

Q. What portion of her time would you say she usually spent in connection with the toll department?

A. I should say one-third of the time.

Q. Now were there any private branch exchange operators?

A. Yes, sir.

Q. Where were they located and what were their duties?

A. They were located at the central office—Seelbach's Old Inn, Louisville Hotel, Galt House, and their duties were receiving and sending long distance and local messages by occupants of the hotels and also for transient people.

Q. How did their names appear on the pay roll?

A. As private branch exchange operators.

Q. Were you familiar with the character of calls that they usually attended to during the time you were there?

A. Yes, sir.

Q. What proportion of their time would you say was

2451 devoted towards long distance or toll department?

A. One third of their time.

Q. Now were there any toll switching operators?

A. Yes, sir.

Q. Who were they and what would they do?

A. I cannot give you their names, but they were located in the local exchange room of the main exchange.

Q. How many of them were there?

A. I believe as a rule there were two.

Q. What were their duties?

A. If I remember correctly their duties were to switch messages from the long distance room and back again from the toll room to the subscriber.

Q. Were they intermediaries between the operators at the exchange proper and operators in the toll department?

A. I think so.

Q. Now I believe you said that the toll trouble man, who was assistant to the toll wire chief, devoted his time to trouble arising from the toll lines?

A. Yes, sir.

Q. And tolls equipment, is that correct?

2452 A. Yes, sir.

Q. Now were there any of the regular trouble men or other employés of the company who would do work on the lines or toll equipment or apparatus in cases of emergency or otherwise?

A. I believe it was customry to get assistance from the local trouble men in case the toll trouble man could not handle such trouble.

Q. Did the Cumberland Telephone Company have any gangs of men or employés engaged in reconstructing parts of plants?

A. Yes, sir.

Q. When any of the toll lines or other parts of the toll system need to be reconstructed what employés would do that work?

A. The men on the construction department of the local exchange.

Q. How were the time card or cards of that nature of the men in the construction or reconstruction department kept insofar as showing what particular lines or parts of the plant the men were working on?

A. Up until about January, I believe, 1906 or there about the men appeared on the pay roll as simply linemen, ground-

2453 men and foremen, but later on the classification was devised whereby a man's time was shown and the nature of his work. If he was working on toll lines or local exchange lines, where the classification would show on the pay roll.

Q. Do you know whether the classification which appeared on the pay roll when it was sent to Nashville was followed out in the entries made by the company on its general books?

A. I do not.

Q. Now Mr. Settle, who was the chief man in general charge of the plant of the company at Louisville, Kentucky?

A. Mr. Geo. D. Hall, Superintendent.

Q. Is he superintendent of Louisville alone or has he a district outside of Louisville?

A. He has or did have charge of what is known as the Louisville district, including the Louisville exchange.

Q. Of what does the Louisville district comprise?

—. ——.

Q. What did it comprise when you were with the company?

A. It comprised the Louisville exchange and Jeffersonville, and New Albany and Pleasure Ridge Park, Jefferson-

2454 town, St. Matthews, Anchorage, Harrods Creek, West Point and probably fifteen or twenty other exchanges.

Q. Was the district changed at any time during the time you were with the company by making it larger or smaller?

A. I could not say as to that.

Q. Where was the salary of Mr. Hall paid from?

A. Louisville office.

Q. To what extent were expenses incurred over the district supervised by Mr. Hall paid at Louisville, Kentucky, if any?

A. All the salary expenses of foremen and workmen in the district and all the Louisville exchanges and about 13 of the suburban

exchanges around Louisville, and all the expenses I believe or about all of them, from the other exchanges in the district, such as pay rolls, expenses and different accounts.

Q. What about the material used in his district from what point was that paid—cases of material?

A. I believe it was customary to have the material for the district supplied from the warehouse as a rule. Of course some material, I believe was supplied otherwise, bought direct or bought by the Louisville office and shipped.

2455 Q. Did the company have a supply department at Louisville?

A. Yes, sir.

Q. And what points were furnished from that supply department?

A. All the exchanges under Mr. Hall's jurisdiction.

Q. Were you familiar with the amount of time spent by Mr. Hall in connection with the Louisville plant as distinguished from the amount of time spent by him in connection with other plants [illegible] the district?

A. Yes, sir; in a general way.

Q. How much of his time, would you say, was devoted towards the affairs of the Louisville exchange proper?

A. About one-fourth of his time I should say.

Q. Was he also superintendent of the toll department and long distance department as well as the exchange business?

A. Yes, sir; he was assistant superintendent of the entire plant—of the district.

Q. Did the company have a general manager at Louisville, Ky?

A. They had what was known as a local manager at Louis-

2456 ville.

Q. Who was the local manager when you left there?

A. Mr. W. K. Boardman.

Q. Did Mr. Boardman as manager have under his jurisdiction any exchanges or any parts of the plant except the Louisville plant?

A. Yes, sir.

Q. What additional property did he have jurisdiction over?

A. He had jurisdiction over 13 exchanges known as suburban exchanges of Louisville.

Q. Did his duties have anything to do with the toll lines or long distance lines extending and connecting those various exchanges?

A. Yes, sir.

Q. Were you familiar with the amount of time which Mr. Boardman, as manager, devoted to the Louisville exchange proper?

A. He devoted, I should say, about two-thirds of his time to the Louisville exchange and about one-third of his time to the suburban exchange.

Q. Does the district over which Mr. Hall as superintendent have jurisdiction cover any greater territory than that over which

2457 Mr. Boardman, the local manager, has jurisdiction.

A. Yes, sir; it does.

Q. How much greater territory, if you know?

A. At least twice as much.

Q. Now while you were cashier, what were your duties as regards the business of the local exchange as distinguished from the business other than the business of the local exchange?

A. My duties as cashier were such that I had charge of the receipts and disbursements, and collections of all accounts from the suburban exchanges as well as the Louisville exchange, and also an oversight of the accounts of these exchanges which were kept at the Louisville office.

Q. What about the toll department?

A. Of course my duties embraced the toll department to a certain extent. We kept a record of all the toll messages made by the subscribers and accounts as well.

Q. Well from your knowledge of the amount of time, devoted to the various branches of the company's business how much of your time would you say was devoted towards the Louisville ex-

2458 change proper?

A. About two-fifths of my time.

Q. Did you have any clerks under you?

A. Yes, sir.

Q. How many?

A. The entire office force was under me.

Q. Did you have a chief clerk?

A. Yes, sir.

Q. What were his duties?

A. Her duties rather, were—she kept the general books and also paid and received all money—she paid out all money covering expenses, pay rolls *and* etc., and kept the record of the collections for Louisville and the suburban exchanges, and also a record of the rentals and tolls for these exchanges, and reported to the Nashville office every month the condition of each exchange.

Q. Were her duties confined to Mr. Boardman's territory or to Mr. Hall's territory?

A. Confined to both territories.

Q. Included both territories?

A. Included both territories.

Q. Was that true of your duties also?

A. Yes.

Q. How much of her time would you say the chief clerk devoted towards the Louisville exchange proper?

2459 A. About two-thirds of her time.

Q. Now did the local manager have a clerk?

A. Yes, sir.

Q. What were his duties?

A. His duties were to assist the manager in any way that was necessary. He also had charge of the supplies going to and from the exchanges in the district. He attended to what business he could when the local manager was absent

Q. Were you sufficiently familiar with the character of the work done by him to know how much time he devoted towards the Louisville exchange proper?

A. Yes, sir; I think so.

Q. How much of that time do you think he devoted towards the business of the Louisville exchange proper?

A. Two-thirds.

Q. Now did the company have any solicitors?

A. Yes, sir; several.

Q. Did they devote all of their time to the Louisville exchange?

A. As a rule with one exception I believe.

Q. Who was that?

2460 A. Mr. F. K. Lord.

Q. What were the duties of Mr. Lord?

A. His duties were to solicit subscribers both in the city and the district.

Q. How much of his time was devoted toward soliciting business for the Louisville exchange proper, if you know?

A. Three-fourths would be a fair estimate.

Q. Now did either the superintendent or the manager have a stenographer?

A. Yes, sir.

Q. Which of them?

A. They both had stenographers.

Q. Did the superintendent's stenographer devote any of her time towards the Louisville exchange business proper?

A. Yes, sir; a small portion.

Q. How much would you say?

A. About one-fourth of the superintendent's time was devoted to the local exchange work.

Q. I don't recall whether I asked you about the assistant cashier, was there an assistant cashier?

A. Yes, sir.

2461 Q. Was the assistant cashier your assistant?

A. Yes, sir.

Q. What did the assistant cashier do?

A. The assistant cashier—the assistant cashier's duties were to receive all the collections from the Louisville exchange and the thirteen surburban exchanges, making record of the same and depositing the same in the bank each day, and also to assist in making up the pay rolls and work of that kind.

Q. Were you sufficiently familiar with the duties of the assistant cashier to know how much of his or her time was devoted towards the business of the Louisville exchange proper?

A. Yes, sir.

Q. How much of that time would you say was so devoted?

A. I think about five-sixths of his time was devoted to the Louisville exchange. I think that would be a fair estimate.

Q. Did he devote more of his time to the Louisville exchange than you did?

A. Yes, sir.

Q. Why was that?

A. Because the amount of work that he did for the sub-

2462 urban exchange was very slight compared with my duties.

Q. Now while you were there did the company have a man in its employ by the name of Metzger?

A. Yes, sir.
Q. What position did he hold?
A. He was known as the superintendent of maintenance.
Q. Did he have any duties outside of the city of Louisville?
A. Yes, sir; his duties embraced the suburban exchanges out of Louisville.
Q. What surburban exchanges—those under Mr. Hall or those under Mr. Boardman?
A. Those under Mr. Boardman.
Q. Were you sufficiently familiar with his duties to know how much time he devoted to the business of the Louisville exchange proper?
A. I believe so.
Q. How much would you say he devoted to the Louisville exchange proper while you were there?
A. I should think that two-thirds of his time to the Louisville exchange was a proper estimate.
Q. How many men did Mr. Metzger have under him?
A. He had probably twenty-five or thirty.
Q. In what work were they engaged?
2463 A. Some of them were trouble clerks, some of them were trouble men, wire chiefs, instrument installers instrument take-out men, instrument repair men *and* etc.
Q. Did any of his men do any work outside of the city of Louisville in connection with any of the other exchanges in either Mr. Boardman's or Mr. Hall's district?
A. Yes, sir; some.
Q. How many of them would you say?
A. I believe that there were about three men that were called upon to do work outside of the Louisville exchange.
Q. What did they do outside the Louisville exchange?
A. They were sometimes called upon to repair switchboards at the suburban exchanges and to install telephones and to increase the capacity of switchboards at the suburban exchanges, and fix up the batteries—replenish batteries sometimes, repair at different times that could not be handled by the local manager.
Q. Were you sufficiently familiar with their work of this character to know how much time they devoted towards the Louisville exchange proper and how much to the territory outside of
2464 Louisville?
A. Yes, sir; I believe I have a fair knowledge of their time devoted in that manner.
Q. How much time would you say that those three men devoted towards the Louisville business proper?
A. Three-fourths of their time to the Louisville work.
Q. Now while you were there, did the company have in its employ a man named Dean?
A. Yes.
Q. Was that Dean with them at the time you left them?
A. No, sir.
Q. Who had taken his position when you left?

A. Mr. O. D. Green, I believe.
Q. What title did Mr. Dean or Mr. Green have?
A. Known as Superintendent of Construction or general foreman I believe.
Q. What were their duties?
A. They had an oversight of all the construction work done in the city, the foremen and their gangs of men.
Q. Did Mr. Dean, or after his successor came in Mr. Green devote any time to the district outside of the city of Louisville
2465 in either Mr. Boardman's or Mr. Hall's district?
A. Yes.
Q. Over whose district were they foreman or superintendent?
A. Over Mr. Boardman's territory.
Q. Were you sufficiently familiar with the duties of either Mr. Dean or Mr. Green to know how much time was devoted to the Louisville exchange proper and how much to the business outside the Louisville exchange?
A. I believe I have a fair conception.
Q. Did their duties have to do with toll lines as well as these suburban exchanges?
A. At times, yes, sir.
Q. How much of their time would you say was fairly devoted towards the business of the Louisville exchange proper?
A. I should say that two-thirds of the superintendent's time was devoted to the local Louisville exchange.
Q. Was there a draftsman employed by the company or any draftsmen?
A. Yes, sir.
Q. How many, if any?
2466 A. I believe one as a rule.
Q. What were his duties?
A. His duties were to make blue print of new lines being constructed in the city and district, of course local and long distance lines.
Q. Did he have any duties in connection with Mr. Hall's district?
A. Yes, sir.
Q. Did his duties extend beyond Mr. Hall's district?
A. I think not.
Q. Were you sufficiently familiar with his work to know how much time he devoted towards the Louisville exchange proper and how much to the district?
A. I believe I have a fair knowledge, yes.
Q. How much of his time would you say was fairly spent in work for the Louisville exchange proper?
A. One-half.
Q. Well now were there any cable men employed by the Company?
A. Yes, sir.
Q. How many, if you know?
A. The number varied at different times, as few as three I believe and as many as eight or ten.

Q. Did any of these cable men devote any of their time to
2467 either Mr. Hall's territory or Mr. Boardman's territory?

A. Yes, sir.

Q. How many of them?

A. As many as two or three I should judge.

Q. What would they do out in the territory—out in Mr. Boardman's district?

A. They would repair any cable that might be in trouble or it might be necessary to string a new cable to take care of certain lines that had become congested—work of that nature.

Q. Did they do any work in New Albany?

A. At times, yes, sir.

Q. When they did work in New Albany would the pay roll show it?

A. As a rule it did not.

Q. Did it ever show it?

A. I believe later on when the new specification was gotten out it showed fairly well where the work was done.

Q. Were there any operators employed and in the service of the company known as Suburban operators?

A. Yes, sir.

Q. How many?

A. Two I believe.

2468 Q. What did they do?

A. Their duties were to connect subscribers with suburban parts such as New Albany and Jeffersonville, and Harrods Creek, Pleasureridge Park, St. Matthews *and* etc.

Q. Did they perform any duties except those you have detailed?

A. I believe not.

Q. How did their names appear on the pay roll?

A. Suburban operators.

Q. Now taking up these people about whom you have testified as performing service in the district, how did their names appear on the pay roll—for instance, the general manager, he had his name on the pay roll?

A. His name appeared on the pay roll as manager.

Q. Was his salary paid here?

A. Yes, sir.

Q. Were the names of the others, such as the cashier and chief clerk and the manager's clerk and the solicitors, assistant cashier and others, how did they appear on the pay roll?

A. They appeared on the pay roll just as you have called them off there.

2469 Q. And were their salaries paid here at Louisville?

A. Yes, sir.

Q. How did Metzger's name appear on the pay roll?

A. Superintendent of maintenance.

Q. Was any mention made after his name or anything to indicate on the pay roll that he had any duties in connection with the district?

A. No, sir.

Q. How about the others that I read over a few minutes ago, was there any intimation on the pay roll that they had any duties in connection with the district?

A. No, sir.

Q. How about the three of Metzger's men which you say did work in the district, and by the way, were they any particular three men? What did you mean when you said "Metzger had three men who did work in the district"?

A. Why they were three particular men as I remember it. Their names were George Schuman, E. A. Weidkamp and Clarence Stevens.

Q. How did their names appear on the pay roll?

2470 A. They appeared as a rule on the pay roll as private branch exchange men and installers.

Q. When they went out and did work in Mr. Boardman's district was any record made of that on the pay roll?

A. No, sir.

Q. Now do you know whether any higher rates were charged to New Albany subscribers and Anchorage subscribers in such exchanges where they desired free use of the Louisville exchange?

A. In Jeffersonville and New Albany they charge—at one time in Jeffersonville and New Albany the service was free both ways, coming and going, but later on the rates in Jeffersonville and New Albany was the same as in Louisville for free service, and if I remember correctly the rates at the suburban exchange as a rule were put a little higher than the rates for service in Louisville, that is, giving the suburban subscribers free service in Louisville. For instance, the rate at Anchorage or Pewee Valley for free service to Louisville was five dollars a month.

Q. When you went with the company did it have any pay stations installed?

A. Yes, sir.

Q. How many, if you remember?

2471 A. I should judge from between two and three hundred.

Q. In what class of houses or establishments were those pay stations installed?

A. They were all business telephones, and the majority of them I believe were installed in drugstores and hotels and public places of that kind.

Q. Do you remember, what, or about what receipts were derived from those pay stations at that time?

A. Do you mean as an average?

Q. Yes.

A. I should say that they would average about—at that time they would average about three dollars a month.

Q. On what basis were those stations installed?

A. I believe they were all installed at that time, on a strictly ten percent commission basis, with the exception of a few which received no commission?

Q. Do you mean the person in whose place of business they were installed received ten percent of the receipts?

A. Ten percent of the local receipts, which does not include
2472 of course the American Long Distance calls.

Here an adjournment was taken until 2:00 p. m.

2473 The parties met pursuant to adjournment at 2 o'clock P. M., and Mr. J. E. SETTLE was further examined by Mr. Blakey as follows:

Q. I think I was asking you in regard to the pay stations when we adjourned at noon. Did you say how many pay stations the company had in operation at the time you went with the company?

A. Yes, sir; I believe I said that they had in the neighborhood of between two and three hundred pay stations.

Q. And I have forgotten whether you stated where those pay stations were installed? Where were they installed?

A. They were installed in drug stores, hotels and public places.

Q. What is your recollection as to the average receipts from those pay stations?

A. My recollection is that the average for the pay stations were about three dollars per month.

Q. Now, did the company change its rates for pay stations at any time after you went with them?

A. Yes, sir.

Q. How long after you went with them?

A. In the neighborhood of four years.

Q. What rates did the company then make for its pay stations?

A. They made a rate of four dollars per month, guaran-
2474 teed by the subscriber.

Q. And did it put all of its pay stations on that basis?

A. No, sir.

Q. What did it do in regard to the stations it had theretofore installed?

A. It continued with those pay stations, with the exception of a few which they removed, because they were not paying them to maintain them.

Q. Then did the company make a change subsequent to that in regard to its pay stations?

A. When did they make the change?

Q. I say, did they make a change subsequent to that?

A. They made a change in this way——

Q. I mean in so far as the rates are concerned?

A. Well, they had the four dollar rate, that rate, the subscriber paid for his service and got free connections in the city, and then they had the four dollar guaranteed rate where the subscriber was entitled to fifty per cent of local receipts above four dollars.

Q. Well, about how many telephones—pay station telephones—did the company have installed say in 1905 when this change was made?

A. In 1905, you mean business pay stations?

Q. Yes.

2475 A. In 1905 the company had approximately I should say about five hundred pay stations.

Q. Were they all installed in business houses?
A. Yes, sir.
Q. Did the company ever install any pay stations in residences?
A. Yes, sir.
Q. When did they begin to do that?
A. About February, 1906.
Q. What rate did they make for pay stations installed in residences?
A. They were first installed without any rate whatever, with the exception that the subscriber pay five cents for each outgoing local call.
Q. What was the greatest number of pay stations of that character that the company ever had in force during the time you were with them?
A. I believe at one time they had about two thousand of the residence pay stations.
Q. Were the receipts from those residence pay stations—did the receipts from those residence pay stations pass through your department?
A. Yes, sir.
Q. During the time those pay stations—during the time you were there, and after those residence pay stations were installed,
2476 what would you say were the average receipts of those pay stations?
A. About thirty cents per month.
Q. What were the lowest receipts from any of them?
A. Some of them—on some of those pay stations there were no receipts.
Q. Was any record kept of the individual stations in these residences, showing the receipts from each station?
A. Yes, sir.
Q. Was that sent to the Nashville office?
A. No, sir.
Q. Now, did the telephone company at any time put out any telephones without making any charge therefor whatever, or under an agreement not to make a charge for a specified length of time?
A. Yes, sir; they did.
Q. When was that?
A. About the early part of 1903.
Q. How many stations of that character did they install that you know of?
A. To the best of my recollection there was something like two thousand telephones installed without charge.
Q. What was the agreement in regard to any charge being
2477 made?
A. The first agreement was that the telephone would remain in free of charge for sixty days and on trial. At the end of sixty days they were to be removed if the subscriber did not desire the service at the regular rate. And later on, they changed it to a five and seven months' contract, allowing the subscriber sixty days' free use of the telephone.

Q. As to the first plan you have mentioned, namely, sixty days' free trial, how many telephones were installed on that plan as near as you can remember?

A. I should judge a thousand to twelve hundred.

Q. How long did those telephones installed in that manner remain in the place where they were installed?

A. As a rule they remained sixty days. In some cases longer. Sometimes they were removed before the sixty days, if the subscriber was dissatisfied and insisted on them being removed.

Q. What percentage of them would you say were removed without having earned any income whatever?

A. As I remember, there was about seventy-five per cent of those free telephones removed. The balance were retained by subscribers who agreed to pay the regular rate.

Q. Now as to those that were installed on five, six and seven
2478 months' time, what percentage of them were removed at the time, the five, six and seven months' period had expired?

A. About sixty per cent.

Q. And what rental was charged for those telephones after the period expired for which no rental was charged?

A. The regular rental which was governed according to the class of service they had.

Q. Were those telephones business or residence telephones?

A. The majority of them were residence telephones.

Q. Do you know what the telephone company does with the telephone instrument when a subscriber's station is abandoned?

A. Yes, sir.

Q. What is done with it?

A. The instrument is removed and brought back into stock. The instrument is—that is, if the receiver and transmitter is in good shape, it is retained at the stock room and used again. If not, it is returned to the supply department who in turn returns them to the American Bell Telephone Company from whence they came, and they are exchanged. The instrument itself is retained at the stock room, and used again if it is in shape. If it is not, it is gone over and put in good order.

2479 Q. What do you mean by the instrument itself?

A. The desk stand or the stand itself, the telephone that the receiver or transmitter is on, or the wall set which contains the receiver and transmitter.

Q. When a telephone subscriber's station is abandoned, and the instrument, including the stand or the wall set, is placed in stock, is there any occasion on which that stand or wall set or instrument are returned to the supply department?

A. Yes, sir.

Q. When are they returned to the supply department?

A. They are returned in case that the number on hand is too great in their judgment to supply the demand. In other words, if they were taking out more telephones than they were putting in, they send the surplus to the supply department, or if they are defective they will send them to the supply department.

Q. How many of those instruments, such as desks or wall sets, are usually kept in the stock department—in the stock room?

A. I should judge about fifty sets.

Q. Well, if the subscriber's station is abandoned and the instrument, including the wire and apparatus connected with it, is
2480 in good shape and is placed in stock, and a new subscriber desires an apparatus of a similar character, is that same apparatus supplied to him from stock?

A. Yes, sir.

Q. Was that the custom during the time you were with them?

A. Yes, sir.

Q. During the time you were with the company, were there any serious sleet storms or storms of any character doing any particular amount of damage to the telephone company?

A. Yes, sir; I believe there was one severe storm.

Q. When was that?

A. To the best of my recollection it was about January or February, 1902, shortly after—I think the fall of the year after I went with the company.

Q. How much was required in the way of money, if you know, to be expended on account of that storm?

A. That I really could not say, because there was a good deal of material used, and of course, men's time, etc., and it would be hard for me to state.

Q. Well, was it or not a serious storm from a telephone standpoint?

A. Yes, sir; considered somewhat serious, something like three thousand lines I believe out of commission.

Q. During the time you were with the company, were there any other storms from sleet or otherwise which to any extent
2481 interfered with the operation of the plant?

A. I believe there were one or two slight storms that did some damage, but nothing serious, what you would call serious.

Q. What length of time was required to repair that damage in those two instances?

A. I think at the most, everything was repaired inside of three days, if I remember correctly.

Q. Have you any idea how many lines were out of commission at the worst of any of those storms?

A. Yes, sir; at one time I remember hearing the wire chief say there was something like eight hundred lines out of commission. The other time I don't know exactly and could not say, but it was just an ordinary—a slight storm.

Cross-examined by Mr. GRANBERY:

Q. Your position during the whole time you were with the company was local Cashier?

A. Not the entire time—no, sir.

Q. What was your position?

A. From April, 1901, to October, 1901, I was Assistant Bookkeeper on the rental books.

2482 Q. Where was your office and the place you did your business at that time?

A. On the first floor of the main exchange, 442 West Jefferson.

Q. Now after that you were Cashier?

A. Yes, sir.

Q. Where was your place of business and where did you do your work?

A. On the main floor at the main office building.

Q. What is located on the main floor of the office building?

A. You mean what is located now or what was located then?

Q. I mean the whole time?

A. The whole time?

Q. Yes.

A. When I first went with the company, the rental book-keeping department, the receiving assistant cashier as it is termed now or known then as the receiving teller or collecting window, the manager's office, the toll clerk, the superintendent of construction's office and the superintendent of construction clerk, and Mr. Hall's office and the pay stations, the central office pay station was located on the first floor.

Q. When was that changed?

2483 A. That was changed I think in January 1905.

Q. And what has been on that floor since up to the time you left?

A. The office force consisting of the cashier, assistant cashier, or window clerk, chief clerk and the book-keepers, toll clerks, the manager, and the traffic department, the manager's clerks, and I think I named toll clerks, and the central office.

Q. What do you mean by the central office?

A. Central pay station office.

Q. Now, what were your hours?

A. Sometimes from eight to six and sometimes from eight to five and in the summer one o'clock on Saturdays.

Q. Did the duties of your office require your entire time and attention?

A. Almost—yes, sir.

Q. You have spoken of Mr. Hall, the division of his time between the Louisville exchange and the rest of his territory?

A. Yes, sir.

Q. How did you get that information?

A. That information was—I figured it out from the fact that I knew Mr. Hall was absent from the city. In other words, he was on his district work about from three to four days out of each week.

2484 Q. Did you know where he went when he went out of the office?

A. Not exactly—no, sir; but he was supposed to be and I did know a great many times just where he was—yes, sir.

Q. Did you keep tab on him whenever he left the office?

A. No, sir; not exactly a tab.

Q. Were you watching him to see?

A. No, sir.

Q. What about the local manager? Did you know where he went to when he went out of the front door?

A. As a rule we knew where the manager was—yes, sir.

Q. Why were you watching him so closely?

A. We did not watch him. He left word where he could be found.

Q. With you?

A. Sometimes with me, sometimes with his chief clerk. Everytime invariably, we knew where he was, whether he was out of the city or in some suburban exchange or Louisville, or New Albany.

Q. Didn't your pay rolls from 1906 on down indicate where each man had spent his time?

A. Not altogether.

Q. And what part of it?

A. Not altogether—no, sir.

2485 Q. Substantially?

A. It did not indicate where the manager or superintendent was. It did not indicate what work the office force were doing nor the toll clerks. It did indicate what the construction men were doing as a rule.

Q. Did these other exchanges all have local managers?

A. Yes, sir.

Q. Did they have trouble men and men to install telephones and take out telephones?

A. No, sir; the manager done that himself with the exception of the larger exchanges like Jeffersonville and New Albany.

Q. There they had their regular line men and trouble men and men of that kind?

A. Jeffersonville and New Albany—yes, sir.

Q. Did you pay all those men from the Louisville office?

A. Yes, sir.

Q. Every one of them?

A. Yes, sir.

Q. You paid all of the construction men everywhere?

A. In the Louisville district—yes, sir; paid from the Louisville office.

Q. Who approved those pay rolls?

A. The pay rolls were approved—the district pay rolls—outside of the manager's territory, were approved by Mr. Hall, and

2486 the other pay rolls were approved, that is the suburban pay rolls and the Louisville pay rolls, were approved by the local manager.

Q. All you did was to pay them under the direction of a superior and sent them to the Nashville office?

A. No, sir; they passed through my hands. They were O. K.'d by my signature also.

Q. You did not O. K. them and pay them until they had been O. K.'d by some one else.

A. Not as a rule—no, sir.

Q. After you paid them and O. K.'d them you sent them to Nashville to the Auditor?

A. Yes, sir.

Q. And how the Auditor entered them on the general books of the company, you don't know?

A. No, sir; I don't know.

Q. You say Mr. Webb was pretty rough with you last Fall?

A. I didn't say he was rough,—I saw from his manner that he had it in for me.

Q. Don't you think that he had a good right to have it in for you?

A. I think so—yes, sir.

Q. How much were you short?

A. About $1200.

2487 Q. You had just stolen that much money from the company and put it in your pocket?

A. No, sir; I hadn't just stolen it and put it in my pocket.

Q. Didn't you admit that you were short that much?

A. I admitted that I was short but I didn't say I had stolen it and put it in my pocket.

Q. And the Guaranty Company paid it for you?

A. Yes, sir; and I stood for the Guaranty Company.

Q. And you executed your note to the Guaranty Company?

A. Yes, sir.

Q. And that is still unpaid?

A. Part of it—yes, sir.

Q. How much of it?

A. I don't remember.

Q. Have you paid a hundred dollars on it?

A. Yes, sir.

Q. How much more?

A. I don't remember exactly what I have paid but I paid every dollar that I possibly could.

Q. Now do you know Mr. E. W. Farnham?

A. Yes, sir.

Q. How long have you known him?

A. I have known him since about the 27th day of May.

2488 Q. How did you get acquainted with him?

A. I met him in Nashville.

Q. In Nashville?

A. Yes, sir.

Q. How many times have you seen him since?

A. I have seen him probably twice.

Q. How long at a time?

A. Just run across him.

Q. What was the occasion of your meeting him in Nashville?

A. I received a telegram from a friend in Nashville.

Q. Who was that friend?

A. Mr. John Key, asking me to call on the Mutual Audit Company.

Q. Who is John Key? One of Mr. Farnham's clerks?

A. He was.

Q. Yes, all right. Go ahead.

A. And I also received a message, a telephone message that even-

ing from the Mutual Audit Company to call and see them, which I did, and they asked me to go to Nashville, which I did.

Q. How long were you in Nashville?

A. I was in Nashville, I think very near thirty days.

Q. How long?

A. Approximately thirty days.

2489 Q. What were you doing there?

A. I was giving the men employed by the Mutual Audit Company or the Mutual Audit Company's employés, information with reference to the Cumberland Telephone Company's business.

Q. You were paid for your services, were you?

A. I was.

Q. Who by?

A. The Mutual Audit Company.

Q. Did you tell them that you had been short with the Company?

A. They knew it.

Q. How did they find that out?

A. I don't know.

Q. Did they know that when they telegraphed you to come there?

A. Mr. Key knew—yes, sir.

Q. Had you told Mr. Key?

A. No, sir.

Q. Did Mr. Farnham know it?

A. Yes, sir.

Q. When did you next see him?

A. I saw him—I came back and I saw him I think some time afterwards.

2490 Q. Did you make your visit to Nashville known or let it be known by anybody connected with the Telephone Company?

A. My sister-in-law knew I was going. She works there.

Q. Did anybody in Nashville know it?

A. Did anybody in Nashville know I was there?

Q. I mean connected with the Cumberland Telephone Company?

A. No, sir.

Q. Where did you stay when you were in Nashville?

A. I stayed at several places, boarding houses.

Q. Did you go to the Company's office while you were in Nashville?

A. No, sir.

Q. You did not go where Mr. Farnham and his assistants were doing their work in the Company's office?

A. No, sir.

Q. Did you stay at the boarding houses where his clerks were?

A. No, sir.

Q. Did you work with them all the time you were there?

A. No, sir; not all the time, just at times. I didn't work with them you understand. I talked with them, and that was all. My work was simply talk, you understand.

Q. These pay rolls that you have spoken of having paid and hav-

ing O. K.'d, did you make them as correct as near as you
2491 could?

A. Yes, sir.

Q. At all times?

A. Yes, sir.

Q. And when they went to the Auditor at Nashville they were in as good shape as you knew how to put them?

A. As good as I and the Chief Clerk also knew.

Re-examined by Mr. BLAKEY:

Q. Mr. Granbery has asked you about a shortage and stealing money from the Cumberland Telephone Company. Will you kindly explain in what way you left the Company in its debt?

A. In October, about October 25th, I think, 1903, Mr. G. D. Webb, Treasurer from Nashville Tennessee, came to Louisville and in the presence of Mr. Hall and the Travelling Auditor took me to task about the condition of certain accounts on the books which were in bad shape, and his manner being very unfriendly, I naturally concluded that the best thing I could do was to resign my position, which I did, and left the Company's employ about two or three days later. I had already made up my mind that I was going to resign. I had not made up my mind before that, but I had been thinking of it because I had another offer as Secretary and Treasurer
2492 from the Columbia Novelty Company and naturally I did not feel that it was to my advantage to stay, and therefore resigned and went immediately with the Columbia Novelty Company.

Q. What I asked you was for an explanation of how you were short with the Company, if you were short with them, and how you were indebted to them, in what way did any such indebtedness arise?

A. It arose from the fact—from one fact that I had made several errors, which on the face of the thing looks as if I had deliberately taken the money, which it is not true, but on the other hand it is true that I did use some of the Company's funds, not with the intention of fraud or theft, but simply lack of foresight.

By Mr. GRANBERY:

Q. How long had that lack of foresight been going on?

A. I don't know as I could say definitely but to be honest with you I think that I was probably unwise you might say for a period of a year and a half, something like that.

Q. What do you mean by being unwise?

A. By using some of the Company's funds for other purposes?

Q. What do you mean, for your own particular purposes?

A. Yes, sir.

Q. What else do you call that besides embezzlement?
2493 A. On the face of it it is probably, but a man's mind is not always what his actions look like.

Q. Did you go to the Novelty Company when you left the Cumberland Telephone Company?

A. Yes, sir.

Q. Did you tell them about your unwise conduct?
A. They knew about it—yes, sir; the President knew about it.
Q. What salary did you get from them?
A. I got a salary of $70. a month with the prospects of a better proposition, as it was a new business and looked like it was a very good business and would probably be a very paying investment.
Q. What did you get from the Company when you left?
A. $125.
Q. $125. a month?
A. Yes, sir.
Q. How long did you stay with the Novelty Company?
A. I left there—I was with the Novelty Company up to the time I went to Nashville.
Q. And you never got an increase over $75.?
A. Oh, yes, I have made more than that, but I did not while I was there. You understand I was only there from the first of November to the last of May, a period of seven months.
2494 Q. During that period they only paid you $75?
A. That is all they were to pay me during that period.
Q. They did pay you that?
A. Oh yes, sir; they paid me.
Q. How come you to leave them?
A. Because the business was not going like I thought it would go, in fact, like we all thought it would go, and I had decided to go into another business and had accepted the proposition to go into another business and I was asked to go to Nashville and I could go and I went.
Q. You left the Novelty Company to go to Nashville?
A. Well no, not exactly. I was going to leave the Novelty Company on the first of June. I had resigned on the 15th of May and was going to accept another proposition on the 1st of June.
Q. What with?
A. The Southern Law and Adjustment Company.
Q. Instead of doing that you went to Nashville?
A. Yes, sir.
Q. What did Mr. Farnham pay you?
A. Mr. Farnham did not pay me.
Q. Who paid you?
A. The Mutual Audit Company.
Q. How much did they pay you?
2495 A. They paid me $125. a month.
Q. And expenses?
A. Some expenses.
Q. What do you mean by some expenses? Board and railroad fare?
A. They did not pay my board. They paid other expenses like railroad fare, etc.
Q. After you left Nashville, and the employment of the Mutual Audit Company, did you go to the Law and Order concern?
A. No, sir. I had other work, other propositions that I liked better.

Q. What was that?
A. I went with the Southern Life Insurance Company in the capacity of Special Representative to sell stock.
Q. How long did you stay with them?
A. I have been with them every since.
Q. Still with them?
A. Yes, sir; handling stocks and bonds—not stocks and bonds, but New York railroad bonds for the New York Central Railroad Company.
Q. On a commission?
A. Yes, sir.
Q. You do not handle any cash?
A. No, sir.

2496 ISAAC HILLIARD, called for the defendant, the City of Louisville, being duly sworn and examined by Mr. Clayton B. Blakey, deposed as follows:

Q. Where do you live?
A. I live at 1074 Cherokee Road, City of Louisville.
Q. How long have you lived in Louisville?
A. All my life.
Q. How old are you?
A. Thirty years of age.
Q. What is your business?
A. Stock and bond broker.
Q. How long have you been engaged in that business?
A. Eight years lacking one month.
Q. What is the style of your firm?
A. J. J. B. Hilliard and Son.
Q. Who was J. J. B. Hilliard?
A. My father.
Q. Is he living or dead?
A. He is dead.
Q. Had he an established business at the time he died?
A. He had.
Q. In connection with your business, please state what experience you have had in selling and buying stocks and bonds of public service corporations engaged in business in Louisville
2497 Kentucky?
A. Well, I am almost daily handling stocks and bonds of public utility corporations located in the City of Louisville. I should say five days out of the week I have transactions in those securities the year round.
Q. Do you make a specialty of any particular class of business in your line?
A. No, sir; I do not.
Q. Is there any brokerage firm having more business connected with local securities than your firm?
A. I am unable to answer that question definitely, because I do not know how much business other brokers do.

Q. State whether or not you have an extensive business in local securities?

A. I should say my business ranks among the first four in local securities in the City of Louisville—the first four businesses.

Q. Are you familiar with the market value of the common stock of the company operating the street railway in the City of Louisville?

A. I am.

Q. What is that company?

A. The Louisville Railway Company is the operating com-
2498 pany.

Q. What is the market value of the common stock of that company?

A. The Louisville Railway Company's common stock is not on the market. It is all held by the Louisville Traction Company.

Q. What is the market value of the Louisville Traction Company's stock?

A. The market value of the common stock today is about ninety-four,—ninety-three and a half bid, ninety-four and one-fourth asked.

Q. What dividend does that Company pay at the present time?

A. Four per cent per annum.

Q. Has that company ever paid a higher dividend than four per cent?

A. It has not.

Q. How high did its stock ever sell in the open market?

A. A hundred and forty-seven dollars a share.

Q. You mean by that the present company?

A. The present company.

Q. Do you know anything about the earnings of that company?

A. According to the company's report, it earned last year a fraction less than five per cent on its common stock after
2499 dividends on its preferred stock and interest on its bonds.

Q. Are there any corporations in Louisville engaged in the manufacture and sale of gas?

A. Yes, sir; there are two.

Q. What are they?

A. Louisville Gas Company and the Louisville Heating Company—I beg pardon, it should be the Kentucky Heating Company.

Q. Do you know the market value of the Louisville Gas Company's common stock?

A. There is only one class of stock issued by the Louisville Gas Company, the market value of which is about ninety-five. The last sale was ninety-six.

Q. Do you know what dividends that company pays to its stockholders?

A. Pays five per cent per annum.

Q. How long has it been on a five per cent basis?

A. It has paid five per cent since July 1907, I believe. I am not certain of that. It reduced its dividend from six per cent either in July 1907 or January 1908.

Q. Do you remember what the market price of the stock was while it was on a six per cent dividend basis?

A. It ranged from $130. down to about $105.

2500 Q. Do you know anything about what amount the company earns on its capital stock?

A. The company never makes a definite report as to how much it makes on its capital stock. It merely states that it pays dividends in accordance with its earnings.

Q. Does that company own or conduct an electric lighting business in Louisville?

A. Yes, sir; it owns a majority of the stock of the Louisville Lighting Company.

Q. Is there any dividend paid on the Louisville Lighting Company's stock?

A. The Louisville Gas Company has not recently made a statement as to the dividends of the Louisville Lighting Company's stock. Until the first of this year, the Louisville Lighting Company paid four per cent dividends for at least four or five years.

Q. Do you know anything about the market value of the stock of the Louisville Lighting Company?

A. It has no market value that I can place on it.

Q. Why is that, if you know?

A. There has never been any demand for it for investment purposes. The stock has been so closely held. I do not know that I could assign a good reason for its lack of market ability.

2501 Q. Do you know whether it is due to the fact that none of the owners of the stock offer it for sale?

A. I do not.

Q. Do any of the owners offer it for sale?

A. From time to time—yes, sir.

Q. How long since you know of any of it having been offered for sale?

A. I had an offer of a hundred shares during the past July at seventy-five dollars a share.

Q. What dividend does the Kentucky Heating Company pay on its capital stock?

A. The Kentucky Heating Company pays three per cent on its common stock, five per cent on its preferred stock.

Q. What is the market value of its common stock?

A. About sixty-four dollars per share.

Q. What is the market value of its preferred stock?

A. About ninety dollars a share.

Q. Do you know anything about the earnings of that Company?

A. The Kentucky Heating Company has never made any public statement as to the earnings on its common stock to my knowledge.

Q. Now do you know anything about any other Lighting

2502 Company besides the Louisville Lighting Company doing business in Louisville? And if so, what Company or Companies are so engaged?

A. The Kentucky Electric Company, the George G. Fetter Company, the Louisville Trust Company all furnish light.

Q. Which of those three companies are engaged in the business extensively, if any of them?

A. The Kentucky Electric Company is engaged in quite an extensive business.

Q. To what extent do the other two companies engage in the business?

A. Only under local conditions—that is to say, the surrounding block, adjacent to the plant.

Q. Now does the Kentucky Electric Company pay any dividend on its stock?

A. It does not so far.

Q. How long has it been in business?

A. So far as I remember, about twenty months.

Q. What character of stock has it out-standing?

A. It has one class of stock only.

Q. And what is that class?

A. One class of stock. I don't think you could say what class it is. It is only one class. It is capital stock.

Q. Do you know the market value of that stock?

2503 A. It has no active market. It is nominally quoted "Par bid, $125. asked." Sales have been made at par. How much above that, I do not know.

Q. Do you know anything about the earnings of the Company?

A. I do not. They make no public statement.

Q. Do you know anything about the stock of the Home Telephone Company?

A. Nothing further than as it is listed on our local exchange and traded in our local market.

Q. What is the par value of that stock?

A. $100 a share.

Q. What is the par value of the stock of the other Companies you have mentioned?

A. In every instance $100 a share.

Q. What is the present value of the stock of the Home Telephone Company?

A. The stock has no market at the present time. It has been offered in the past two weeks as low as thirty-three dollars a share and no buyers.

Q. What in a general way has been the market upon that stock for the last four or five years?

A. Going back five years, it was quoted as low in 1904 as $16 a share and as high as twenty-eight. It may possibly have sold over that. That is as I recall now. In 1908 it sold up to about
2504 $40. In 1907 it sold up to $70 a share. During the past two years it has been almost steadily declining.

Q. Do you know anything about the earnings of that Company?

A. I am unable to give any definite record of the earnings. My information in that regard is from officers and friends of the Company who have at times disagreed as to the amount earned on the stock. They have never admitted that the Company earned the four per cent which it at one time paid on its stock.

Q. Do you know how long it paid a four per cent dividend?

A. I think it paid four dividends of one per cent each in eighteen months.

Q. Do you know how the Company disposed of that stock originally?

A. Probably half of that stock was given away as a bonus with the bonds of the Company when they were first put on the market. Another portion, how much I do not know, was turned over to the promoters of the Company, and a small balance was later sold by the Company for cash.

Q. Do you know the market value of the bonds of the company?

A. The bonds have recently sold at seventy and at sixty-eight. They are now offered at $69.75, no bid.

2505 Q. Do you know what the company realized for the bonds at the time they were first sold by the Company?

A. I don't believe the Company received any fixed price for their bonds. They turned over at least two blocks, probably as many in these two blocks as $150,000 worth, par value, to these contractors who built the plant. Their bonds were sold to banking houses, and still others were offered for subscription by the Company itself. The subscription price was at first seventy-five per cent and later was advanced to eighty-seven per cent.

Q. Are there any public service corporations in Louisville other than the ones you have named?

A. The Cumberland Telephone & Telegraph Company.

Q. What about the Louisville Water Company?

A. Inasmuch as the Louisville Water Company is entirely owned by the City, I consider it a municipal enterprise.

Q. Can you recall any others?

A. I cannot.

2506 Cross-examined by Mr. Granbery, as Attorney for the defendant, The Cumberland Telephone & Telegraph Company.

Q. The inquiry that the court has desired proof on was what the people generally expect to or receive on the actual amount of investment in business enterprises such as Telephone Companies in and around the City of Louisville, which I assume you will agree with me is quite a different proposition from merely getting at the market price of particular securities listed on the local exchange. Now I wish, with that before you, to ask you some questions of a financial nature that will at least tend to throw light upon the inquiry that the court wants the proof directed to. Government bonds pay only two per cent do they not?

A. They pay two, three and four.

Q. What are those two per cent bonds selling for?

A. A fraction over par.

Q. Now then, state securities, state bonds, usually bear about three per cent interest or three and a half or four per cent, not over that, isn't that so?

A. Yes, sir.

Q. What do those securities sell for?

A. They vary, according to the states, but I should say that they all sell in the neighborhood of par.

Q. Now then, municipal securities of large cities, such as
2507 Chicago, Indianapolis, Louisville, Cincinnati and Cities of that class, what interest do their securities bear?

A. In the neighborhood of four per cent.

Q. And what basis do they sell on? At what price do they sell?

A. On practically a four per cent basis or a little under that at the present time.

Q. That is, if they are four per cent securities, they sell for par?

A. Yes, sir; or a little above.

Q. Street railway securities—bonds I mean, five per cent bonds—what basis do they sell on?

A. I cannot answer that question generally, because they vary very much in different cities according to the size of the city and the bonds issued on the property per mile and their earnings per mile.

Q. Give us a general idea of how those securities, street railway securities—bonds, sell?

A. The first mortgage five per cent bonds on large properties in cities of two hundred thousand population or over sell above par generally.

Q. How much above par?

A. Usually on a four and a half per cent basis.

Q. Now those bonds, those per cent bonds on industrial
2508 enterprises, upon what basis do they sell?

A. I don't think you can fix any basis for industrial enterprises, for each one varies in itself.

Q. Do those bonds sell usually above par?

A. I know a lot of them that sell under par and some that sell above par.

Q. Even a six per cent bond?

A. Even a six per cent bond.

Q. Why is it that those bonds, the two per cent and the three per cent and the four, five and six per cent—why is it that all of those bonds do not sell on the same basis, or why is it that they sell near the same basis with different rates of interest? Is it not because of the value of the security behind the bond?

A. Partially the value of the security behind the bond, partially the purposes for which they can be used, and all that must be taken into consideration, on the supposition that the bonds are absolutely secure in themselves.

Q. In other words, that class of securities sell according to the certainty or the near certainty of the principle and interest of the bonds, is that so?

A. I did not catch that question.

Last question was read to the witness by the stenogra-
2509 pher.

A. That class? What do you mean by that class?

Q. I mean the bonds that I have mentioned, the government bonds, the state bonds, the municipal bonds—that class of securities.

A. Partially only. Government bonds can be used for other pur-

poses than merely as a matter of investment. They are principally used by the banks for circulation purposes, and therefore have a value——

Q. Beyond the investment feature?

A. Beyond the investment feature, and in the same way municipal bonds are valuable to banks for government deposits and also are valuable to trust estates which are limited to that class of investment.

Q. Well now, what fixes the market value of stock resting upon street railways, gas companies, electric light plants, water plants, telephone plants and similar enterprises?

A. I don't believe there is any one condition or circumstance at all that fixes the market price of any public utility stock or bond.

Q. Now the fact that a five per cent stock is selling at par, and a bond which rests on that property ahead of the stock bearing five per cent interest sells at par, why is it that those two securities are on a parity in the market?

2510 A. If they are on a parity, it is very likely that the stock sells at par on the same basis with the market security, that there is an equity besides the five per cent in the property for the stock.

Q. In other words, the man who is buying the bond, that pays five per cent is looking only to the interest on his bond and when he pays par on his stock with a dividend of five per cent, is looking for more than five per cent?

A. Exactly.

Q. I will ask you to state if in your opinion eight per cent return on the actual dollars invested in a public service enterprise is too large a return? I don't mean now upon the securities issued, but I mean eight per cent upon the actual dollars that has been put into the business by the proprietors or the owners?

A. Do you mean to limit me to Louisville corporations?

Q. No, sir; I mean is eight per cent more than a reasonable return for people in Louisville, for people who wish to put their money in an enterprise in Louisville or elsewhere that only yields eight per cent per annum on the actual dollars put into the enterprise?

A. That is a very hard question to answer. I am not limited to other cities, nor am I limited to the class of investment. Eight per cent on one investment would be only a fair return on

2511 another investment it would be an extremely small return and on another investment it would be probably too great a return.

Q. Now I want to ask you to enumerate some properties in each of those classes, if you will?

A. I should say on a water company in another state, eight per cent would be a great big return. I should say on a street railway probably eight per cent would be a fair return in a small city, rather a large return in a city of this size. On a lighting proposition I should say that eight per cent would only be a fair if not too small.

Q. What about a telephone security?

A. According to the return on telephone investments in the past, the money actually invested, eight per cent is a reasonable return.

Q. Now according to the history of telephone investments of the United States, I will ask you to state whether or not it is a fact that eight per cent is considered a small return upon the actual dollars put into the business?

A. My knowledge of telephone business and the history of the telephone business of the United States is very meager. I recall an article in the nature of an advertisement by a telephone security man, which stated that the average return on telephone in-
2512 vestments, the country over, on the actual money put in, was in the neighborhood of ten per cent. In large cities it was gradually decreasing the return, as more money had to be spent to keep up the property, and the return on the actual money spent was being decreased in large cities.

Q. But not decreased in the smaller places?

A. Not decreased in the smaller places.

Q. By larger cities, you mean——

A. Cities of two hundred to two hundred and fifty thousand population and over.

Q. Now then, isn't it a fact that in the telephone business, one of the important factors in determining the market value of a security, is the financial ability of the company to continue to get new capital from time to time interested in the business as it grows.

The last question was read to the witness by the stenographer.

A. I should judge that that is important in any business.

Q. Now you understand that in the telephone business that the plant can never be a finished property, but as you get new subscribers and your business grows you must increase your capital account in order to supply these new customers. You understand that to be a fact in the telephone business, do you not?

2513 A. Yes, sir.

Q. Now, that new capital must of necessity be put into the business by the investing public from time to time as it is needed, that is true, is it not?

A. Yes, sir.

Q. Now then, isn't that a risk and a hazard that a man who buys telephone securities has to take?

A. I don't understand what you mean by being a risk.

Q. I mean by that this: That if a man buys securities upon a telephone plant, doesn't he have to take the risk of that company being able to finance its future needs by getting new money into the business from time to time, realizing and knowing that if a time comes when it cannot get that new money to take care of the growth of the business, the property begins at once to go down?

A. I should not call that a risk. I should call that an advantage, his ability to be considered among those who had the opportunity to subscribe for a new capital in a growing business.

Q. Wouldn't that depend very largely on whether the business be prosperous or not prosperous?

A. If it was not prosperous there would not be any more capital needed.

Q. What would become of the capital already invested?

2514 A. I don't think it would necessarily change its condition.

Q. Do you think a telephone plant that does not grow can stand still and never go down?

A. If it makes the proper charges for depreciation and renewals, it can stand still, yes, sir.

Q. Now, take a telephone plant in Louisville: Do you imagine that a telephone plant can stand still in Louisville for any length of time and not meet the growth of business? Do you think that it would retain its patronage if it did not meet the growth of business?

A. I don't know enough about the telephone business to say positively whether it could or not, but I should say that after a city reaches a certain size, the telephone company could have sufficient patronage to stand absolutely still with the proper charges for depreciation and renewal.

Q. Do you think a gas company can stand still after a city reaches a certain size?

A. Yes, sir.

Q. Do you think an electric light company can stand still under those circumstances?

A. Yes, sir.

Q. Do you think that the water company can stand still under those circumstances?

A. Yes, sir.

2515 Q. Then what becomes of the new business in those cities as they grow?

A. I am not supposing that their territory naturally increases. I am supposing their territory does not increase.

Q. As the city increases, the population increases does it not?

A. Yes, sir.

Q. Necessarily there will be more demand for water after the city continues to grow than there was before?

A. Other companies might come and supply them.

Q. That is the point. Now then, it has got to be one of two things, either the company has got to continue to grow to take care of the new business or it has got to let some other company come and take hold of the business, isn't that so—the new business?

A. Yes, sir; if the city continues to grow in the meantime.

Q. You don't know of any city in America that does not continue to grow year by year, do you?

A. No, I don't believe I have ever heard of but two or three. I have heard of two or three small cities. Every city as a rule grows in the United States.

Q. You know that all these public service companies, the street railway, the water company and the lighting company and

2516 the gas company and the telephone company continues to grow also and get larger patronage each year, do they not?

A. Yes, sir.

Q. Well now then, they are confronted with one or two horns of the dilemma: They must either let some other concern come in and take the new business or they must provide new capital to take it themselves, isn't that a fact?

A. Yes, sir.

Q. Now then, taking the telephone business, and supposing a company stands still and let other companies come in and take the new business, don't you think that that would have a very big effect upon the patronage that the company already had in causing them to lose customers who would go to the new companies?

A. I should think that they would have an easier time keeping their customers than the other companies taking them away from them inasmuch as they had the original company and the inside of conditions before the new companies were organized.

Q. I will ask you to state whether or not in your opinion the telephone securities are regarded as hazardous or staple securities in the Louisville market?

2517 A. The class of telephone securities varies as much in the Louisville market as much as any other class of securities does. One telephone security might be considered absolutely safe and a high class investment and another one extremely hazardous and poor speculation.

Q. Do banks, trust companies and estates invest funds in telephone securities—telephone stocks?

A. In this locality?

Q. Yes.

A. I know of estates who have investments in telephone security.

Q. Did the estate buy them or the proprietors of the estate buy them before he died and left them in his estate?

A. Yes, and no. I know of one estate in which telephone securities were left. I know of two estates for which telephone securities have been bought.

Q. Home Telephone securities?

A. Not Louisville Home Telephone securities—no.

Q. What telephone securities were they?

A. The American Telephone & Telegraph.

Q. That is the company that owns the long distance lines throughout the United States?

A. As I understand it—yes, sir.

2518 Q. Now, is Cumberland Telephone & Telegraph Company's stock regarded as an investment security in the Louisville market?

A. Yes, sir.

Q. With estates, trust companies and banks?

A. I know of no estates that have bought Cumberland Telephone stock nor banks. It is held in some estates here.

Q. How much Cumberland Telephone & Telegraph Company stock do you know of that is owned in Louisville? How many shares in round numbers?

A. I know of over five hundred shares. I have heard of a great deal more, but I do not know of it.

Q. How much more? As much more?

A. Probably twice as much more.

Q. So you have heard of and know about in the aggregate something like a thousand shares of Cumberland Telephone & Telegraph Company stock?

A. More than that, I should say.

Q. Would you say two thousand?

A. Less that that.

Q. Fifteen hundred?

A. Between a thousand and fifteen hundred.

Q. Now, these securities that you have been asked about—

2519 I will ask you if it is not a fact that purchasers of those securities expect either some other dividend or a rise in the price of stock. They are not bought as an investment to be placed away in the strong box on those prices, are they?

A. Do you mean the Cumberland Telephone?

Q. No, I mean the securities that Mr. Blakey asked you about, street railway stock, Kentucky Heating Company's stock and things of that kind?

A. I know of street railway's stock, Louisville Traction Common stock is bought to be put away and held in boxes purely for the income on it as a non-taxable investment.

Q. As a non-taxable investment?

A. Yes, sir.

Q. With a view of it increasing in value as time goes on?

A. With a possibility of its increasing in value but with a feeling certain of its present dividend and that income from it.

Q. And with the hope and expectation that the dividend will increase as time goes on?

A. Yes, sir; possibly.

Q. Now, securities fluctuate very greatly, do they not in the markets of the country?

2520 A. Yes, sir.

Q. They fluctuate as much as fifty points, do they not?

A. More than that.

Q. So that when you get at the market price of any particular stock at any particular time, a great many conditions have to be taken into consideration in determining why that stock is at that particular price?

A. Certainly.

Q. Very often people with ready money, waiting investments, buy these securities temporarily, do they not, expecting as soon as they find a proper place for it of going into other enterprises, that they will sell those securities and get the money back?

A. Yes, sir.

Q. Now, what do business men generally in Louisville expect to make on their money?

A. I could not answer that question.

Q. What do merchants expect to make?

A. I could not answer that.

Q. What do people who go into manufacturing businesses in Louisville expect to make?

A. Not less than ten per cent, I should say, a guess purely, because I am not in that business.

Q. I will ask you if you know anybody in Louisville who
2521 go into a business enterprise of any kind or a merchandise business of any kind in Louisville who does not hope to make at least ten per cent on his money in that business?

A. I know so little about it that I would not answer that positively but I should say they were foolish if they did.

Q. How do you feel about it yourself? Would you invest money—go into any enterprise and take the risks incident to it without expecting and hoping to get at least ten per cent return on your money?

A. Manufacturing or commercial?

Q. Yes.

A. No manufacturing or commercial enterprise—no.

Q. What enterprise would you feel that you would go into and take the risk of disaster or failure that you would be content to buy for less than ten per cent profit?

A. I think if a man has sufficient money to warrant solely his investment, he would be safe and right in taking a six per cent return on a first class water company franchise any time.

Q. That is, if he had plenty of money to live on if the thing went to disaster and he lost his estate?

A. I don't think under a first class water franchise in a good city a man has very much chance of losing it. There have
2522 been fewer failures in that direction than any other that I know of.

Q. Does the question of public control or the right of the public to regulate the rates of these concerns have an effect upon the return a man expects or hopes for when he goes into these enterprises?

A. Yes, sir.

Q. Now, having that fear over him all the time, is it not proper that he should expect a higher return than he would if that fear did not hang over him all the time?

A. No, I think not, because it is more than offset by the privilege given him by the public to operate.

Q. What is the privilege other than the privilege of going into business? What is it other than renting a house to offer your goods for sale? What privilege does he get beyond the fact that the public has permitted him to offer his goods for sale?

A. In nearly every public service franchise he gets the privilege of the use of the public streets which are very material and essential. He does not have to pay but a fixed price for this, and not a permanent rental yearly.

Q. After he has gotten the use of the streets, his problem has just started, has it not? He has got to find somebody that
2523 will trade with him, hasn't he?

A. Yes, sir.

Q. That is the serious problem in all business and commerce, is it not, to find somebody that will buy your goods?

A. He knows before hand in a public service corporation that the people must buy his goods. They have got to use his property.

Q. Suppose there is a competitor in the same business?

A. They have got to use one or the other. Whoever is the best business man gets the business.

Q. Whoever offers the best bargain gets the best business, that is it is it not?

A. Yes, sir.

Q. Suppose the other fellow is content to offer a bargain that you cannot meet, then your money is lost in your enterprise, is it not?

A. Yes, sir.

Q. Now isn't that a risk that every man takes when he goes into those kind of things?

A. Yes, sir.

Q. Don't you think that risk is worth something, some profit?

A. That risk is worth some profit—yes, sir.

Q. What rate of interest do the Louisville banks charge
2524 the customers?

A. That varies according to the season of the year and the condition of the money market.

Q. Well I understand, but you can give us the average?

A. The range in rates of interest—I would say it ranges from four to seven per cent.

Q. Sometimes more?

A. Possibly more. I never knew it.

Q. What do real estate mortgages pay in Louisville?

A. Five and six per cent.

Q. Now there a man loans his money out at six per cent. and takes not a particle of risk of loss, or substantially no risk of loss. Do you mean to say a man who invests his money in an enterprise where he takes the risk of loss and the risk of losing his principal and the risk of getting no profit, that he ought not to be allowed to make more than a man who loans his money on real estate mortgage and takes practically no risk of loss?

A. Yes, sir.

Q. How much more would you say that the man who takes the risk should have?

A. That should be judged entirely by the character of the enterprise.

Q. And the risk that he takes?

A. And the risk that he takes.

2525 Q. What do the banks of Louisville generally expect to make on their actual capital invested in their business?

A. I have not sounded the bankers thoroughly enough to answer that question.

Q. Tell me if you can about what they hope to make on their actual capital invested in their business during the past few years.

A. I should say over an average of the last five years, the average bank in Louisville has made at least eight per cent. on its capital invested, but must be taken into consideration the surplus the banks work on, inasmuch as that is really a capital to them also and is built up at the expense of the stockholders.

Q. That is undoubtedly true, but it is built up out of the earnings, is it not?

A. Built up out of the earnings.

Q. And they get a return on that, do they not?

A. Yes, sir.

Q. And you mean that they get eight per cent. on the actual money invested in the business?

A. No, sir; I mean on the actual capital.

Q. Regardless of surplus?

A. Regardless of surplus.

2526 Q. Don't you know that the principal banks in Louisville make more than eight per cent.?

A. I do. I say that that is an average return during the last four or five years. We have had banks go out of business and some of them have lost money. I am figuring up the average. The good banks of Louisville I should say make at least twelve per cent. on their capital.

Q. And what on the capital and surplus combined?

A. Somewhere between seven and eight per cent.

Q. Take the Fidelity Trust Company, what dividend does it pay?

A. Twelve per cent.

Q. Now that is twelve per cent. on its capital and surplus?

A. Twelve per cent. on its capital.

Q. Now then they add to the surplus in addition to that each year, do they not?

A. Yes, sir.

Q. What dividends do the three leading National banks in Louisville pay and have paid during the last five years?

A. That varies to the three leading National banks. The Bank of Kentucky of course is first. It pays eight per cent.

2527 Q. And has it added to its surplus each year?

A. Not each year. It has added to its surplus—well, I believe it has slightly too, but not materially one year.

Q. Not materially one year. It had one bad year?

A. Yes, sir.

Q. Now then, the other banks, what do they pay, the other two?

A. I should say the Union National is probably the bank with the next largest deposit of any of the National banks and therefore next in size. It pays ten per cent. on its capital stock.

Q. And adds to its surplus?

A. It has added to its surplus regularly.

Q. Other banks run along and some of them of course where they are not properly managed sometimes go out of business?

A. Yes, sir.

Q. And lose their capital, much less making a profit on their capital?

A. Yes, sir.

Q. That is so in every enterprise and line of business?

A. Yes, sir.

Q. You spoke of various public service companies in Louisville and

the market price of their stock, common stock and what the
2528 dividend was. I will ask you to state if you can or give me the best estimate you can of how much those concerns are earning upon the actual dollars invested in the enterprise?

A. That is a very hard question to answer without going back over the history of each corporation in particular and following it through its various financing schemes, showing just how much money was spent on the property and how much wasted.

Q. I realize that you cannot give me anything like an approximate estimate, but I will ask you if it is not your opinion that each one of them *are* earning at least ten per cent. upon the actual dollars that they have put into the business?

A. I don't believe that either the Louisville Railway Company, which is the operating company for the Traction Company, nor the Louisville Gas Company earns as much as ten per cent. now on the actual dollars invested in the property.

Q. What in your opinion are they earning upon the actual money invested in the enterprise?

A. I should say as a guess that the Louisville Gas Company is earning somewhere in the neighborhood of seven per cent. on the money invested.

2529 Q. What about the street railway?

A. I don't believe the street railway is earning any more than that.

Q. Now, the street railway is being operated by an operating company, is it not?

A. Yes, sir.

Q. Now, that operating company of course, its capital is not fictitious, but is genuine, is that correct?

A. I believe so—yes, sir.

Q. I believe I am mistaken. Isn't their security just double the amount of money put in the common stock?

A. No.

Q. You are sure of that?

Q. Because the company put in out of its earnings before it issued any bonus stocks to the stockholders, pretty near a hundred per cent. on its capital stock—original capital stock at two and a half millions.

Q. Taking the property that they leased—they of course agreed to pay interest upon the securities and dividends upon the stock of the company that owned the property, did it not?

A. Yes, sir.

Q. Wasn't there a great deal of fictitious valuation in the securities of that company that owns the properties?

2530 A. No, sir; I don't think there is but very little fictitious value in that, because the Louisville Traction Company is the sole owner of the stock of the Louisville Railway Company and there is no value that you could properly put on it.

Q. It does not own the bonds?

A. It does not own the bonds,—no.

Q. Now, Mr. Hilliard, the sum of it all, you do not regard eight

per cent. upon the actual investment as exorbitant returns for a public service company in Louisville such as a telephone plant?

A. You want my opinion?

Q. Yes, I mean upon the actual dollars invested in the business.

A. I would be extremely glad myself to get such a return on any investment I could make in a public service security in the City of Louisville.

Q. If you felt your principal was perfectly safe?

A. If I felt my principal was perfectly safe.

Q. But not feeling—not taking into consideration the absolute certainty of your security, but taking such securities as you usually find upon telephone plants, would you be willing to invest
2531 your money in a telephone security stock of a telephone plant that did not promise you at least eight per cent. return on your money, taking into consideration the risk and hazard of the business, chances of loss, the chances of a failure in the future?

A. No, sir; I cannot say that. I would be delighted to get eight per cent return on my money in a high grade telephone security of any kind, no matter whether located here or elsewhere.

Q. Have you tried to invest in any of those securities? Don't you know that you can find them all over the country?

A. That I can get eight per cent return on my money invested?

Q. I mean on the money invested in the telephone plant? I do not mean eight per cent——

A. You put it in the way of securities.

Q. Would you be willing to invest your money or do you know of anybody in Louisville who would be willing to invest money in a telephone enterprise in the City of Louisville where it did not promise to pay at least eight per cent return on the actual money they had to use in building the plant?

A. No, I think not.

By Mr. BLAKEY:

Q. Does a street railway company and an electric light
2532 company and gas company ever have to have new capital to extend their lines?

A. They do.

Q. Do you know whether the Home Telephone Company is a Kentucky corporation?

A. I have forgotten.

Q. If it is a foreign corporation, do you know whether the question of taxes on the stock of that corporation enters into the value of the stock, the market value of the stock?

A. It does not if it is a foreign corporation.

Q. Would there be—is there in the investing public any preference for stock of a company organized under the laws of Kentucky due to the taxation laws of Kentucky?

A. There is, and I believe the Court of Appeals of this State has decided where all or practically all of the property of a foreign corporation is owned in the State of Kentucky, the stock of that company is not subject to taxation.

Q. What is the reason for the expectation on the part of the investing public of a higher rate of return on money invested in manufacturing or merchandise business than money invested in public service corporations?

A. The reason lies in the fact that a manufacturing or
2533 merchandise business depends for its success on the efforts of any one man or set of men in getting the business, and against the fact that a public service corporation has the business ready made for it, and that company or its competitor must get that business. It must be done by somebody as soon as the public service corporation has put itself in shape to serve the public.

Q. How do the investing public look on securities of a public service corporation such as telephone or railway companies as compared in so far as it has any advantage, if any, over stock in a merchandise or manufacturing company?

A. Probably it looks on the securities of the public service corporation with favor as shown by the return on the investment.

Q. So the investing public generally deal in the securities of public service corporations?

A. In this locality—yes.

Q. Do they deal in them to a greater or less extent than they do in the stock of manufacturing or merchandise corporations?

A. To a greater extent.

Q. To what greater extent?

2534 A. I should say that two thirds of the local investment demands are taken up with public service corporation securities.

Q. Now you spoke of the Fidelity Trust Company I believe paying twelve per cent. How long has the Fidelity Trust Company been conducting a trust business in the City of Louisville?

A. I don't know the exact date of their organization. It was before my time, but I think it was about in 1880.

Q. How is it considered by the public from the standpoint of stability?

A. Very highly.

Q. What class of business does it principally earn the money with which it pays its dividends?

A. Principally from commissions and fees on trust estates.

Q. It is not then from returns on its individual capital or surplus loaned out?

A. Very small part of it I should say is obtained in that way.

Q. Now speaking of the earnings of some of the banks, can you tell me in a general way what some of the big banks in New
2535 York earn on their respective capital—capital stocks?

A. Some of them earn as high as sixty and seventy per cent, I think.

Adjourned to tomorrow morning at 10 o'clock.

ISAAC HILLIARD.

2536 LOUISVILLE, KY., *Oct. 15th*, 1909.

The parties met pursuant to adjournment at 10 o'clock A. M.

H. B. WARREN, called for the defendant, the City of Louisville, being duly sworn and examined by Mr. BLAKEY deposed as follows:

Q. Where do you live?
A. In Louisville, Kentucky.
Q. What is your age?
A. Thirty-two my next birthday.
Q. What is your occupation?
A. I am employed by the Mutual Audit Company, Louisville, Kentucky, as an Accountant and Auditor.
Q. Was the Mutual Audit Company employed by the City of Louisville to examine into the books of the Cumberland Telephone Company within the last six or eight months?
A. They were.
Q. Did the Mutual Audit Company make an examination of the books of the Cumberland Telephone and Telegraph Company?
A. Yes, sir.
Q. Who had charge of that examination for the Mutual Audit Company?

2537 A. I had charge of that examination under the direction of the General Manager, Mr. Farnham.
Q. What is Mr. Farnham's name?
A. Mr. E. W. Farnham.
Q. What position does he hold with the Mutual Audit Company?
A. General Manager.
Q. Do you know his present condition of health?
A. I know that he is in very bad health at the present time, hardly able to get around.
Q. Is he well enough to give a deposition at this time in this case?
A. No, sir.
Q. What experience have you had in examining and auditing books of a nature similar to those of the Cumberland Telephone Company?
A. I have never examined any other telephone books.
Q. Have you ever examined into and audited books of railroads or municipalities or any other institutions of that character or similar character?
A. Yes, sir.
Q. What experience have you had along that line, if any?
A. You want to know about the actual kind of work I did?

Q. Yes, the kind of work you were engaged in of that
2538 nature.

A. I have inspected and examined the capital stock accounts, bond issues, earnings and expenses of railroads, and have examined all branches of municipal governments and I have done all kind of work in commercial business houses or on commercial business books, you might put it.

Q. What railroad accounts have you examined?

A. The Florida East Coast Railroad, the Louisville & Nashville Railroad, Chicago & Northwestern Railroad, Atlanta & St. Andrews Bay Railroad, the Southern Railroad in Kentucky, the Queen and Crescent Railroad. That is all I can think of just now.

Q. Were you under employment of the Mutual Audit Company at the time you were making these examinations?

A. Yes, sir.

Q. Under whose employment and direction was the Mutual Audit Company working when those various railroad properties were examined?

A. Under the railroad commissions of different states.

Q. Does the Mutual Audit Company make a specialty of any class of accounting work?

A. Yes, sir.

Q. What particular class does it make a specialty of?

A. Railroad and municipal.

2539 Q. What do you mean by "municipal"?

A. The auditing of books of city government, county government and state government.

Q. When did you begin any work in connection with your examination of the Cumberland Telephone Company's books?

A. About the 4th day of May, 1909.

Q. Where did you begin that work?

A. At the general offices of the Cumberland Telephone Company at Nashville, Tennessee.

Q. When the work was begun, how many men did the Mutual Audit Company put on the job?

A. Two, the General Manager and myself.

Q. Did the Mutual Audit Company have any instructions from the master as to what they should do—what it should do and what its Accountants should do?

A. Yes, sir.

Q. Who has those instructions now?

A. I have them.

Q. Are they in your possession or in the possession of Mr. Farnham?

A. They are in my possession.

Q. I will ask you to file those instructions and make them a part of your deposition?

A. I do so.

2540 The paper in question was thereupon produced, filed with this witnesses deposition and marked by the stenographer Exhibit No. 1 for identification.

Q. I notice these instructions are in the shape of a letter signed by Henry Burnett, Special Master, and addressed to E. W. Farnham, Esq., Louisville, Kentucky. Do you know the occasion for them being addressed to Mr. Farnham instead of to the Mutual Audit Company?

A. I can't say as to that.

Q. Do you know whether Mr. Farnham had these instructions

at the time the examination was begun at Nashville—whether he had received them at that time?

A. My memory is not absolute on that. I could not say.

Q. I notice one paragraph in the letter is as follows: "In conjunction with an expert accountant to be appointed by the Telephone Company, you are to make your investigation to make it as complete as may seem to you necessary and proper, etc." Did the Cumberland Telephone Company have an accountant to meet you at Nashville at the time you began this work on May 4th, 1909?

A. Yes, sir.

Q. Who was that accountant?

A. George Wilkinson.

Q. What was the first thing that was done in connection
2541 with examining the accounts of the Telephone Company or making plans for the examination of the accounts?

A. Mr. Wilkinson and Mr. Farnham held a conference.

Q. Were you present?

A. At which I was present, as to the best and quickest method of procedure in the work to be done, and drew up a set of—or a statement, rather, a statement of suggestions to be followed out in the making of the report.

Q. Was that paper an agreement or merely a memorandum as to the method which they at that time thought should be followed?

A. It was merely a memorandum.

Q. Was it so understood by all three of you?

A. Yes, sir.

Q. Did Mr. Wilkinson have any assistant present at that time?

A. No, sir.

Q. What was done by the Mutual Audit Company and by Mr. Wilkinson looking towards the examination of those books—what was the next thing that was done?

A. It was mutually agreed between the Accountants that we would ask the Auditor of the Cumberland Telephone Company to have his men make up for us a detailed itemized statement of
2542 the construction account cost of the Louisville exchange from January 1st, 1900 to January 1st, 1909. It was further agreed that Mr. Wilkinson should devote himself to examining the earnings of the Cumberland Telephone Company and that the Mutual Audit Company should devote themselves to the examination of the expenses of the Cumberland Telephone Company and all papers and figures of both Accountants to be exchanged for checking purposes or for any other reasons.

Q. Did you for the Audit Company begin any work in connection with those books? And if so, what did you begin doing and about when did you begin?

A. I think it was about the 6th of May we started to work on the expenses of the Cumberland Telephone Company.

Q. What particular branch of their books did you begin to work on?

A. I don't believe I understand that question.

Q. Did you begin work on the construction account or the expense account?

A. Oh, I began work on the expense account at first.

Q. Who did you have assisting you, if anyone?

A. Mr. Castleman.

Q. Who was Mr. Castleman?

A. He was an employé of the Mutual Audit Company.

2543 Q. How long did you work on the expense account at that time?

A. I think about one day.

Q. Then what did you do and what did you go to work at and what was the occasion of the change, if you know?

A. Mr. Smith, the Auditor of the Telephone Company requested the Accountants to draw off for themselves, the detailed statement of the construction account cost, owing to the pressure of time and work on his men he felt that he could not spare them for this piece of work.

Q. Did you and Mr. Castleman then begin work on this construction account?

A. We did.

Q. And just how did you go about that work in connection with the construction account?

A. We received the books showing the itemized cost of the construction work, and from those books made an exact copy, after which we balanced the same, and made it agree, if possible, with the books.

Q. Then what did you do in connection with the construction account, if anything?

A. Then we made a request for such vouchers of the construction account as in our judgment we cared to inspect.

2544 Q. Then when you had completed that, what did you do?

A. Then we returned to the examination of the expense accounts of the Cumberland Telephone Company.

Q. When did you return to that examination of the expense accounts, about what date?

A. I should say somewhere around the 1st of June.

Q. What course did you pursue in going through these expense accounts?

A. We did not draw off an itemized statement of the expense accounts, using the books of the Cumberland Telephone Company as our guides for the vouchers which we cared to inspect.

Q. How long did it take you to make your examination of the expense account?

A. I think probably three weeks at least.

Q. Then what work, if any, did you take up?

A. We then checked those statements which had been prepared by Mr. Wilkinson.

Q. What statements were those?

A. Statements of all the earnings of the Cumberland Telephone Company for the years 1905, 1906, 1907 and 1908, and a statement of the expenses in total for the same years which Mr. Wilkinson had drawn off from the books.

2545 Q. What did you do when you completed that, if anything?

A. I think the next thing we did was—well, we cleaned up all the work, went over all the work to see that we had everything so far completed in good form.

Q. Did you at any time examine into the question of how much the Cumberland Telephone Company had paid for the Ohio Valley Telephone Company's property?

A. Yes, sir.

Q. In what way and when was that done?

A. Mr. Wilkinson had already prepared a statement or a set of statements pertaining to this matter, and we checked the statements and the figures on the statements with the books of the Ohio Valley Telephone Company.

Q. And did you find Mr. Wilkinson's figures correct?

A. Yes, sir.

Q. How many men were there engaged on that work for the Mutual Audit Company during the time you were there?

A. Now, that reminds me. I have omitted one thing in the procedure of our work that you asked me about. We also drew off a statement of toll costs, outgoing and incoming, from the Louisville exchange, together with the revenue derived from the outgoing calls.

Q. Was there any revenue from the incoming calls?

A. That would not appear upon the—rather, did not ap-
2546 pear upon the records from which we derived our information.

Q. Well, you did not answer my question about how many men you had working on these books during the time you were there?

A. Four all the time and five when Mr. Farnham was present.

Q. Who were those other men besides yourself, Mr. Farnham and Mr. Castleman?

A. Mr. John Key and Mr. Chase Kimbel.

Q. Were Mr. Castleman and Mr. Key and Mr. Kimbel working with you and under your direction?

A. Yes, sir.

Q. Now taking up the matter of the Ohio Valley purchase. I wish you would state whether you examined the books of the Ohio Valley Company to ascertain what those books showed as to its assets and liabilities as of the 3d day of June, 1899?

A. No, sir.

Q. Did you examine them as of any date prior to January 1st, 1900?

A. No, sir.

Q. Why didn't you?

A. Because our instructions were to examine the books of the Cumberland Telephone Company and examine them as to
2547 their cost to the Telephone Company, of the Ohio Valley Telephone Company, and we had no authority to make an examination of the books of the Ohio Valley Telephone Company other than as to the assets and liabilities transferred to the Cumberland.

Q. Now what did you find to be the financial statement of the assets and liabilities of the Ohio Valley as of January 1st, 1900?

A. Do you want that in detail?

Q. I will ask you to file the statement as an exhibit with your deposition showing that account as it appeared on the books of the Ohio Valley as of that date?

A. I will file such a statement.

The statement in question was later furnished by the witness and was filed with his deposition and marked by the stenographer Exhibit No. 2 for identification.

Q. Is that exhibit which you will file, a copy of Exhibit No. 1 appearing in the report made by the Mutual Audit Company to the Master in this case?

A. It is.

Q. Now I will ask you to turn to that exhibit and state what were the total assets of the Ohio Valley as they appear as of January 1st, 1900?

2548 A. $932,532.08.

Q. What items in a general way go to make up that total of nine hundred and thirty two thousand dollars?

A. The cost of construction of various exchanges and toll lines, real estate, franchise, supplies, cash on hand.

Q. And are there other sundry accounts?

A. Other sundry accounts?

Q. What appears to be the value placed by the Company on its exchanges, office furniture and fixtures, and toll line construction?

A. $638,196.74.

Q. What appears there as a value of the real estate?

A. $115,765.46.

Q. What appears to be the value of the franchise?

A. $100,000.

Q. Now turning to the liabilities, what are the total liabilities appearing on that account?

A. $932,532.08.

Q. What items go to make up those liabilities in a general way.

A. Capital stock, bonds outstanding, surplus accounts and various reserve accounts and other outstanding accounts due by

2549 the Ohio Valley Telephone Company.

Q. Now how many shares of the capital stock were there outstanding in the Ohio Valley at the time the Cumberland Company took it over?

A. Five thousand, four hundred and ninety-four shares.

Q. What was the par value of those shares?

A. One hundred dollars.

Q. Making a total of how much?

A. $549,400.

Q. Now do the books of the Cumberland Telephone Company show how much it paid for that stock—how much the stock cost them?

A. They did not buy that five thousand, four hundred and ninety-four shares. They bought only a portion of it.

Q. Did they acquire the property of the Ohio Valley Telephone Company?

A. Yes, sir.

Q. In what way did they acquire it?

A. By buying a majority of the capital stock outstanding.

Q. And did they do anything else—did they in any other way acquire the other property or other stocks or exchange their stock for it?

A. They did.

Q. What did they do in that respect?

2550 A. They exchanged share for share such stock as they could not or did not buy.

Q. How many shares of stock did they purchase?

A. Three thousand, five hundred and fifty-one shares.

Q. How much did they pay for that?

A. $500,835.

Mr. GRANBERY: I understand that the joint report of the Accountants and the separate report of the Accountant is evidence in this case without any further proof, they being filed with the Master Commissioner, and under the agreement I understand that they are proof without any further evidence to establish them. I make this explanation thinking maybe that you are endeavoring to prove the report in such a way as to get it in the record. I understand that they are already a part of the record. If that is not your understanding, I am perfectly willing that it shall be understood and stipulated that the reports filed with the Master are a part of the record and evidence for such purposes as either side may desire in this case.

Mr. BLAKEY: The defendant is not willing to enter into such stipulation.

Mr. GRANBERY: I think we had better have a ruling on this by the Master. I think we ought to send for him to come

2551 up and not delay the taking of this evidence, but I think he should come and determine that question, because it is a matter of importance to know from our standpoint what the situation is in respect to these reports.

Mr. BLAKEY: I think so far as the Master is concerned that the reports ought to be considered by him for what he takes them for, but so far as the court is concerned, that is a matter of law, as to whether those reports are evidence without any additional proof on the subject. I don't see that any ruling of the Master could affect the situation one way or the other.

Q. How many shares were there outstanding in addition to the ones which they purchased for cash?

A. One thousand, nine hundred and thirty-seven shares.

Q. Do you know to whom those shares belonged?

A. One thousand, nine hundred and twenty shares belonged to the American Telephone & Telegraph Company. It may have been known at that time as the American Bell Telephone Company.

Seventeen shares belonged to other parties. Of that I have no knowledge.

Q. What did the Cumberland Telephone Company do in reference to those one thousand, nine hundred and thirty-seven shares?

2552 A. They exchanged one share of their own stock for one share of the Ohio Valley Telephone Company's stock.

Q. For the entire one thousand, nine hundred and thirty-seven shares?

A. Yes, sir.

Q. Now adding those two figures together, the one you have just named as the cash paid for a portion of the stock and the $193,700, makes a total of how much?

A. $694,535.

Q. How much is that in excess of the par value of the capital stock as it appeared on the books of the Ohio Valley?

A. $145,135.00.

Q. Mr. Smith, the Auditor of the Company has testified in this case that of the items appearing on this sheet under the heading of "Liabilities," the surplus account of $12,322.08, the reserve for depreciation $8,000, the reserve for toll line reconstruction $9,000, and the reserve for special accounts $38,875.16, were not real liabilities,—were not assumed by the Cumberland Company and were never paid by the Cumberland Company. Now, what did those items total?

A. $68,197.24.

2553 Q. Now, deducting that amount from the $145,000 about which you have just testified as the surplus value paid for the stock of the Ohio Valley, leaves a balance of how much?

A. $76,937.76.

Q. Now then, if the capital stock of the Ohio Valley was worth $145,000 more than it appeared on the books of the Ohio Valley as being, and if the liabilities appearing on the books of the Ohio Valley were $68,000 less than the books showed them to be, what would be the difference appearing on the books between the assets and the liabilities of the Ohio Valley as of that date?

A. $76,937.76.

Q. Now if we assume that the exchanges and toll lines of the Company were really worth the amount which the books would show under that state of case, namely, $76,000 more than they did show, or $76,000 in excess of the $932,000, and if that $76,000 is prorated against the construction of the exchanges and toll lines in proportion to the value of the toll lines and the value of the exchanges, if that course had been pursued by the Cumberland Telephone Company in transferring the accounts and property of the Ohio Valley to the books of the Cumberland Company, how much would those books have shown to be the value of the ex-

2554 change properties and how much to be the value of the toll line construction?

A. The exchange properties would show a value of $574,647.91. The toll line construction would show a value of $149,486.59.

Q. And if the $76,000 had been added to the value of the exchange and toll line construction in the manner you have indicated, would the books have balanced as to the assets and liabilities?

A. Yes, sir.

Q. And would the books so balanced have shown the actual cost to the Cumberland Telephone Company of the stock of the Ohio Valley?

A. Yes, sir.

Q. And would those books also have shown all of the liabilities as they appear on the exhibit which you have before you, eliminating the ones which I detailed as having been admitted by Mr. Smith as not being liabilities?

A. Yes, sir.

Q. Now, when the Cumberland Telephone Company placed the value of the Ohio Valley property or the accounts of the Ohio Valley's property on its books, especially as regards the Louisville exchange, what course did they pursue and what did they cause their books to show?

2555 A. They added to the amount previously referred to of $638,196.74, that portion of the cost to the Ohio Valley Telephone Company which the Ohio Valley Telephone Company had in previous years written off against the profits of their business to the extent of $135,505.70. They further added a premium of $145,135.00 on account of the purchase of three thousand, five hundred and fifty-seven shares of the Ohio Valley stock for cash at a price over and above $100 per share. They further added an approximate premium on one thousand, nine hundred and thirty-seven shares of stock exchanged to the amount of $79,979.91, making a total valuation of telephone plants to the amount of $998,817.33.

Q. How is that item of $135,000 which you mentioned—how does that item appear on the books of the Ohio Valley, if it appears there at all?

A. Do you want the dates and everything, or the total?

Q. Just the items that go to make up the total amount?

A. There was deducted from the value of their franchise $12,500. There was deducted from the aerial construction charges $89,385.99; from the equipment construction $19,000; from underground cable construction $14,619.71.

Q. Over what period were those items charged off?

2556 A. Beginning December 31st, 1891, to and including December 31st, 1898.

Q. What was the occasion for those items to be charged off in the way they were, if you know?

A. Not having examined the books of the Ohio Valley Telephone Company, and furthermore not having been present at the meetings of the Board of Directors where such entries were authorized, I of course cannot state the reasons of the Ohio Valley Telephone Company for making such entries.

Q. Are you sufficiently familiar with book-keeping methods of corporations of this character to know in a general way why items of this character are charged off?

A. I think so.

Q. Please state why corporations of this character usually charge off items of that character?

A. The creating in this manner of any such account would of course reduce the book value of such account, and the only legitimate reason for such a reduction would be that this account had been previously charged with items in an erroneous manner.

Q. What would you say about the property having depreciated and no depreciation fund having been set aside to take care
2557 of it and the Company's charge for certain parts of the value of the plant to represent that depreciation? Can you answer that question?

A. I don't think I can, no. I do not see through it.

Q. Now taking the item, estimated value of the one thousand nine hundred and thirty-seven shares. How was that arrived — if you know?

A. I don't know how that was arrived at.

Q. If a forty dollar premium on each share had been estimated on these one thousand, nine hundred and thirty-seven shares, how much would have been the amount represented by the excess value?

A. $77,480.

Q. Now in what way did the Cumberland Telephone Company place on their books the value of the Louisville exchange proper, and how did they arrive at the figures that they placed on their books representing that value, if you know?

A. From the total of $998,817.35, which I have previously testified about, was deducted the value of the toll lines to the amount of $199,763.47, leaving a balance of $799,053.88. This last amount was divided amongst the nine exchanges acquired on the basis of the number of subscribers in each exchange, excepting that
2558 Louisville was charged at the rate of two subscribers for one.

Q. You mean Louisville was treated in this division as having twice as many subscribers as it actually had?

A. Yes, sir.

Q. And what percentage of the amount you last named was charged on their books as being the value of the exchange of Louisville on that basis?

A. 84.92 per cent.

Q. Was that the amount that was placed on the books of the Cumberland as being the value of the Louisville plant?

A. Yes, sir.

Q. Mr. Farnham in his report speaks of an item of 80.4 per cent having been charged as the Louisville proportion of the amount, you have named. Do you know where he gets that item?

A. He figured, when he arrived at that percentage by the same method of computation as that employed by the Cumberland Telephone Company. It seems to be merely a difference or possibly an error in figuring.

Q. Basing the values of the various plants on the ratio *with* each bore to the other according to the number of stations in each ex-

change, and treating Louisville as having twice as many
2559 stations as it did have as of January 1st, 1900, what percentage of the total which you have named there should have been charged to Louisville?

A. 80.4 per cent.

Q. What amount then was placed on the books of the Cumberland Telephone Company after it acquired the Ohio Valley, as the value of its plant at Louisville, Kentucky?

A. $678,254.69.

Q. Did that include any of the items of assets appearing on the exhibit before you, such as real estate, franchise, supply accounts, and other incidental accounts?

A. It did not include any of those accounts mentioned.

Q. Did it include the toll line construction appearing on that exhibit under the heading of "Assets"?

A. It did not.

Q. Now, when I was asking you in regard to Exhibit No. 2, you arrived at a figure of about $76,000, as the amount which you apportioned as the excess of the liabilities over the assets, taking into consideration the premium paid by the Cumberland Telephone Company for the stock of the Ohio Valley Company, and taking into consideration the items of liabilities which are shown not to have been liabilities, and that item of $76,000, I believe you apportioned against the construction of various exchanges,
2560 and against the toll lines belonging to the Ohio Valley, and arrived at certain figures as the amount then representing the value of the exchanges and the toll lines. Will you please repeat those figures?

A. I find the value of the exchanges to be $574,647.91 and the value of the toll lines to be $140,486.59.

Q. If the $574,000, representing the value of the exchanges were apportioned among them on the basis which the Cumberland Telephone Company professed to apportion them, namely, treating Louisville as having twice as many stations as it really had, and then apportioning the cost or apportioning the value among the exchanges according to the number of stations they had, what would be the amount representing the Louisville plant? In other words, what is 80.4 per cent of $576,000, about which you have testified?

A. $462,016.92.

Q. Would that include the real estate or any other assets obtained by the Cumberland Company from the Ohio Valley?

A. No, sir.

Q. Would that represent the same item which the $678,000., which the Cumberland Telephone Company placed the value
2561 of the Louisville plant on its books at?

A. Yes, sir.

Q. Now, coming to the construction account of the Cumberland Telephone Company. Over what period did you examine into the construction account?

A. From January 1st, 1900 to January 1st, 1909.

Q. What did the books of the Company show to have been the

amounts expended by them for each of the years 1900 to 1908 exclusive in the way of construction?

A. 1900, $166,939.03. 1901, $178,851.39. 1902, $213,470.32. 1903, $163,486.84. 1904, $131,555.63. 1905, $60,966.01. 1906, $89,281.50. 1907, $21,491.68. 1908, a credit to the construction account of $4,351.83.

Q. Did you examine the vouchers representing any part of the items going to make up the totals you have read off?

A. Yes, sir.

Q. To what extent did you examine such vouchers?

A. Excepting the month of January 1900, and part of February 1900, I examined the greater majority of the vouchers representing a value of over $100., excepting the vouchers calling for materials or supplies furnished for construction by the supply department of the Cumberland Telephone Company.

2562 Q. Have you prepared a statement showing the extent of the vouchers examined by you as to the amounts for each of the years 1900 to 1908 exclusive?

A. Yes, sir.

Q. Will you let me see that statement?

The witness did so.

A. I have prepared a statement of the vouchers examined, classified as to the character of vouchers of the equipment construction and the aerial construction. I have not prepared any statement of vouchers examined and classified as to underground construction.

Q. Will you file those two statements and make them a part of your deposition as exhibits?

A. I do so.

The papers in question were thereupon filed with this witness's deposition and were marked by the stenographer for identification "Exhibits "Warren, No. 3," and "Warren No. 4."

Q. I notice under the heading of "Recapitulation," aerial construction, being Exhibit "Warren No. 3, you show vouchers under the heading of "Supplies from supply, not examined," and also under the heading of "Not examined" a total for the period amounting to something like $335,000. Is that correct?

A. That is right.

2563 Q. What character of vouchers were the vouchers aggregating the $41,000, under the heading of "Not examined"?

A. Not having examined the vouchers, I cannot say as to their character.

Q. Why did you not examine those vouchers?

A. They consist mostly of vouchers for small amounts, and being pressed for time, and being urged to move as rapidly as possible in our work, we did not take the time to examine small vouchers.

Q. What about the $294,000, under the head of "Supply vouchers not examined"? Why was it that you did not examine those vouchers?

A. To have examined those vouchers would have necessitated a working in the supply department, and having visited the supply

department to the extent of finding out how much work would be necessary to examine those vouchers, I came to the conclusion that it would take two or three or four months to do the work, and do it properly, and I knew we did not have the time to devote to that particular piece of work, so we did not examine any of the vouchers from the supply department for that reason.

Q. From what source did you get the items going to make up the $294,000.?

A. Each month the supply department furnishes to the
2564 auditing department a statement showing the amount of supplies chargeable to the various exchanges of the Cumberland Telephone Company. This statement is charged by the Auditor on his books to the exchanges designated by the supply department. From this statement I obtained these figures referred to, which statement showed nothing but the total amount chargeable each month to the Louisville exchange.

Q. What did the records or vouchers or auditor's bills from which you took these items show?

A. You are referring now to this item of $294,000.?

Q. Yes, I am referring to the items which go to make up the total of $294,000. as there appears in the auditor's office.

A. They showed the amount chargeable to the various exchanges.

Q. Did they show what articles were furnished by the supply department to the various exchanges?

A. They did not.

Q. Did they show anything except the amounts which the supply department said should be charged against the various exchanges?

A. I believe they did show the classification of the expenditure as between construction account, aerial equipment and under-
2565 ground expenses, but further than that classification and the total amount to be charged, they showed nothing.

Q. Was there any way of telling from those records in the Auditor's office whether any material represented in that total of $294,000. from the supply department was actually furnished to the Louisville exchange?

A. No, sir.

Q. Was there any way of telling from those vouchers whether the articles or supplies so furnished, if furnished, were used in the City of Louisville or whether they were used in the district of which Louisville is the center?

A. They did not so show.

Q. What did you do insofar as these particular items aggregating $294,000. are concerned when it came to accepting or rejecting them as a part of the money expended by the Telephone Company in constructing its Louisville exchange?

A. We accepted the figures as shown.

Q. Now, what did you do in that respect insofar as the items aggregating $41,000. under the heading "Not examined" on this exhibit? Did you accept those items as they appeared on the books or did you reject any of them?

A. We accepted them.

Q. And do both of those items, the $294,000, and the $41,000, now appear in your statement of what the books show as the
2566 cost of construction for the period covered?

A. They do.

Q. I notice on this same exhibit under the heading "Excerpts" making a total of $2,290.07. Please explain what that item means?

A. That consists of charges made to the construction account, Louisville exchange, which charges were made erroneously and which we deducted from the construction account cost.

Q. Did Mr. Wilkinson agree that those items should be deducted?

A. He did.

Q. Did Mr. Wilkinson object to any of those items?

A. He did not.

Q. Were you present when I cross examined Mr. Blair Smith, the Auditor of the Company?

A. I was.

Q. Did I ask him in detail in regard to the vouchers going to make up the items appearing under the heading of "Excerpts" on this sheet?

A. I don't remember about that.

Q. What were the character of those items represented in that total, I mean in a general way?

A. They consisted of telegraph poles erroneously charged
2567 to Louisville, freight on shipments to other places which was paid by the Louisville exchange, errors in the pay roll, the pay roll having been charged to Louisville construction when it properly belonged elsewhere.

Q. Did such pay rolls show on their face that they belonged elsewhere?

A. Those items which we deducted from the construction account did show that the work was done elsewhere,—actually credited, the reason for which I am not able to state now.

Q. Were you present when I cross-examined Mr. Smith in regard to the pay roll vouchers which had been charged to the construction account of the Louisville exchange?

A. I was.

Q. I will ask you whether you made up any working papers at the time you went over the construction account showing the number of the vouchers and showing any other facts in regard to the vouchers?

A. I have before me an itemized statement of every voucher and the amount of every voucher charged to the construction account Louisville exchange since January 1st, 1900 up to and including December 31st, 1908.

Q. When did you make that itemized statement?

A. During the first month I was engaged upon this work.

Q. At the time the Mutual Audit Company filed its report
2568 with the Master, were those papers filed with him?

A. No, sir; they were not.

Q. Why were they not filed with him?

A. Because they were in the possession of Mr. George Wilkinson.

Q. How did Mr. Wilkinson get possession of them?

A. He asked us to loan them to him.

Q. When did he return them?

A. They reached the office of the Mutual Audit Company on September 6th, 1909.

Q. Had you those papers in your possession or any memoranda of any voucher connected with the construction account during the first week Mr. Smith was cross-examined?

A. I had not.

Q. I believe you said you were present when I examined Mr. Smith in regard to the pay roll vouchers covering two or three years?

A. Yes, sir.

Q. Did you suggest that I call for any particular voucher or any voucher for any particular time, any particular period?

A. I did not.

Q. Did you have any information or any recollection of any particular class of vouchers at that time dealing with the construction account and especially pay roll vouchers?

2569 A. I did not.

Q. Were those vouchers which I asked for, asked Mr. Smith to produce, asked for indiscriminately?

A. They were.

Q. Did I ask Mr. Smith about all of the vouchers that he produced?

A. No, sir; I believe there were a few that you did not ask about.

Q. How many would you say?

A. Probably a half dozen—less than ten.

Q. Did you see those vouchers which I did not ask Mr. Smith about?

A. I did.

Q. Was there any difference, material difference between those vouchers and the vouchers which I did ask him about?

A. There was none.

Q. Now you have stated here that the amount expended for the year 1900 I believe was $166,000, as shown by the books, and certain other amounts for each of the other years. You have also shown I believe that the amount which you found from their records to have been erroneously charged to construction was something between $2,000 and $3,000. I will ask you if you made any attempt to go into the question of whether the men whose wages ap-

2570 peared on the pay roll vouchers were engaged in doing construction work for the Louisville plant?

A. No further than that information which was contained upon the voucher itself.

Q. Was there any way of telling from the voucher where the men had worked, whose names appeared on those pay rolls, or what class of work they had done?

A. There was no way for us to tell where they had worked, but as to the class of work they had done, that could be judged from the occupation of the man, although that man may have done a great deal of other classes of work other than his occupation would indicate.

Q. In making your deductions from the construction account, did you take into consideration any of those facts about which I have just asked you?

A. No, sir.

Q. Now as for the vouchers for material. Did you go into those vouchers and examine such vouchers as appeared to be for material and which did not originate in the supply department?

A. We did.

Q. What did those vouchers for material show in a gen-
2571 eral way?

A. The- would show the name of the person from whom they were purchased, usually the designation to which the goods were shipped, the quantity of goods, the class of goods and the value of the goods, and on the distribution sheet of the voucher it would show the accounts to which the amounts should be charged.

Q. Where was that distribution sheet of the voucher made up, if you know?

A. Both at Louisville and at Nashville.

Q. Was there any way of you telling from the voucher itself whether the material represented by the voucher was used in connection with the construction account of the Louisville exchange?

A. None further than the distribution as shown on the voucher.

Q. You say the voucher would sometimes show that the goods had been shipped to Louisville?

A. Yes, sir.

Q. What percentage of those vouchers would show that to be the case?

A. I never figured that up to see. I could not make a guess at it. I might state, though, that the greater majority and possibly almost all of the vouchers of the Western Electric Company showed
2572 on them the point of shipment—the designation point of shipment of the goods and I did find some few others showing that the goods had been shipped to Louisville.

Q. Were there any considerable number, say twenty per cent, which did not show on the voucher to what point they had been shipped?

A. I could not commit myself to any quantity, but other than the Western Electric Company's vouchers and a few others, a great majority of those remaining did not show, but it must be remembered that a great deal of those vouchers called for goods purchased in Louisville, although it did not show that they were used in Louisville.

Q. Now when it comes to the items of the Western Electric Company, were you present when I examined Mr. Smith in regard to those items?

A. I was.

Q. To what extent did I ask him to produce those Western Electric Company vouchers for equipment?

A. Mr recollection is that we examined almost—that we examined all of the Western Electric Company vouchers for equipment.

Q. Now when it came to the vouchers representing the purchase

of tools and teams, were you present when I examined Mr.
2573 Smith in regard to those vouchers?

A. I was.

Q. To what extent did I ask Mr. Smith to produce vouchers representing the purchase of tools and teams?

A. We examined practically all of those.

Q. Were those vouchers asked for in the way in which they appeared on your working papers?

A. They were.

Q. And do your working papers show the vouchers as they appeared on the books?

A. Yes, sir.

Q. Now a great many of those vouchers for tools and teams as shown by Mr. Smith, were for tools and teams purchased and to be used at places other than Louisville. I will ask you whether those vouchers were included in the exceptions and deductions which the Mutual Audit Company and Mr. Wilkinson agreed should be deducted from the construction account?

A. They were not.

Q. Now, were the items which you read—the totals of the items which you read a short time ago as representing the construction account for the years 1900 to 1908 inclusive, the account as it appears on the books of the Company or was it the account as it appears after the deduction which the Mutual Audit Company
2574 and Mr. Wilkinson agreed should be made?

A. Those figures represent the accounts as they appeared on the books of the Cumberland Telephone Company.

Q. Now, after the deductions and the exceptions which were agreed to by the Accountants had been made for each of those years, please state what the amounts would be?

A. For 1900, $166,775.23. 1901, $178,549.14. 1902, $217,128.05. 1903, $163,486.84. 1904, $131,371.13. 1905, $60,691.21. 1906, $89,125.15. 1907, $20,770.42. 1908, a credit of $4,351.83.

Q. And those figures added to the total—the item of $678,000, which the company shows to have been the amount it paid for the Ohio Valley plant at Louisville, Kentucky, makes a total of how much?

A. $1,701,900.03.

Q. Did you go into the item representing the amount expended for the years, 1905, 1906, 1907 and 1908 for maintenance reconstruction?

A. We did, excepting for 1908, and in the year 1908, the reconstruction maintenance and the repairs maintenance were consolidated under one account and we were unable to tell which was which.

2575 Q. I believe however before I go into that phase of the case I will ask you about this exhibit No. 4 which you testified about a few minutes ago. I notice on this exhibit No. 4 under the heading of "Supplies not examined" a total of $155,000., and under the heading "Not examined" a total of $27,000. What do those two items represent?

A. The item of $155,000. represents the statement of supplies

furnished by the supply department to the various exchanges, which statement is furnished periodically to the Auditor for his charge to the various exchanges of the figures set forth on the statements, which as I testified previously in relation to another amount, we did not examine those supply vouchers. The item of $27,000. under the heading "Not examined" represents a large collection of vouchers for small amounts for the period of nine years, totalling this amount, which small vouchers we did not examine.

Q. What character of purchases did those vouchers represent? I mean under what general heading, equipment or aerial construction or conduit work or what?

A. This $27,000. or the $155,000?

Q. All of it.

A. They were all charged to equipment.

Q. So that those items you named there are in addition
2576 to the $294,000. and $41,000. which you testified about in connection with No. 3, are they?

A. They are.

Q. Do they cover the same period?

A. They do.

Q. And those items represent equipment vouchers and items on exhibit No. 3 represent aerial construction vouchers, do they not?

A. They do.

Q. Now what are the total of those vouchers which you did not examine as shown by these two exhibits?

A. $518,382.89.

Q. Now were there any vouchers under the general heading of conduit or underground construction which you did not examine?

A. There undoubtedly were, but I have not compiled a statement of them.

Q. What were the character of such vouchers if you know?

A. Not having examined them I could not state.

Q. I mean were they in the nature of vouchers of the character appearing in your two exhibits under the head of "Supplies not examined" and also under the heading of "Not examined"—I mean generally speaking now?

2577 A. Yes, sir; a great many of them were.

Q. Were what?

A. Were for material furnished by the supply department.

Q. Now please explain in a general way what the situation was during the time you were examining these vouchers as regards the time within which you had to complete your examination?

A. You are referring now merely to the time we were examining these vouchers?

Q. The time you were making your examination of the books and especially the various vouchers which you did examine.

A. When we first went to Nashville we were told that the report would have to be completed by the 8th day of May.

Q. You were told by whom?

A. I was told by Mr. Farnham. Where he got his information from I am unable to state. This time limit of May 8th was removed

and no definite date set for the completion of the work, but we were in constant receipt of letters from our client that it was imperative upon us to hurry as fast as possible and get through as quickly as possible and we were doing what we could to finish as quickly as possible, consisted with good work. While we were so thus engaged, I was requested to attend a conference at which conference were present the Master, the Attorneys for both sides and the Accountant, which conference was called for the purpose of attempting
2578 to set some definite date for us to furnish our work. The constant hurrying of our client was not conductive to good work and we were constantly on the alert to do as much as possible in as little time as possible so that we could make our report as complete within a limited space of time.

Q. Do you know the occasion for your client insisting on this haste?

A. I understood that he was being urged by the Master in the case to use all possible speed and to hurry his Accountants along as fast as possible.

Q. Who was insisting at the conference you speak of on an early date being set for the conclusion of your labors?

A. The counsel for the plaintiff.

Q. What was the attitude of counsel for the City in that respect?

A. The counsel for the City wanted us to get through as rapidly as possible consistent with good work but did not want to hinder us in what we considered the performance of good work.

Q. What ruling did the Master make on the subject, if any, if you remember?

A. The Master ruled that the time limit should be removed and no definite date set for the completion of our work, but urged
2579 us to do our best to get through and get through as quickly as possible.

Q. Did the Master say anything about expecting a report within a week or ten days?

A. The Master asked me if it could be done to which I made reply that it could not and giving my reasons therefor.

Q. Do you remember anything about the circumstances under which the work was finally stopped entirely?

A. I remember that the President and General Manager of the Telephone Company came up to the room where we were working and endeavored to impress upon us that we did not know what we were doing, were wasting a great deal of time and that he felt we ought to have been through a long time ago; and in other words made us feel that our presence in his building was no longer requested or desired.

Q. Well, under the circumstances, did you feel justified in attemtping to go into the supply vouchers or the other vouchers representing construction accounts which you did not go into?

A. I did not.

Q. Did you or any of your men waste any time while you were there?

A. Not that I am aware of—no, sir.

2580 Q. Did you work any at night time?
A. We did.
Q. To what extent?
A. Well, I did not count the nights that we worked, but we worked a great deal at night time, frequently to one o'clock in the morning. Every Sunday we worked, not always all day, but every Sunday.

The further taking of these depositions was adjourned until 2 o'clock P. M.

2581 AFTERNOON SESSION.

The parties met pursuant to adjournment at 2 o'clock P. M. and the direct examination of Mr. WARREN was resumed by Mr. BLAKEY as follows:

Q. Now did you go into the items of maintenance repairs and maintenance reconstruction for the years 1900 to 1904 inclusive?
A. I did not.
Q. Did you go into the earnings for those years?
A. I did not.
Q. Why didn't you?
A. Because our orders for our investigation covered the years 1905, 1906, 1907 and 1908 only in respect of the earnings and expenses of the Cumberland Telephone Company in the City of Louisville.
Q. I believe that you said you went into the items going to show the maintenance repairs and maintenance reconstruction for the years 1905 to 1908 inclusive, did you?
A. I said that we went into the expenses of those years and those items were included in the expenses.
Q. Did you ascertain what were the maintenance repairs for the year 1905?
A. I did.
Q. What did the books show as the total of those items for the year 1905?
2582 A. The books showed maintenance repairs totalling $49,151.17; maintenance reconstruction $41,243.92.
Q. Do those items appear on one of the exhibits filed with the Mutual Audit Company's report?
A. They do.
Q. What is the number of the exhibit in that report?
A. Exhibit No. 8 for the year 1905.
Q. Now that same exhibit seems to show a separate heading of expenses as adjusted by Accountants for analysis under the heading of maintenance repairs. What is the total of that item for maintenance repairs?
A. $49,819.14.
Q. Did the Accountants agree, I mean by Accountants, the Mutual Audit Company and Mr. Wilkinson, agree that that was the item which the books showed as the expenses for maintenance repairs for that year?

A. No, sir; they did not. The Accountants agreed that that was the figure which properly represented the expenditures for maintenance repairs for that year.

Q. Well, under maintenance reconstruction on the same exhibit under the heading of expenses as adjusted by accountants, appears a total item of $41,051.02. What did the two Accountants agree that that item represented?

A. The Accountants agreed that this item represented the
2583 proper amount of expenditures at the Louisville exchange for the year 1905 for maintenance reconstruction.

Q. Now when we turn over to exhibit No. 9 of Mr. Farnham's report, we find in the first column under heading "As adjusted by Accountants for analysis" the same items under maintenance repairs and maintenance reconstruction or those mentioned on the last column of exhibit No. 8 for the year 1905, do we not?

A. We do.

Q. Now the last column on exhibit No. 9 for the year 1905, a column of figures under the heading of "Charge Louisville exchange" appears. What is the total item under the heading of maintenance repairs for that year under that heading?

A. $45,464.23.

Q. What does that item represent?

A. That item represents the amount of money which the Mutual Audit Company considers properly chargeable against the expenses of the Louisville exchange for maintenance repairs for the year 1905.

Q. What item appears on that exhibit under maintenance reconstruction for that year?

A. Under the same column of "Charge Louisville exchange" you mean?

Q. If there is such an item under that column.

A. There is no such item. There is no charge for mainte-
2584 nance reconstruction under the column of "Charge Louisville exchange."

Q. Is there any item on that exhibit No. 9 for the year 1905 showing what amount was expended for maintenance reconstruction for that year?

A. There is an item of $41,051.02.

Q. Now do similar figures representing similar facts as to maintenance repairs and maintenance reconstruction appear on exhibits 8 and 9 for the respective years, 1906, 1907 and 1908, showing what the Mutual Audit Company found to be the amounts properly chargeable for each of those years to maintenance repairs and maintenance reconstruction?

A. They do with the one exception of the year 1908 under the item "Maintenance reconstruction."

Q. What do those items show for maintenance repairs and maintenance reconstruction for the year 1906 as found by the Mutual Audit Company?

A. For 1906, the items of maintenance repairs $49,655.11; maintenance reconstruction, $40,626.07.

Q. And what do they show for the year 1907?

A. Maintenance repairs, $63,363.84; maintenance reconstruction, $41,895.10.

Q. And what for the year 1908?

2585 A. Maintenance repairs, $52,921.53; maintenance reconstruction $31,450.07. Now, I think right here you ought to let me qualify my statement I made a moment ago as to their being no such charge to maintenance reconstruction for the year 1908 which the Mutual Audit Company found properly chargeable.

Q. Will you please expla-n how the Mutual Audit Company arrived at the $31,450.07 for maintenance reconstruction for the year 1905?

A. We found that the books of the Cumberland Telephone Company did not separate maintenance repairs and maintenance reconstruction expenses for the year 1908. We therefore took the total maintenance repairs for the years 1905, 1906 and 1907 and the total maintenance reconstruction expenses for the years 1905, 1906 and 1907, and deriving a per cent of the reconstruction to the repairs for those three years, we applied the same percentage for the year 1908, deducting from the maintenance repairs gross total the amount represented by that percentage, and applying it as the maintenance reconstruction expenses for the year, which figure amounted to $31,450.07.

Q. Did both the Mutual Audit Company and Mr. Wilkinson agree that that was a fair distribution of the total sum which was charged that year to maintenance repairs?

2586 A. They did.

Q. Now I wish you would make a calculation based on the figures representing the total maintenance repairs and total maintenance reconstruction for the four years, 1905 to 1908 inclusive as found by the Mutual Audit Company and as just detailed by you, and state what percentage of the gross expenditure for those two items for the four years was used in maintenance repairs?

A. I have made the calculation and find the percentage of maintenance repairs to the total for the four years to be 57.6.

Q. Do you mean that 57.6 per cent of the total of maintenance repairs and maintenance reconstruction was used by the Company in maintenance repairs?

A. I do.

Q. Now, if you take Mr. Farnham's figures for each of the years 1905, 1906 and 1907, and take the amount of about $19,000, which Mr. Smith, the Auditor, says was the amount which the Company devoted towards maintenance reconstruction for the year 1908, what percentage will then appear as the percentage which the maintenance repairs bears to the total?

A. I have made the calculation and find the percentage of

2587 maintenance repairs to the total maintenance repairs and maintenance reconstruction for the four years mentioned is 59.6.

Q. Now, will you state what percentage the gross maintenance

repairs for the four years will bear to the total of maintenance repairs and maintenance reconstruction for the four years, including the year 1908 if only about $19,000 was used in maintenance reconstruction, using the exact amount Mr. Smith says was used in maintenance reconstruction, and the balance or the total of maintenance repairs and maintenance reconstruction for the year 1908 was used for maintenance repairs?

A. I find the percentage to be 60.9.

Q. Now have you examined Mr. Smith's deposition, the Auditor of the Company, to ascertain what amounts were used by the Company in the years 1900, 1901, 1902, 1903 and 1904, what he testified to as being the amount expended for those years for either maintenance repairs or maintenance reconstruction?

A. I have.

Q. What do you find those amounts to be?

A. I find in the year 1900 the maintenance was $50,180.03; for 1901, $68,417.50; in 1903, $51,630.75; in 1904, $66,456.72.

2588 I find there were no figures quoted or asked for, for the year 1902. I therefore have taken the total for the four years, 1900, 1901, 1903 and 1904, and averaged that total and applied that figure as against the year 1902.

Q. Now, Mr. Smith testified that for those years there was no separation of maintenance repairs from maintenance reconstruction, but that both were included under the heading of maintenance repairs. I requested you to make out a statement showing what you might think was a reasonable division of the gross items for those years between maintenance repairs and maintenance reconstruction. Have you made out such a statement?

A. I have.

Q. Please state what percentage of the total charged up for the year 1900 to maintenance repairs you have fixed in your statement as being the amount which should have been devoted to maintenance reconstruction?

A. I applied fifty per cent of the total amount as properly chargeable to maintenance reconstruction.

Q. How much does that fix as the total amount for maintenance reconstruction for that year?

A. $25,090.00.

Q. Now for the year 1901, what percentage—on what basis did you divide the total amount charged up to maintenance repairs for that year?

2589 A. I divided the maintenance repairs on the basis of forty-five and fifty-five per cent, forty-five per cent going to maintenance reconstruction, using for my basis a percentage that maintenance repairs and maintenance reconstruction each bore to the total of each for the year 1905, which year I had accurate figures.

Q. For the year 1902, upon what basis did you make the division?

A. I divided it on the same basis as the year 1901, forty-five per

cent of the total maintenance repairs to maintenance reconstruction.

Q. What did that percentage total for each of the items?

A. Maintenance repairs divided on that basis would leave a total to maintenance repairs of $32,544.19; to maintenance reconstruction $26,627.06.

Q. Now for the year 1903 what division did you make between the two of the totals charged against maintenance repairs for that year?

A. I applied exactly the same percentage for 1903 as I did for 1901 and 1902, allowing forty-five per cent total maintenance repairs to be chargeable to maintenance reconstruction.

Q. And what total did that make for each of the items?

A. It left for maintenance repairs a total of $28,396.91, and for maintenance reconstruction $23,233.84.

2590 Q. And on what basis did you divide the total charged against maintenance repairs for the year 1904?

A. I divided that on the basis of forty-three per cent of the total maintenance to be chargeable to maintenance reconstruction and fifty-seven per cent to maintenance repairs.

Q. Upon what theory did you make that division?

A. I based that on the fact that the number of telephones for 1904 had increased materially over the telephones for 1902 and 1903, and I therefore concluded that it would cost more to maintain a greater number of telephones, and that maintenance should be charged a larger proportion of the total figure.

Q. According to those figures then, what was the amount which you allotted to maintenance repairs for the year 1903 and what was the amount which you allotted for the year 1904?

A. 1903 I allotted $28,396.91. In 1904, $37,879.53.

Q. And what do the books show was the amount used in maintenance repairs for the year 1905?

A. The books of the Cumberland Telephone Company?

Q. Yes.

A. $49,151.17.

Q. Was that the amount before any separate deductions were made by the Mutual Audit Company?

2591 A. Yes, sir; that was also the amount before any excerpts agreed upon by the Accountants were deducted as well.

Q. What was the amount of maintenance repairs for the year 1905 after both the deductions had been made from it by the Accountants jointly, and also the deductions made from it by the Mutual Audit Company?

A. $45,464.23.

Q. Suppose you turn to your records there and state how much the telephone subscribers' stations increased for the years 1903, 1904 and 1905?

A. In 1903, the telephones increased eight hundred and seven over the end of the year 1902. In 1904 the telephones increased to one thousand four hundred and forty-four over the end of the

previous year 1903. In 1905 they increased one hundred and twenty-one over the last month of the previous year, 1904.

Q. Now I will ask you to make up a statement of the construction account as claimed by the telephone company, beginning with the item of $678,000, which it said it paid for the Ohio Valley Telephone Company, adding to it each year the amount which the company says it expended in construction work, and assuming
2592 that the property depreciates seven and a half per cent each year, as the Company claims it does, deducting each year the amount expended in maintenance reconstruction, and setting aside the balance as depreciation fund—have you made up such a statement?

A. I have.

Q. Please file that statement and make it a part of your deposition.

A. I do so.

The paper in question was thereupon filed with this witness's deposition and marked for identification by the stenographer Exhibit "Warren No. 5."

Q. Will you please take that statement and explain in detail its meaning and just how you made it up?

A. I started with the cost of the Louisville exchange as placed on the books of the Cumberland Telephone Company, $678,354.69. I added to that amount one half of the construction account for the year 1900. On the total derived, I figured seven and a half per cent for depreciation and reconstruction account. From that amount derived by figuring seven and a half per cent, I deducted the amount expended in the year 1900 for reconstruction, which amount I based on a percentage of fifty per cent of the total maintenance charged as testified to a few moments before. I then had left a balance in the Treasury or a balance which I am sup-
2593 posing to leave in the Treasury for purposes of rebuilding the plant. Having arrived at those figures, I then add to my original total on which I figured the seven and a half per cent interest, the balance of the construction for 1900. I add to that again one half of the construction for 1901. On this new total I again compute seven and a half per cent for reserve or depreciation and reconstruction and proceeded as explained above. I followed this same method through each and every year.

Q. For the years 1905, 1906 and 1907, what sum do you use as the amount expended for maintenance reconstruction?

A. For the years 1905, 1906 and 1907 I use the amounts as agreed upon and adjusted by the Accountants.

Q. And for the year 1908, what sum do you use?

A. I used the amount as testified to by the Auditor of the Company as having been expended in the year 1908 for reconstruction purposes.

Q. Now, why do you start out by adding only one half of the reconstruction for the first year and so on down through the list? What is your reason for using only one half of the reconstruction on which to figure seven and a half per cent?

2594 A. For the reason that that portion of the plant which was built in December would not begin to depreciate—in November or October it would not begin to depreciate unless from extraordinary causes. Therefore it is only fair to assume that half of the reconstruction or half of the construction for the year would be subject to depreciation.

Q. Is the seven and a half per cent figured as the end of the year?

A. It is.

Q. Now on the basis you have detailed what do you find to be the amount which the company has expended in constructing the plant, that is, assuming that those sums which you have detailed for each year are expended in construction and assuming that the company paid $678,000 for the plant, as it claims it did?

A. The statement I have before me contains the total construction figures up to the 6th of March 1909, and the total up to that time is $1,702,391.68. Deducting from that the construction since the 1st of January 1909, and up to the sixth of March, shows a total up to the 1st of January 1909 of $1,701,900.03.

Q. In other words there is $491.65 in your exhibit as representing the expenses of construction for the year 1909, is
2595 there?

A. There is.

Q. Now, what do the total of the sums used during those years in reconstruction repairs amount to?

A. I don't believe you mean quite that. It is not reconstruction repairs—maintenance reconstruction is what is designated.

Q. Maintenance reconstruction?

A. The sum total for the period is $277,403.88.

Q. And what would be the balance of reserve over and above that amount, figuring on a basis of seven and a half per cent as you have outlined?

A. The balance of the reserve would amount to $639,680.52.

Q. In deducting that amount from the $1,702,000, which you mentioned, as of January 1st, leaves a balance of how much?

A. Would leave a balance of $1,062,711.16. Before you go any further, you asked me what my balance would be. You never asked me what my first amount would be. You omitted to ask me to testify as to this column. I cannot get at that balance unless I deduct this from that.

Q. What would the seven and a half per cent amount to invested in the plant as claimed by the company as shown on this
2596 exhibit—what would that amount to as a total at the beginning of January 1909?

A. $917,084.40.

Q. How do you arrive at the figure $639,680.52, which you have said would be the balance unexpended—the balance of the seven and a half per cent unexpended?

A. By deducting from this seven and a half per cent reserve, the amount spent for reconstruction, which leaves a balance of reserve unexpended.

Q. Of how much?

A. Of $639,680.52.

Q. Now during the time you were examining the construction vouchers, did you ever come across any pay roll vouchers wherein any employés seemed to have been paid or appeared to have been paid for services in connection with toll line construction in the City of Louisville.

A. No, sir.

Q. Did you examine the pay roll of the employés whose services were made use of in connection with the Louisville exchange?

A. I did.

Q. Coming to the question of earnings, explain will you how that question was taken up and to what extent it was gone
2597 into?

A. It was agreed between the Accountants in the first place, that we would leave the detail of the compiling of the statement of the earnings to Mr. Wilkinson, and Mr. Wilkinson compiled such records, checked them up, and turned them over to us for our check. We rechecked those statements and accepted the figures as compiled by him.

Q. What did those figures show?

A. Those figures showed the earnings credited to the Louisville exchange as exchange earnings, meaning the earnings from rental of telephones, also showed the proportion of toll earnings or outgoing messages which were to be credited to the Louisville exchange, also the proportion of earnings on account of messages going over their lines on to the A. T. T. lines, the earnings from telegraph companies, messenger fees, earnings from the rental of poles, earnings from private lines, earnings from list advertisements, earnings from telegraph drops, earnings because of removal of instruments, and miscellaneous earnings.

Q. Now for the year 1905, what did the books of the company show to have been the exchange earnings for that year?

A. That I cannot answer you, Mr. Blakey. I have not here the figures of the earnings as shown by the books. We did not
2598 take them off. I can show you here the earnings—I have here rather the earnings which Mr. Wilkinson compiled and which were checked by us, but whether they are exactly in conformity with the books of the Cumberland Telephone Company, I do not now remember.

Q. Well, do the figures which you mentioned show the actual earnings of the company for the years 1905, 1906, 1907 and 1908?

A. They do—yes, sir.

Q. Can you state what their actual earnings were for those years as shown by the books?

A. No, sir. As shown by my report, yes.

Q. What is the distinction between the actual earnings and the earnings as shown by the books?

A. The books may have contained errors which Mr. Wilkinson found. I cannot say as to that.

Q. Have you the figures before you showing what the Mutual

Audit Company and Mr. Wilkinson agreed were the actual earnings of the Company for the years 1905, 1906, 1907 and 1908?

A. Yes, sir.

Q. What were those earnings from the exchange proper for the year 1905?

2599 A. $264,675.13.

Q. What proportion of the toll earnings were credited to the Louisville exchange for that year?

A. $6,759.

Q. What was that supposed to represent, if you know?

A. That was supposed to represent a commission of fifteen per cent of the revenue collected on outgoing toll messages.

Q. Collected at Louisville, Kentucky?

A. Yes, sir.

Q. How much did the company actually earn as commissions on the A. T. & T. messages?

A. $2,865.29.

Q. How much did the Company actually earn from telegraph companies for telephone service?

A. For the year 1905, $983.88.

Q. In what way did the telephone company earn anything from the telegraph companies? In other words what does that item represent, what character of earnings?

A. It represetns earnings for the use of telephone instruments in the telegraph offices.

Q. In the City of Louisville?

2600 A. In the City of Louisville, which instruments were paid for on the basis of the number of messages transmitted over those instruments and not upon the basis of a monthly rental.

Q. What about message fees? How much for that year were the earnings from that source of the company?

A. That is apparently a misprint, a typographical error. That should be "Messenger fees." The messenger fees earned by the Cumberland Telephone and Telegraph Company's messengers $805.02. Those earned by other messengers for the A. T. & T. Company's service $57.

Q. What do you mean by messenger fees? What does that mean?

A. That means when a long distance call requires the service of a messenger boy to find the individual whose presence is requested at the telephone, a special fee is charged by the Telephone Company for the services of that boy in locating the party.

Q. Now, pole service and attachments. What does that mean?

A. That is a revenue derived from outside concerns who have use for telegraph poles in running some of their own wires,

2601 and they simply lease space from the Cumberland Telephone Company on the pole.

Q. Are those poles inside of the city limits of Louisville or outside of the city limits of Louisville?

A. Well, I did not check up the poles but I should infer they were inside of the city.

Q. Do the books of the Company show that earnings from that pole service and attachments is credited to the Louisville exchange?

A. They do.

Q. What are private lines?

A. Private lines is an earning from parties who have installed for them by the Cumberland Telephone Company lines which begin and end in property which does not touch the local exchange, or in other words, the use of the telephone or a private line does not require the services of the local exchange.

Q. What were the earnings from the private lines for the year 1905?

A. $1,342.01.

Q. What are list advertisements if you know?

A. List advertisements represents the amount of money received from listing in the telephone directory more than one name for one subscriber's telephone.

Q. What did the earnings from that source amount to in
2602 the year 1905?

A. $751.83. Now wait a minute, I think I am wrong there. I am not sure in my mind whether it represents that or whether it represents the advertisement on the telephone book.

Q. Does it represent some side issue in connection with the conduct of the telephone business or some incidental matter connected with the telephone business?

A. It does.

Q. Is it connected with the exchange business proper or the long distance business?

A. With the exchange business.

Q. Now, removals and miscellaneous. What do you know about that? What do you know about the items going to make up the removal and miscellaneous receipts?

A. The removal revenue is derived from a charge for removing a telephone in a person's house, from one part of the house to another. A charge is usually made for the time and extra wire possibly that is used, and the miscellaneous may cover anything else that may happen to come up.

Q. Do you know whether those two items, removal and
2603 miscellaneous, are items connected with the exchange business as distinguished from the toll business or long distance business?

A. There may be revenue derived from removals and miscellaneous for both exchange and toll business, but these items specified here are strictly exchange business.

Q. How about telegraph drops, what are they?

A. Revenue represented by telegraph drops is derived from the privilege of using a telephone wire or pole to drop a telegraph instrument into any building that may be along the route of the telephone company.

Q. Is that an earning in connection with the exchange business proper or the toll or long distance business?

A. That is connected with the exchange solely.

Q. Now what were the bad debts for the year, uncollected accounts for the year 1905, if you know?

A. The bad debts chargeable to the revenue of the Louisville exchange were $10,366.42.

Q. Do you know what was the occasion for bad debts to that extent for that year? What brought it about?

A. It seems that for the year or two previous the Cumberland Telephone Company had installed in the City of Louisville a great many telephones on the basis of first thirty days or first sixty days
2604 free service and the next sixty or ninety days to be paid for. They were installing such phones on a six months' contract, and in so doing they installed a great many phones and were unable to collect for the rental of the telephones during the time which the contract agreed should be paid for. This naturally accumulated a great many bad debts which were disposed of in the year 1905.

Q. What were the bad debts for the year 1906?

A. Louisville exchange $4,230.58.

Q. For the year 1907?

A. Louisville exchange $2,050.77.

Q. The year 1908?

A. Louisville exchange $3,113.22.

Q. Now coming to the year 1906, what were the exchange earnings for that year, eliminating the item known as fifteen per cent. on all outgoing messages over toll lines and eliminating the messenger fees?

A. You want the total revenue of the entire exchange?

Q. Yes.

A. The net earnings for the year 1906 with the omissions as specified above were $283,194.04.

Q. Does that item include originating commissions on the A. T. & T. Company messages?

A. It does not.

2605 The third question preceding was thereupon read to the witness as follows: "Now coming to the year 1906, what were the exchange earnings for that year, eliminating the item known as fifteen per cent. on all outgoing messages, over toll lines, and eliminating the messenger fees?"

A. $286,621.13.

Q. Is that after deducting bad debts?

A. Yes, sir; it is the net revenue—the net earnings rather as called for in your question.

Q. Do you mean net earnings or gross earnings?

A. Gross earnings I should have said—yes, sir.

Q. Now, without deducting the bad debts, what would be the total revenue for that year?

A. $290,851.71.

Q. Now for the year 1907, eliminating fifteen per cent. on all outgoing messages and all messenger fees, and not taking into account bad debts, what was the total revenue of the company for that year?

A. $313,009.98.

Q. And did the Mutual Audit Company and Mr. Wilkinson agree that the items which go to make up the total which you named for 1906, were the actual items of revenue for that year?

A. Yes, sir.

2606 Q. Did they agree that the $313,000. which you have named as the revenue for the year 1907 was the actual amount of revenue for that year after eliminating the items which you did eliminate?

A. Yes, sir.

Q. Are these the actual earnings of the exchange for those two years after eliminating those items?

A. Yes, sir.

Q. Now, coming to the year 1908, what were the actual earnings of the company from exchange service proper for that year?

A. $307,431.85.

Q. And what was the proportion of the toll earnings on a fifteen per cent. outgoing message basis?

A. $7,809.95.

Q. What were the receipts from commissions on American Telephone & Telegraph Company messages?

A. $3,272.37.

Q. What were the earnings from telegraph companies' telephone service?

A. $761.79.

Q. What were the earnings from messenger fees?

A. $658.30.

2607 Q. Were there any earnings that year for messnger fees on account of American Telephone & Telegraph Company?

A. There was not.

Q. What were the earnings from pole service and attachments that year?

A. $1,229.99.

Q. What were the earnings from private lines for that year?

A. I don't know, for the reason that the earnings for private lines were included in the earnings under exchange earnings.

Q. What about list advertisements for that year, what were the earnings from that source?

A. $3,151.59.

Q. What about the earnings from removal and miscellaneous?

A. $2,682.97.

Q. What were the earnings from telegraph drops?

A. $2,130.55.

Q. And eliminating the earnings from fifteen per cent. on outgoing messages and also the messenger fees, what were the remaining gross earnings from the Louisville exchange?

A. Also deducting bad debts?

Q. Yes.

2608 A. $317,370.05.

Q. Does that figure represent the actual earnings of the company at Louisville, Kentucky?

A. It does, after deducting the two amounts as requested in the question.

Q. Did the Mutual Audit Company and Mr. Wilkinson representing the Cumberland Telephone Company, agree that the item you have named is the correct item representing the earnings for that year?

A. They did.

Q. Now you spoke this morning about having caused to be made or having made a record of the toll calls outgoing and incoming from the Louisville office. I wish you would make out a sheet showing those toll calls outgoing and incoming, month by month and the revenue derived from them, and file it as a part of your deposition?

A. I will do so.

The paper in question was later furnished by the witness and was filed with his disposition and was marked by the stenographer for identification Exhibit "Warren No. 6."

A. I have before me in the report of the Mutual Audit Company Exhibit No. 10, the information that you asked for.

2609 Q. Will you cause a copy of that to be made and file it as a part of your deposition?

A. I will.

This paper is the same as the one referred to marked "Exhibit No. 6."

Q. Now for what years did you examine the books of the company to ascertain the facts in regard to their toll messages?

A. The years 1906, 1907 and 1908, using in 1906 only ten months and in 1908 eleven months.

Q. Why did you use only those months?

A. Because the records were not available for the missing months In 1906 they had not been preserved prior to the month of March, and I do not recall the reason now for the month of December, 1908 being missing, but temporarily it was misplaced.

Q. Now what did the records of the company show as to the total number of outgoing calls for the ten months of the year 1906?

A. 132,754.

Q. And what were the number of incoming calls for that period?

A. 107,099.

Q. Does the company make any charge at the Louisville

2610 exchange for incoming calls?

A. No, sir.

Q. What was the total cash revenue collected by the Cumberland Telephone Company of Louisville for transmitting those 132,754 outgoing calls?

A. $42,457.01.

Q. And what was the average revenue for each of those calls?

A. $.3198 a piece.

Q. What was the lowest average for the outgoing calls for any one month?

A. $.2353.

Q. Fifteen per cent on $.3198 is how much?
A. $.0479.
Q. Does that mean that the company for the ten months of 1906 only received an average — a little over four cents on each outgoing message of the Louisville exchange?
A. I take it to mean that.
Q. What I meant to ask you was this and I suppose what you intended to answer was this question: Does that mean that if the company only credits the Louisville exchange with fifteen per cent of the revenue derived from outgoing calls, that the Louisville exchange would then only be credited with a little over four
2611 cents for each outgoing call from the Louisville plant?
A. I should consider such to be the case.
Q. Is or is not that a fact?
A. It is a fact.
Q. Now for the year 1907 what were the total outgoing calls for the entire year?
A. 140,740.
Q. And what were the total incoming calls for the entire year?
A. 126,347.
Q. And what were the gross receipts from all outgoing calls for that year?
A. $57,095.93.
Q. And what was the average earning per call for that year?
A. $.4094 a message.
Q. And what was the lowest average for that year for any one month?
A. $.3491.
Q. And if the company credited the Louisville exchange earnings with only fifteen per cent of the receipts from each message, what would be the average amount credited to the Louisville
2612 exchange on each outgoing message?
A. $.0614 per message.
Q. And does that mean that if the company does pursue the policy of crediting to the Louisville exchange only fifteen per cent of the total receipts from each message sent over its lines, that the earnings of the Louisville exchange would only be enhanced by something over six cents on each outgoing toll message?
A. It does.
Q. Now for the year 1908 or the eleven months of the year 1908, how many outgoing messages were there from the Louisville plant?
A. 109,207.
Q. How many incoming for that year for that period?
A. 91,773.
Q. What were the total receipts from those 109,207 outgoing messages?
A. $48,223.07.
Q. And that is an average of how much per message?
A. $.4416.
Q. And if the company only credits the earnings of the Louisville exchange with fifteen per cent of the receipts from each outgoing

long distance message, then how much would the Louisville
2613 exchange proper be credited with per outgoing message?

A. $.0662 per message.

Q. Does that mean if the company does pursue the policy of only crediting fifteen per cent to the earnings of the Louisville exchange out of each outgoing toll message for that year, the Louisville exchange proper would only be credited with something over six cents for each outgoing message?

A. It does.

Q. Have you any records showing the gain or loss in telephones for the Cumberland Telephone Company at Louisville, Kentucky over any particular period of years?

A. Yes, sir.

Q. From where did you get such records?

A. From the records of the office of the company in Nashville Tennessee as to the telephones put in and taken out monthly.

Q. Have you any records showing the earnings of those telephones—earnings month by month from the various classes of service rendered by the telephone company?

A. Yes, sir.

Q. From what source did you get that record or those
2614 records?

A. These were taken from records in the office of the Cumberland Telephone Company at Nashville, which records show the classification of service.

Q. I asked you to make up a statement showing the facts in regard to the gain and loss in telephones, the character of telephone on which such gain or loss occurred, and the revenue month by month as it appears on the books derived from telephone rentals. Have you prepared such a statement?

A. I have.

Q. Will you file it and make it a part of your deposition?

A. I do so.

The paper in question was thereupon filed with this witness's deposition and marked for identification by the stenographer Exhibit "Warren No. 7."

Q. Now, with what date did you start in making up this report?

A. January 1st, 1905.

Q. Did you have any records prior to that time from which you could make such a report?

2615 A. No, sir.

Q. What were the number of pay stations installed at that time?

A. 699.

Q. What was the number of dead head stations?

A. 106.

Q. What does D. H. S. B. mean?

A. That means dead head switch boards?

Q. How many stations were there of that kind?

A. 129.

Q. What does telegraph mean?

A. Telegraph means the instruments in telegraph companies which were paid for on a message rate instead of on a straight monthly rental basis.

Q. How many of those instruments were there?

A. Five.

Q. What does P. B. exchange and extension sets mean?

A. Private branch exchange is an exchange in a man's place of business usually or residence for his own building, which requires a switchboard for the control of the telephones in his own building or in his own set of building or in his own plant.

Q. Do the figures under the heading I have just read mean the private branch switchboards or the instruments attached to
2616 the private branch switchboard?

A. It means the instruments which communicate with the private branch switchboard, with the exception of the operator's instrument on the private switchboard.

Q. And what are extension sets as covered by that heading?

A. Extension sets are instruments which are attached to the same line as another instrument.

Q. And how many of those private branch exchange stations and extension sets were there on that date?

A. 1905.

Q. What does actual subscribers mean as appears on this exhibit?

A. The actual subscribers represent the difference between the total number of phones in use on that date and the sum of all these instruments which we have just testified about.

Q. How did you arrive at the actual subscribers, as you term it?

A. In just the way I have stated. I added the pay stations, the dead heads, the dead head switchboards, telegraph, private branch exchange and extension set instruments and deducted the total from the total number of instruments in use.

2617 Q. How many actual subscribers were there on that date?

A. 5,927.

Q. What were the total phones on that date?

A. 8,776.

Q. Now for the month of December how many pay stations were there?

A. 565.

Q. How many dead heads?

A. 102.

Q. How many dead head switch boards?

A. 120.

Q. How many telegraph stations?

A. 7.

Q. How many private branch exchanges and extension sets?

A. 2,328.

Q. How many actual subscribers?

A. 5,990.

Q. What were the total number of subscribers?

A. Telephones you mean?

Q. The total number of telephones?

A. 9,112.

Q. And what were the earnings for that month from
2618 the actual subscribers and pay stations, if you know?

A. $21,911.72.

Q. Now did the pay stations increase any during the month of January 1906?

A. It did.

Q. How much?

A. 57.

Q. Did the actual subscribers increase any during that month?

A. Yes, sir.

Q. How much?

A. 24.

Q. Did the earnings increase any—did the earnings from pay stations and actual subscribers increase or decrease for that month?

A. It decreased.

Q. How much?

A. About $880.

Q. Now take the month of February 1906. Did the pay stations increase any during that month?

A. They did.

Q. How many?

A. 337.

2619 Q. Did the actual subscribers increase any?

A. They did.

Q. How many?

A. 54.

Q. Did the earnings for those two classes of service increase any?

A. They did.

Q. How much?

A. About $200.—$190., about.

Q. Now take the month of March: Did the pay stations increase any for that month?

A. They did.

Q. How much?

A. 148.

Q. Did the actual subscribers increase any for that month?

A. They did.

Q. How much?

A. 151. No, I beg pardon, I got the wrong column. They decreased four. I was looking at the wrong column.

Q. And did the earnings increase or decrease?

A. The earnings increased.

2620 Q. How much?

A. $80.

Q. Now take the next month, April. Did the pay stations increase or decrease for that month?

A. They increased.

Q. How much?

A. 118.

Q. Did the actual subscribers increase or decrease?

A. They decreased.
Q. How much?
A. 34.
Q. And what about the earnings?
A. The earnings decreased about $106.
Q. Now the next month, did the pay stations decrease or increase for that month?
A. The pay stations increased fifty two.
Q. What about the actual subscribers?
A. They decreased forty-nine.
Q. What about the earnings?
A. The earnings decreased about $40.
Q. Take the month of January as compared with the month of May, 1906. How many more pay stations were there for the month of May 1906 than there were for the month of January 1906?
2621 A. 655 pay stations more.
Q. Were there more actual subscribers in the month of May than there were for the month of January or less?
A. There were less.
Q. How much less.
A. There were thirty-three less.
Q. And did the earnings for the month of May increase over the earnings for the month of January?
A. They did.
Q. How much?
A. $145.28.
Q. Coming on down to the end of 1906, how many more pay stations were there in December than there were in January 1906?
A. 1156 more pay stations.
Q. And were there more or less actual subscribers in December?
A. There were less.
Q. How many less?
A. 55.
Q. How about the earnings as compared with December and January of that year?
A. The earnings for the month of December were $128.05 more than the earnings for the month of January.
2622 Q. I notice that for the year 1906 you have a number of figures appearing under C. P. Company, what does that mean?
A. C. P. Company means Circulation Promotion Company.
Q. Do you know anything about what class of telephones are included under that head?
A. They are telephones which are installed by the Cumberland Telephone Company in places where contracts are made by this Circulation Promotion Company, and those telephones are installed at the instigation of the Circulation Promotion Company.
Q. Do you know whether the Circulation Promotion Company pays the Cumberland Telephone Company anything for putting those telephones in?
A. I do not.

Q. Did you, during your examination of the earnings for the years 1905, 1906, 1907 and 1908 ever find that the Company had ever had any receipts from the C. P. Company or from any other source on account of the installation of these telephones?

A. I did not.

Q. How many telephones did it have under C. P. Company, heading for January 1906?

2623 A. 73.

Q. How many for December 1906?

A. 1284.

Q. How many for January 1907?

A. 1393.

Q. How many for June 1907?

A. 1839.

Q. How many for December 1907?

A. 1818.

Q. How many for September 1907?

A. 1987.

Q. Did the pay stations for the month of January 1907 increase over the pay stations for the month of December 1906?

A. They did.

Q. How much?

A. They increased by 109.

Q. Did the actual subscribers increase or decrease?

A. The actual subscribers decreased.

Q. How much?

A. 69.

Q. How about the earnings?

A. The earnings increased $248.34.

2624 Q. Now what months did the Cumberland Telephone Company have the greatest number of those C. P. Company stations in service?

A. September 1907.

Q. How many of those stations did it have in service at that time?

A. 1987.

Q. How many pay stations of the character it had prior to the installation of this class of pay stations, did it have for that month?

A. 439.

Q. Now going back to the 1st day of January or rather to the month of December 1905 immediately before it began to install this C. P. Company's stations, how many pay stations did the company have that month?

A. 565.

Q. How many actual subscribers?

A. 5,990.

Q. What were the earnings for that month?

A. $21,911.72.

Q. Now comparing that with September, 1907, how many more pay stations were there in service on that date than for the month of December 1905?

2625 A. There were 1861 more pay stations in use in September 1907 than in December 1905.

Q. How did the actual subscribers compare?

A. There were 388 less subscribers in September 1907 than in 1905.

Q. How did the earnings compare?

A. The earnings for September 1907 were $395.88 less than the earnings for December 1905, this notwithstanding the fact that in March 1907 the rates for the rental of telephones were raised—increased.

Q. Now take the comparison between the private branch exchange stations and extension sets for those two months and show how they compared?

A. There were three hundred and eighty-six more instruments on private branch exchanges and extension sets in September 1907 than there were in December 1905.

Q. And compare the total instruments for the two months.

A. There were eighteen hundred and seven more instruments in use in September 1907 than in December 1905.

The further taking of these depositions were adjourned until October 16th, 1909, at 9:30 o'clock A. M.

2626 LOUISVILLE, KY., *Oct. 16th*, 1909.

The parties met pursuant to adjournment at 9:30 o'clock A. M. and the direct examination of Mr. H. B. Warren was resumed by Mr. Blakey as follows:

Q. When did the telephones known as the C. P. Company telephones begin to decrease in number?

A. Beginning the month of October 1907.

Q. How many of those telephones were there in January 1908?

A. 1767.

Q. How many pay stations were there in all in that month?

A. 2202.

Q. And how many actual subscribers were there in that month?

A. 5,434.

Q. And what were the earnings for that month from pay stations and actual subscribers?

A. $21,900.82.

Q. Now take the month of December, what was the difference between the C. P. Company's stations in that month of January 1908 and the month of December 1908?

A. In January 1908 they were 1767. In December 1908 1031, or 736 less in December than in January.

Q. And how many less actual subscribers were there in
2627 December than in January if you know?

A. There were two hundred and sixty-nine subscribers less in December than in January.

Q. And what was the difference in the actual earnings for those two classes of pay stations and the actual subscribers between January and December, if you know?

A. The difference in the earnings showed a difference of $2.94

in favor of December 1908. In other words, there was $2.94 more earnings in December than in January.

Q. What was the number of those C. P. Company's subscribers in June 1908?

A. 1488.

Q. Did the number of those subscribers fall off gradually all during the year of 1908?

A. They did.

Q. What were the earnings from the pay stations and of the actual subscribers for the month of June, 1908?

A. $21,473.48.

Q. How did you arrive at the earnings from those two classes of service?

A. I took from the records of the Cumberland Telephone Company in Nashville—from their records called "Classification
2628 of telephone service" the actual number of telephones in use each month for each year, classified as to pay station telephones, C. P. Company telephones, dead head telephones, dead head switchboard telephones, telegraph telephones, private branch exchange telephones and extension set telephones, which classification also showed the rates per month charged for those various classes of telephones, and showed also the amount of monthly earnings derived from these various classes of telephones. This classification statement also showed the total number of telephones in use in the City of Louisville, and in arriving at the actual number of subscribers, I took the total number of telephones in use and deducted from it the number of telephones above itemized, the result giving me the actual number of subscribers. This statement also showed the total amount of earnings from all telephones, and deducting therefrom the earnings on the telephones as itemized above, I arrived at the earnings for the actual subscribers and pay stations and C. P. Company's telephones.

Q. Was there any separation of the earnings of between pay stations and actual subscribers?

A. There was not.

2629 Q. You have stated that the earnings which the company credited to the Louisville exchange, being the amount derived from fifteen per cent on all outgoing messages, for the year 1907, was $8,116.85, I believe.

A. I don't recollect whether I testified to that exact figure, but that is the figure.

Q. How was that figure arrived at, if you know?

A. Mr. Wilkinson made up and compiled this statement of these earnings which I checked after he had completed them, and I have no working papers to show for these figures, and I do not recall now just exactly how or what goes to make up this amount.

Q. In one of the exhibits you have filed and about which you have testified, you stated that the records of the company showed that the total outgoing calls for the year 1907 was 140,740, and that the gross receipts for those outgoing calls was $57,095.93. Will you kindly tell me what fifteen per cent of $57,095.93 would amount to?

A. $8,564.39.

Q. Now there seems to be an apparent difference of over $400 between those calculations or between the calculations you have just made and the fifteen per cent earnings as made up by Mr. Wilkinson and as checked by you. Please explain if you can what
2930 is the occasion for that difference and why those figures do not tally?

A. The item of $57,095.93 was derived from a statement compiled in the Louisville office of the Cumberland Company and sent monthly to the general office at Nashville, which statement showed the outgoing number of calls from Louisville, the destination of such outgoing calls and the revenue or earnings for each call. This statement was subject to an auditing and checking from the Nashville office, and was subject to corrections for overcharges or undercharges or omissions.

Q. What do you mean by omissions?

A. In case any one or more calls had been overlooked by the Louisville office in making up the statement.

Q. How would the Nashville office know about that?

A. They would know about that from the report sent in by the station receiving the long distance call, which report would contain a call from Louisville that did not appear upon the Louisville statement, showing that there was an omission either from Louisville or an overcharge from the receiving point. Therefore our figures, as shown on Exhibit No. 10 of the Mutual Audit Company's report or Exhiibt Warren No. 6 in this deposition, will be gross figures as reported by the Louisville exchange subject to the audit
2631 by the Nashville office, and would not represent the exact Louisville earnings.

Q. What did the $8,116.85 which you have stated was the amount agreed upon by the Mutual Audit Company and Mr. Wilkinson as being the earnings for that year on account of this fifteen per cent—from what was that derived?

A. As before stated, I have no working papers in relation to this amount, and it is some months now since I checked these figures and I could not state from memory just what constitutes these figures.

Q. Do you remember whether or not it was the item as finally audited by the Telephone Company and as being the amount which its books showed at that time as its receipts from the fifteen per cent?

A. This amount of $8,116.85 represents the correct audited earnings credited to the Louisville exchange on outgoing toll messages for the year 1907.

Q. What did the commissions on the American Telephone and Telegraph Company's outgoing messages amount to for the year 1907?

A. $3,864.17.

Q. What were the actual earnings from private lines for the year 1907?

A. $1,153.91.

2632 Q. What were the earnings from the fifteen per cent on all outgoing messages of the Company from its Louisville exchange for the year 1906?

A. $7,170.29.

Q. And what was the amount of commission earned on account of the American Telephone and Telegraph Company's messages for that year?

A. $3,427.09.

Q. What was the amount of earnings from private lines for that year?

A. $1,079.92.

Q. Who made up the original statement concerning the earnings for the four years from 1905 to 1908 inclusive? I mean during the time your examination of the Mutual Audit Company and Mr. Wilkinson was in progress?

A. What do you mean by the original statement?

Q. Who made up the statements from which the actual earnings for those four years were arrived at, the Mutual Audit Company or Mr. Wilkinson?

A. Mr. Wilkinson made up that statement.

Q. Was it accepted as made up by him or were corrections made in it after the checking was done by you?

2633 A. I don't recall any corrections that were made in his statement.

Q. Were you present when the Mutual Audit Company—the representative of the Mutual Audit Company and Mr. Wilkinson prepared and signed a joint report which they filed with the Master?

A. I was.

Q. Please state in detail how the joint report was made up and what took place in connection therewith?

A. Mr. Wilkinson had his stenographer to prepare a statement of the construction account of the Louisville exchange from 1900, January 1st, to 1909, January 1st, naming gross totals for the years only. Mr. Wilkinson also had his stenographer prepare a statement of the earnings subdivided as to classification for each year, naming totals only. He had also had prepared a statement of the expenses subdivided into proper classifications for the four years with totals only for each classification, and the accountants for both sides checked the figures as prepared by Mr. Wilkinson's stenographer and agreed that those were the figures which they had arrived at during the course of their work, and agreed that a statement should be made up showing that those were the proper figures for

2634 the various accounts as specified. Mr. Wilkinson had also prepared from an exhibit filed by the Auditor of the Telephone Company, which exhibit contained an itemized list of every telephone user in the City of Louisville, a statement showing the earnings for one month as per the rate charged by the Cumberland Telephone Company for those subscribers on that list, allowing from that total a deduction for discount and pre-payment. He had also had prepared the statement from the same list of subscribers showing what the earnings would be if such phones were charged the rate as called for by the Ordinance passed by the common council of the City of Louisville, and showing a difference of what the earnings would have been between the rates as charged by the

Cumberland Telephone Company and the rates as requested in the ordinance of the common council in the City of Louisville. All these statements and all these figures were checked back by us and found to be correct, and passed upon by both Accountants.

Q. Was any discussion had at that meeting between the two Accountants or the two Representatives of the City and the Telephone Company as to what amount should represent the purchase by the Cumberland of the Ohio Valley Company's property?

2635 A. I do not recall whether any such discussion was had at that particular time. I know there were several discussions relating to that subject, but whether there was one at that time or not, I do not recall.

Q. Had any discussions been had relative to the making up of a joint report prior to the final meeting, at which the joint report was made up?

A. Yes, sir.

Q. Was there any difference of opinion between the Representatives of the City and the Representatives of the Telephone Company as to what the Cumberland Company had actually paid for the Ohio Valley Company's property at Louisville?

A. There was.

Q. Now, the joint report shows that the Accountants agreed that the total cost as shown by the books of the Company was $1,700,000. Do you know whether any item was included in that total representing the amount which the Telephone Company, the Cumberland Company had paid for the property of the Ohio Valley?

A. Included in that amount of $1,700,000 and odd was the amount which was charged on the books of the Cumberland

2636 Telephone Company as the cost to them of the Louisville exchange, namely $678,354.69.

Q. What did the Accountants understand to be the significance of the statement in that joint report that the total cost of the plant of the Cumberland Telephone Company at Louisville was 1,700,000 and odd thousand dollars?

A. I believe you have misstated the tenor of this joint report in your question. The Accountants agreed that the books of the Cumberland Telephone Company showed that this amount or these amounts had been expended on construction.

Q. Did the Accountants agree that that amount of money had been expended in constructing the Louisville exchange?

A. They did not.

Q. Did the Accountants agreed that the Cumberland Company had paid over $678,000 for the plant of the Ohio Valley Company at Louisville, Kentucky?

A. They did not.

Q. Now when it came to the discussion of the question of the operating expenses, what did the Accountants agree were the

2637 total of the operating expenses as shown by the books of the Company for the years 1905, 1906, 1907 and 1908?

A. 1905, $227,171.29. 1906, $233,898.28. 1907, $246,598.61. 1908, $217,395.53.

Q. Did those items include the amount spent for maintenance reconstruction for those years?

A. They did.

Q. Did those items include the expenses of conducting the toll department of the telephone business at Louisville, Kentucky?

A. They did.

Q. Was there any discussion had at that time as to whether those expenses of conducting the toll department should be included in the total operating expenses for those years?

A. There was.

Q. What was the substance and effect of that discussion?

A. The Mutual Audit Company stated that in their opinion the expenses of the toll department should not be included in the expenses of the Louisville exchange. Mr. Wilkinson could not agree to this opinion and the right was reserved by each one—each Accountant—to treat that matter in any way he saw fit in a
2638 separate report to be filed with the Master.

Q. What about items of rent and insurance and taxes? Was there any discussion as to whether items of rent and insurance and taxes should be taken into consideration in connection with the operating expenses of the Company for the four years?

A. There was.

Q. What discussion was had on that subject?

A. The Mutual Audit Company desired to eliminate from the expenses of the Louisville exchange taxes and insurance paid upon real estate and buildings to which Mr. Wilkinson could not agree. This matter was also left for adjustment in a separate report to be made to the Master.

Q. Was there a separate report made to the Master by the Mutual Audit Company dealing with these phases of the operating expenses?

A. There was.

Q. Now, taking up the question of the operating expenses for the year 1905, under what classification do the operating expenses for that year appear on the books of the Cumberland Telephone Company?

2639 A. Do you mean operating expenses or all expenses?

Q. All expenses. I notice the joint report speaks of them generally as operating expenses but I mean now all expenses.

A. The expenses appear under four general heads, namely, general expenses, operating expenses, maintenance repairs and maintenance reconstruction. To these are added what is known as instrument expense.

Q. Now for the year 1905, what did the Mutual Audit Company and Mr. Wilkinson agree was the total amount expended under the heading of general expenses for that year?

A. $40,476.83.

Q. Did the two Accountants make any change in reaching that conclusion of the items as they found them on the books?

A. They did.

Q. Please explain what those changes were?

A. We found that there was no operating expense charged up in what is known as General Account to the Louisville exchange.

Q. What was the General Account?

2640 A. The general account was an account maintained by the Cumberland Telephone Company to which was charged such expenses as could not properly be located to any one exchange for any particular item of expense. This account was handled as an item of general expense against the entire company in its final dealings at the end of the year.

Q. What proportion of that general expense did the Accountants agree would be the proper amount to charge against the Louisville plant?

A. $3,139.93.

Q. At whose suggestion was that item added to the expenses of the Louisville plant?

A. At the suggestion of Mr. Wilkinson.

Q. What other item was added to or taken from the item of general expense as the books showed them to be?

A. There was deducted from the proportion of the general office expenses charged to Louisville the sum of $5,521.47.

Q. How was that item arrived at?

A. By checking of the general office expenses and eliminating therefrom such items that could be absolutely located as to

2641 exchanges or districts, and which would therefore have no bearing whatever on the Louisville exchange, and pro-rating the net amount thus found to the Louisville exchange, we arrived at a figure less than that charged to the extent of $5,521.47.

Q. At whose suggestion was that item eliminated from the expenses of the Louisville exchange?

A. At the suggestion of Mr. Wilkinson.

Q. Now were there any other items either added to or eliminated from the total of the general expenses for the year 1905?

A. There was eliminated $7.85 from taxes.

Q. At whose suggestion was that elimination made?

A. The suggestion of the Mutual Audit Company.

Q. Did Mr. Wilkinson agree that it was a proper elimination?

A. He did.

Q. Now, coming to the operating expenses, what did the two Accountants agree was the total operating expenses for that year?

A. $4,264.54.

Q. And was that any different from the books as kept by the company?

2642 A. Yes, sir.

Q. What did the books as kept by the company show?

A. $92,333.95.

Q. Please explain just how that difference was arrived at?

A. There was added to the operating expenses under the heading of "Pro-rate of general account" the sum of $429.38. The explanation for this addition is the same as the one testified to above in relation to the addition of $3,139.93 for general expenses. There was deducted from salaries and wages $8,492.29.

Q. How was that item arrived at?

A. That item was arrived at by a dissection of the pay roll. In going through the pay rolls of the Cumberland Telephone Company for the year 1905 we eliminated portions of the salaries and wages paid at Louisville and charged to Louisville expenses, for various services rendered, which in our opinion properly belonged to the district and not at all chargeable to the Louisville exchange. In our opinion this work for which we have deducted a portion of the pay, was done outside of the City of Louisville and therefore we deducted that amount of money from the pay roll ex-
2643 penses charged to the City of Louisville.

Q. Please go into these individual items and just state what persons' wages or salaries were distributed or divided between Louisville exchange expenses and district expenses?

A. The district expenses which we deducted consists of a foreman named Metzger and three of his men. We took one-third of Metzger's time and one-fourth the time of his men, assuming that that much of their time was spent outside of the City in doing work, repairing, rebuilding or constructing lines around the surrounding suburban exchanges. We deducted also one-third of the time of Superintendent Dean, and one-fourth of the time of his cable men for the same reason that we deducted that of Metzger and his men. We deducted one-half of the pay of the draftsman Frantz, having information that he was the draftsman for the entire district over which Mr. George G. Hall was Superintendent, knowing therefore that Mr. Frantz does undoubtedly make blue prints and maps and does drafting work for the entire district as well as the City of Louisville. We deducted from the Louisville office pay roll a portion of the Cashier, Assistant Cashier, the time of the book-
2644 keeper whose duty it was to keep the books of Jeffersonville, New Albany and Suburban exchanges, and also the Manager's Clerk whose duty it was to keep track of the supplies of the various Suburban exchanges. We deducted the Cashier and Assistant Cashier for the reason that a portion of their time was allotted to collecting the accounts of Suburban exchanges, paying the bills of Suburban exchanges and doing the same work exactly for them as they would do for the Louisville exchange. We also deducted the Jeffersonville and New Albany book-keeper because the work of that person was exclusively to keep a record of the accounts of Suburban exchanges although the salary was paid at Louisville and charged to Louisville. We also deducted from the Louisville pay roll three fourths of the time of Superintendent Hall and one third of the time of the Manager of the City office. We did that for the reason that we had information that the Superintendent spent about three fourths of his time outside of the City of Louisville on his district. I had other evidence of that fact, for the reason that in going through the expense vouchers of the Louisville ex-
2645 change while at Nashville, I frequently found vouchers of expense accounts for Mr. Hall where he would be gone a week or ten days at a time throughout the country, getting as far

away from Louisville as Lexington, Danville, over in Indiana, and those expense accounts came in without fail regularly every week.

Q. Were those expense accounts charged up originally to the Louisville exchange?

A. They were during a period of 1905, 1906 and 1907, I believe—a portion of 1907. From then on they were charged up to what is known as the general account and pro-rated to the exchange. I deducted one third of the salary of the Manager of the Louisville office for the reason that I had information that the Manager was authorized and ordered to take charge of all Suburban exchanges and a portion of his time there. I also in going through the expenses of the Louisville exchange found expense vouchers of the Manager of the local office, showing that he was frequently at New Albany, Jeffersonville, Anchorage and Pewee Valley and all around this section of the county, the immediate vicinity.

Q. Taking the percentages which you have given, on what did you base those percentages or calculate those percentages, on the
2646 actual amount paid to various employés whom you have mentioned, or if not, on what basis?

A. I based them on the actual amount paid the employés mentioned.

Q. What did you say that total amounted to?

A. $8,435.89, with another deduction from pay roll of $56.40, making a total of $8,492.29.

Q. Did Mr. Wilkinson agree that those items should be deducted from the total operating expenses as they appeared on the books of the Telephone Company for that year?

A. He did.

Q. What about the $56.40 you have just mentioned? What does that represent?

A. That item of $56.40 is represented by numerous small amounts which were deducted by us from expense vouchers charged to operating, salaries and wages of the Louisville exchange, which were not properly chargeable thereto, and which deduction was agreed upon by Mr. Wilkinson.

Q. Were there any other items under the heading of operating expenses which you either deducted or added?

A. Yes, sir; under incidental expenses we deducted $6.50.
2647 Q. What was the occasion for making that deduction?

A. That consisted of items erroneously charged to operating expenses Louisville, on the expense vouchers.

Q. Was that item agreed to as a proper deduction by Mr. Wilkinson?

A. It was.

Q. Well, under the heading of maintenance, what was the total which the Accountants agreed to as the expenses incurred under that heading for the year 1905?

A. $49,819.14.

Q. And was there any difference between that item as agreed to by the Accountants and the item representing similar expenditure on the books of the Company?

A. There was.

Q. Explain of what that difference consisted?

A. The difference amounted to $667.97, consisting of an addition by the Accountants to maintenance repairs under the heading "Prorate of general account" $916.78. The explanation for that addition was given in detail under the heading of general expenses, pro rate of general account, in relation to an amount of $3,139.93. The same explanation will apply to this amount. There was
2648 also deducted from material under maintenance repairs the sum of $130.75, and represents items erroneously charged to Louisville on the expense vouchers. There was deducted from travelling, the amount of $112.70, representing amounts erroneously charged to Louisville. There was deducted from incidental expenses the amount of $5.35. This also represents amounts erroneously charged to Louisville, making a net total addition to maintenance repairs expenses of $667.97.

Q. Were those items agreed to by Mr. Wilkinson, the Auditor for the Cumberland Telephone Company?

A. They were.

Q. Now under the heading maintenance reconstruction, what did the Accountants find to be the amount expended by the Company under that heading for the year 1905?

A. $41,051.02.

Q. What did the books of the company show to be the expenditure on that account?

A. $41,243.92.

Q. How is that difference made up and what is the explanation of it?

A. The difference is made up in a deduction from travel-
2649 ling expenses, maintenance reconstruction of $192.90, which amount consists of a number of smaller amounts aggregating this total, which smaller amounts were deducted by us from the expense vouchers charged to Louisville for the year, which amounts were erroneously charged to Louisville expenses.

Q. Now, under the heading of instrument expense, do you know what instrument expense represents?

A. It represents a rental paid by the Cumberland Telephone Company to the American Telephone and Telegraph Company for the use of the patented parts of the telephone. I believe they are known as the transmitter and receiver.

Q. On what basis does the company pay the owner of those instruments and transmitters for the use of them if you know?

A. They pay on a percentage basis for the total earnings. I think it is four and a half per cent.

Q. What did that item amount to for the year 1905?

A. $11,559.76.

Q. Was there any difference—is the item you have given, the amount which was agreed upon between the two Accountants?

A. It was.

Q. Was there any difference between that item and the
2650 item representing a similar expenditure as it appeared on the books of the company?

A. There was.

Q. What was that difference?

A. $1,895.11.

Q. Was it more as it appeared on the books or less than the amount agreed to by the Accountants?

A. It was more on the books of the Cumberland Telephone Company.

Q. How is that difference accounted for?

A. A statement of this amount was prepared by Mr. Wilkinson and checked by us. I have no working papers on this item, did not prepare any, and therefore I am unable to state at this time wherein the difference consists.

Q. Did you check that item back?

A. Yes, sir.

Q. Do you know whether that item was intended—whether the $11,000 which the Accountants agreed to, was intended to represent four and a half per cent of the gross receipts from exchange earnings of the Louisville plant?

2651 A. I cannot now state from memory whether it was figured on the gross receipts or the net receipts, but that was the method of computing this amount.

Q. Now were there any other items appearing on the books of the Cumberland Telephone Company for the year 1905 as an expense other than the ones you have mentioned?

A. There was an item called "Uncollectable accounts" charged as an expense against the Louisville exchange. We did not include this item in our expenses because we had already deducted it or we had already deducted an item of bad debts from our earnings.

Q. What item appeared on the books of the company under the heading "Uncollectable accounts" for that year?

A. $1,679.39.

Q. What item had you deducted for the year 1905 from your earnings under the heading of bad debts or uncollectable accounts?

A. $10,585.50.

Q. How do you explain the difference between those two items?

A. The amount deducted from the earnings on the statement of the Mutual Audit Company was derived from the vouchers——

Q. What amount do you refer to now?

2652 A. The amount of $10,585.50, deducted from the earnings, statement of the Mutual Audit Company, exhibit No. 6. This amount was arrived at by checking all the vouchers pertaining to bad debts and charged to bad debts for the year 1905, and eliminating from those vouchers any bad debts prior to 1904. Having thoroughly analyzed all these vouchers, we arrived at the total of bad debts for the year as mentioned above, $10,585.50.

Q. You mean bad debts for the year 1904 were included as a part of the 10,000 and odd dollars total for 1905 that you have mentioned?

A. They were.

Q. At whose suggestion was that done?

A. It was a mutual agreement of both the Accountants.

Q. Do you know how the telephone company arrived at the $1,679.39, appearing on its books as uncollectable accounts for the year 1905?

A. I do not.

Q. Now coming to the year 1906: Do the books of the company show the same general headings under which it kept the account of the expenses of the Louisville plant for that year?

A. They do.

Q. What did the Auditors agree was the amount properly
2653 chargeable to general expenses for the year 1906?

A. $47,218.52.

Q. And what did the books of the company show was the amount charged for general expenses?

A. $49,205.61.

Q. How was the difference made up, explaining in a general way, this difference, and referring to your explanation of the same items for the year 1905?

A. This difference consisted of a net deduction of $1,987.09 from the figures of the Cumberland Telephone Company. This net deduction consisted of an addition on account of pro-rate of general account of $3,460.20. The explanation for this addition is the same as the explanation for our addition for pro-rate of general account under general expenses for the year 1905, $3,139.93. We also deducted from item under pro-rate of general expenses the sum of $5,447.29, the explanation for which is the same as for the amount of $5,521.47 under the same heading for the year 1905.

Q. Did Mr. Wilkinson representing the Cumberland Telephone Company agree to those figures and that deduction?

A. He did.

Q. Now coming to the operating expenses, what are the
2654 total operating expenses for that year as found by the Accountant?

A. $80,738.06.

Q. What did the books of the company show that expense to be?

A. $87,950.73.

Q. And in what way is the difference accounted for, and in what way was it arrived at?

A. The net difference between the espenses as shown by the Cumberland Telephone Company and the Accountants, is a deduction by the Accountants, of $7,212.67. This is arrived at by an addition to the pro rate of general account of $129.40, and the explanation for which is the same as for the pro rate of general account of 1905, to the amount of $3,139.93 above mentioned. There was also deducted from the pay rolls, salaries and wages, $7,519.29, and an explanation of which is the same as that for the deduction of $8,435.89 from salaries and wages operating expenses in 1905. There was also deducted from salaries and wages $60.24 on account of numerous number of items erroneously charged throughout the
2655 year to Louisville salaries and wages operating expenses. There was also deducted from advertising and canvassing the sum of $62.54, which should not have been charged to Louisville expenses.

Q. Did Mr. Wilkinson representing the Cumberland Telephone Company agree that those items should be deducted from the items shown on the books as operating expenses for that year?

A. He did.

Q. Now coming to maintenance repairs, what did the Accountants agree was the amount which had been expended that year under that heading?

A. $52,796.93.

Q. What did the books of the company show as the amount which had been charged under that heading?

A. $54,621.59.

Q. How is the difference accounted for?

A. The difference shows a net deduction by us of $1,824.66, accounted for by the addition on account of general account of $1,102.19, explanation for which will be the same as the explanation for the maintenance repairs, pro-rate of general account, addition in 1905. There was also deducted from maintenance repairs, salaries and wages, $2,464.74, explanation of which is the
2656 same as for the $7,519.29 deducted from operating expenses, salaries and wages for 1908. There was also deducted from materials the sum of $191.15, which upon examination of the expense vouchers we found to be erroneously charged to Louisville. There was deducted from traveling expenses the sum of $18.96, which we also found to be erroneously charged to Louisville, and there was deducted from conduit, pole and roof rent the sum of $250.00, and from damage and compensation $2.00, both of which we found upon examination of the vouchers to be erroneously charged to the Louisville exchange.

Q. Did Mr. Wilkinson agree that those items should properly be deducted from the amounts shown on the books as expenses for maintenance repairs for that year?

A. He did.

Q. Now as to maintenance reconstruction, what did the accountants agree was the amount expended for that year for maintenance reconstruction?

A. $40,626.07.

Q. What did the books of the company show?

A. $40,650.22.

2657 Q. What is the explanation of the difference?

A. The difference consists of $24.15 deducted by the Mutual Audit Company and is based and is composed of an item of $18.50 deducted from salaries and wages, $2.28 from material and $3.37 from traveling expenses, all of which amounts were found upon examination of the vouchers to be erroneously charged.

Q. And did Mr. Wilkinson agree that those items were erroneously charged and should be deducted?

A. Yes; sir, he did.

Q. What about instrument expenses, what did the accountants find the instrument expense to be?

A. $12,518.70.

Q. And what did the books of the company show that expense to be?

A. $13,848.79.

Q. Can you make any explanation of that difference other than the explanation you made as to the same item for the year 1905?

A. No, sir.

Q. Does the same explanation apply to this difference?

2658 A. It does.

Q. Coming to the year 1907, what did the Accountants find to be the expenses appearing on the books under the heading of general expense for that year?

A. $46,053.67.

Q. What did the books of the company as they were made up show that expense to be?

A. $47,554.15.

Q. What is the explanation of the difference? Is it the same as the explanation you have made as to 1905 and 1906?

A. Yes, sir; the explanation would be the same.

Q. As to operating expense what did the Accountants find the operating expense to have been for that year?

A. $79,661.04.

Q. What did the books of the company show to have been charged under that heading?

A. $84,825.08.

Q. And is the explanation substantially the same there as the explanation you made of the deduction under operating expense for the year- 1905 and 1906?

2659 A. Yes, sir; the explanation would be practically the same.

Q. And did Mr. Wilkinson for the Cumberland Telephone Company agree that those deductions under each of those headings were proper and should be made?

A. Yes, sir; he did.

Q. Now as to maintenance repairs, what did you find the expenses to be—the Accountants find the expenses to be?

A. $65,616.31.

Q. What did the books of the company show them to be?

A. $61,510.57.

Q. Is the explanation which you have made under the heading of maintenance repairs for the years 1905 and 1906 applicable here except insofar as here it is an addition and in the other cases a deduction?

A. Yes, sir; the explanation will be the same.

Q. Now as to maintenance reconstruction, what were the expenses for the year 1907 as found by the Accountants?

A. $41,895.10.

Q. What did the books of the company show them to be?

2660 A. $42,052.43.

Q. And is the explanation as to the deduction under this heading same as made for similar items for the years 1905 and 1906?

A. Yes, sir.

Q. Now the instrument expense for that year, what did the Auditors find that to be?

A. $13,372.49.

Q. What did the books of the company show it to have been?

A. $14,984.21.

Q. And is your explanation as to 1905 applicable to the difference here?

A. It is.

Q. Did the Accountants agree that the total of the additions and deductions which you have mentioned in connection with the expenses for the year 1907 were proper and should be made?

A. Yes, sir.

Q. Did Mr. Wilkinson agree to that?

A. He did.

Q. Now as to 1908, what did the Accountants find to be the general expenses for that year?

2661 A. $42,076.75.

Q. What did the books of the company show them to have been?

A. $40,798.31.

Q. Is the difference between those two items substantially the same as the difference you have explained as to the same items for the year 1905?

A. It is.

Q. I notice here there is an addition whereas in 1905 there was a deduction, otherwise the explanation is the same, is it?

A. Yes, sir.

Q. Now as to the operating expenses, what did the Accountants find to be the operating expenses for the year 1908?

A. $75,440.28.

Q. What did the books of the company show the expenses to have been?

A. $79,331.05.

Q. And is the explanation which you have made as to the similar items for the year 1905 applicable to this item?

A. It is.

Q. What were the deductions that year on account of

2662 salaries and wages?

A. $4,159.24.

Q. That is under the heading of operating expenses?

A. That is under the heading of operating expenses.

Q. And in a general way what does that item represent?

A. It represents a portion of the time of Superintendents Dean and Metzger and certain of their men.

Q. And other officers and employés that you have mentioned?

A. Other officers and employés of the Cumberland Telephone Company in Louisville, whose salaries and wages have been charged to Louisville and who work and do work and did work for Suburban exchanges outside of the city of Louisville.

Q. Now as to the maintenance repairs, what did the Accountants find to be the amount expended in the year 1908 for maintenance repairs?

A. $54,705.91.

Q. Was that an apportionment of a larger total or was that the total which they found on the books?

A. That was an apportionment of a larger total.

Q. What was the larger total?

A. $86,155.98.

2663 Q. Did the items making up that total appear on the books of the Company for the year 1908 under the heading of maintenance repairs?

A. They did not.

Q. Under what heading did they appear?

A. They all appeared under the heading of maintenance repairs with the exception of $6,624.15, which appeared on the books of the Cumberland Telephone Company charged to general account. This amount was found by the Accountants to be the proper proportion chargeable to Louisville exchange and was therefore added by them to maintenance repairs expenses for the year 1908, Louisville.

Q. What did the books of the Company show as the amount which it had charged against maintenance repairs for the year 1908?

A. $79,531.83.

Q. I believe you have said that you found that the books—that the amount expended and appearing on the books under the heading maintenance repairs was about $86,000., and you also say that the Accountants found the $54,705.91 was the amount expended for maintenance repairs for that year. How did you arrive at

2664 that conclusion and what disposition was made of the balance of $86,000.?

A. In examining the expenses of the year 1908, we discovered that the expenditures for maintenance reconstruction were included in the figures for the expenses of maintenance repairs, and not being able from the vouchers to segregate those expenses as to maintenance repairs and maintenance reconstruction, we took an average per cent that the maintenance repairs bore to the total maintenance repairs and maintenance reconstruction for the three years ending 1905, 1906 and 1907 and applied that same percentage against the total figures for the year 1908, to arrive at an average amount of maintenance repairs for the year 1908. Following this plan we arrived at a figure of $54,705.91, which we charged to maintenance repairs. The balance we charged to maintenance reconstruction in the same proportion that the various expense accounts under maintenance repairs bore to the total.

Q. What amount then did you charge up for that year to maintenance reconstruction?

A. $31,450.07.

2665 Q. Did Mr. Wilkinson of the Cumberland Telephone Company agree that the additions and deductions that you have testified to in regard to the year 1908 were proper additions and deductions?

A. He did.

Q. Did he agree that the distribution of the $86,000. which you found as the expenses for that year under the heading of mainte-

nance repairs should be distributed as it was distributed and as testified to by you?

A. He did.

Q. Then what about the instrument expense for that year?

A. The Accountants found it to be $13,722.52, as compared with the books of the Telephone Company, $16,195.21.

Q. And is the explanation which you have made of that item in connection with the 1905 expenses applicable here?

A. It is.

Q. And did the joint Accountants—the two Accountants agree that $13,722.52 was the proper item to be charged as instrument expense for the year 1908?

2666 A. They did.

Q. Now taking those figures for the year 1908 as testified to, what did the Accountants agree were the total expenses for that year, including general, operating, maintenance repairs, maintenance reconstruction and instrument expense?

A. $217,395.53.

Q. Now I notice for the year 1905 under the heading of general expenses, that the pro-rate of general account—that $3,139.93 was added to the amount which the company showed as the total of the general expenses of that year, and for the year 1908 only $1,921.03 was added, and I also notice that for the year 1905, $5,521.47 was deducted on account of pro-rate of general office expenses, and that for the year 1908, only $642.59 was deducted on account of that item. Will you please explain, if you know, what was the cause of the apparently large difference between those items for those two years?

A. Beginning some time in the latter part of 1907, the Cumberland Telephone Company changed the method of distributing their general office expenses, and again I think about January 1st, 1908 they made a difference in the way they distributed their gen-

2667 eral account expenses. From these periods mentioned on up to the present time, or up — the 1st of January, 1909, which ended our examination we found that the Cumberland Telephone Company was pursuing a method of distribution of their expenses more nearly in conformity with the one which we have used in our additions and deductions for the years 1905, 1906 and 1907 which I have just testified about. This would naturally tend to reduce the figures in 1908 over those of 1905, 1906 and 1907, from those accounts compiled by us, as those accounts would be more correctly or more nearly correctly distributed.

Q. What did they do for the year 1908 in regard to Mr. Hall's salary?

A. That was charged to the general account.

Q. Was any part of it charged to the Louisville exchange operations?

A. No, sir.

Q. Was any part of it in 1905 charged to Louisville exchange operations?

A. Yes, sir.

Q. What part of it? I mean on the books of the Company?
A. I understood that to be your question. In 1905 it was all charged to Louisville.

2668 Q. Now taking up the items—the totals of the items as the two Accountants agreed, and dealing for the present with the year 1905, I will ask you whether any part of the expenses of the toll department of the Cumberland Telephone Company at Louisville was included in those totals about which you have testified?
A. They were.
Q. Now for the year 1905, what percentage of the total receipts from both exchange and toll departments did the receipts from the toll department bear to the whole?
A. 16.92 per cent.
Q. And does that mean the total receipts of all money taken in from the toll department at Louisville or does it mean the seven or eight thousand dollars which was represented by the fifteen per cent. credited to the Louisville exchange by the Cumberland Telephone Company on its books?
A. That means all the money taken in.
Q. Now if 16.92 per cent. of the general office expenses were deducted from the total of the general office expenses charged to the Louisville exchange for the year 1905, what would that amount to?

2669 A. Do you mean what would the deduction amount to or what would the office expenses amount to with the percentage deducted?
Q. Well, what were the general office expenses which the Accountants found to be the amount expended on the Louisville plant for the year 1905?
A. $11,205.34.
Q. What is 16.92 per cent. of that amount?
A. $1,895.94.
Q. What was the amount of postage, printing and stationary which the Accountants found to be properly chargeable against the Louisville exchange under the heading of general expenses for the year 1905?
A. $3,524.16.
Q. And what is 16.92 per cent. of that?
A. $596.28.
Q. What were the legal expenses under the heading of general expenses for the year 1905 as found by the Accountants?
A. $1,607.60.
Q. What is 16.92 per cent. of that?
A. $272.01.

Q. What was the rent, light and heat found by the Ac-
2670 countants under the heading of operating expenses as the proper amount expended by the Company for that year?
A. $12,607.48.
Q. Rent, light and heat?
A. Yes, sir.
Q. And what is 16.92 per cent. of that amount?

A. That I don't know. I can figure it out for you.

Q. Never mind. What was the amount of advertising and canvassing as found by the Accountants for that year under the heading of operating expenses?

A. $9,427.96.

Q. What is 16.92 per cent. of that?

A. $1,595.21.

Q. What were the incidental expenses for the year 1905 as found by the accountants?

A. $2,567.85.

Q. What is 16.92 per cent. of that?

A. $434.48.

Q. What was the amount of incidentals which the Accountants found under the heading of maintenance repairs for that year?

A. $687.21.

2671 Q. What is 16.92 per cent. of that?

A. $116.28.

Q. What were the traveling expenses under the heading of maintenance repairs for that year?

A. $3,264.01.

Q. What is 16.92 per cent. of that?

A. $552.27.

Q. From the examination of the books and the company's records, were you able to tell anything about whether any part of the cost of the expenses of advertising and canvassing were for the benefit of toll or long distance department of their business at Louisville?

A. We were.

Q. In what way?

A. Allow me to change my answer, when I said we were. We were able to discover that some of these expenses charged to Louisville advertising and canvassing, were for expenses incurred other than at Louisville. Some of them may have been properly chargeable to toll and some to districts, but we found expense vouchers of the advertising manager and solicitor for sundry and many trips they made around the surrounding country, driving from one

2672 exchange to another soliciting business and for expenses incurred at other towns where exchanges are located.

Q. How about vouchers representing travelling expenses as they appear under maintenance repairs? Could you tell anything from the vouchers or records which you examined as to whether any of that expense was incurred on account of the toll department or long distance department of the business?

A. I don't recollect any specific instance at this moment, but I remember at the time I made that charge that I had in mind some vouchers which I had seen for travelling expenses paid by the Louisville exchange and charged to the Louisville exchange for work out in the country. As I think more about it I recollect distinctly one series of expense vouchers for repairing a toll line at Shelbyville or in Shelby County, rather, near Shelbyville, the expenses of which men were sent out from Louisville, travelling expenses paid by the Louisville exchange.

Q. Did the travelling expenses of those particular men at that time remain a part of the item of travelling in the total made up by the Accountants for the expenses for that year in which
2673 that item did appear or was it excerpted?

A. To the best of my recollection at this moment I can state specifically as to that item, and I have no doubt but what we excepted it.

Q. Was any part of the general office expenses for the year 1905 charged against the operation of the toll department or the long distance department of the Company's business?

A. Well, I can't say, inasmuch as I did not examine the toll department.

Q. Did you examine the general account?

A. I did—yes, sir.

Q. On what basis did the Accountants agree that $11,205.31 should be charged against the Louisville exchange for the year 1905?

A. We secured or took off from the books, the operating expenses, the maintenance expenses and the reconstruction expenses for the entire Cumberland Telephone system for the year, and we arrived at the Louisville exchange operating expenses, maintenance expenses and reconstruction expenses for the same period. We found that the Louisville percentage of expenses to the total ex-
2674 penses was 7.52 per cent. We therefore applied 7.52 per cent of the general office expenses of the proper proportion for the Louisville exchange to bear.

Q. In taking those operating expenses and maintenance expenses, whose figures did you take? Figures you had arrived at and which you have testified about here or the figures as they appeared on the company's books?

A. We took our figures, of course. I can see that.

Q. Did your figures as taken by you to ascertain that result include the expenses of conducting and maintaining the toll branch of the telephone system at Louisville, Kentucky?

A. They did.

Q. How does the Telephone Company treat its real estate in so far as its Louisville plant is concerned?

A. They charge the Louisville exchange rental on the buildings and the Louisville exchange pays taxes and insurance on all the property.

Q. Taking up the question of the taxes, how much taxes did the accountants find to be the amount paid by the Company at Louisville, Kentucky on its property other than real estate for the
2675 year 1905—or rather, I will ask you this question: Please turn to Exhibit No. 9 of the report made by the Mutual Audit Company to the Master, and under the heading of general expenses, please state what is included in the item represented by taxes?

A. The item of taxes amounts to $13,690.44, and includes the taxes paid on real estate, personalty, franchise, miscellaneous items, for such things as tax on account of fire hydrants and other items which the Cumberland Telephone Company considered as a tax.

Q. How much of that was chargeable against real estate if you know?

A. Before I answer that question I should like to state that Exhibit No. 9, real estate taxes, is not in conformity with the amount of taxes paid on account of real estate for that year on Exhibit No. 12, for the reason that Exhibit No. 12 also contains taxes paid in Louisville, or rather charged to Louisville on account of the supply department's warehouse.

Q. What does the $1,831.57 on Exhibit No. 9 for the year 1905 represent?

A. Represents the actual amount of taxes chargeable to the
2676 real estate, which have been charged to the Louisville expenses.

Q. How much taxes were paid on the warehouse used for supply department for the year 1905?

A. $120.14.

Q. And deducting those two amounts from $13,690.44 leaves a balance of how much?

A. $11,738.73.

Q. And 16.92 per cent of that is how much?

A. $1,986.19.

Q. Do you know what the real estate standing on the books of the company is valued at—real estate at Louisville, Kentucky. I mean the real estate, specifying each parcel of real estate separately?

A. Yes, sir.

Q. I am talking about the ledger value now?

A. This statement is as of the 1st of January 1909. Main exchange $102,419.20. South exchange, $15,195. East exchange, $17,734.11. West exchange $15,964.10. Warehouse and lots $8,025.27. Stable, $1,503.74, total, $160,841.42. I might also state that in getting these figures from the books of the Cumberland Telephone Company, I found that the South exchange was valued at $10,695, and the Main exchange at $106,919.20.

2677 The reason for this consists of an item of $4,500, the value of a lot on Ormsby Avenue which was transferred to the Cumberland Telephone Company at the time of the consolidation with the Ohio Valley, and which the books of the Cumberland Telephone Company showed as belonging to the Main exchange on Jefferson Street, in Louisville. Since the first of January, 1909, the value of this lot, $4,500, has been transferred from the Main exchange to the South exchange on the books of the Cumberland Telephone Company, for the purpose of this report, and in endeavoring to get it as accurately as possible, we added the $4,500 to the South exchange as of the 1st of January, deducting it from the Main exchange.

Q. Now, taking the ledger value of those properties as of 1905, did you ascertain the amount of rent paid by the Louisville exchange to the Cumberland Telephone Company for the use of those properties, the amount of insurance paid by the Louisville exchange charged against the Louisville exchange for those properties and the amount of taxes paid by and charged to the Louisville exchange on account of those properties?

A. We did.

Q. Now basing the amount of those taxes, insurance and rentals on the ledger value of the property for that year, what were
2678 the gross revenues derived by the Cumberland Telephone Company from the use of this property—for each piece of property separately for the year 1905?

A. The revenue derived from the Main exchange on account of rentals, insurance and taxes was $9,803.97.

Q. I am not asking for the amount received, but I am asking for the percentage of rental as compared with the ledger value—gross rental?

A. The percentage of gross rental on the ledger value would be 7.77 per cent.

Q. I am asking for the gross revenue which the Company received on account of its rental of that property. That is what I am asking for.

A. The gross revenue would be 9.614 per cent.

Q. What was the 7.77 per cent you first mentioned?

A. That was the revenue derived on account of rentals charged to Louisville exchange.

Q. That is the item I want. What for the East exchange?

A. 7.894 per cent.

Q. What for the South exchange?

2679 A. 5.265 per cent.

Q. What for the West exchange?

A. 8.269 per cent.

Q. What for the Stable?

A. 22.63 per cent.

Q. And what was the average for all properties?

A. 7.79.

Q. Had the company paid its insurance and taxes out of the rental which it derived from this property, instead of charging the insurance and taxes up as a part of the expenses of conducting the Louisville exchange, what would have been the net rental it would have received for the use of this property after so paying the insurance and taxes.

A. Separately, from the Main exchange, 5.926 per cent, East 5.968 per cent, South 2.754 per cent, West 6.259 per cent, Stable, 21.812 per cent, average for all property 5.858 per cent.

Q. For the year 1906, what would have been the gross revenue from each of those properties—what was the gross revenue from each of those properties from its rental based on the ledger value of the property?

A. Main exchange, 7.77, East 8.458, South 5.923, West
2680 8.269, Stable 20.084, average for all property, 7.814.

Q. Now had the Cumberland Telephone Company paid the taxes and insurance out of the rental which it charged up as an operating expense against the Louisville exchange instead of paying that insurance and taxes out of the earnings of the Louisville exchange and charging it up as an expense against the Louisville exchange for that year, what would have been its net percentage of rental on the ledger value of the property?

A. The Main exchange, 5.981 per cent, East 6.498 per cent, South 3.585, West 6.162, Stable 16.919, average for all property, 5,9085 per cent.

Q. Now for the year 1907, please answer the same question in regard to that year which I asked you in regard to the year 1906?

A. Percentages of rental revenue. Main exchange, 8.246, East 8.458, South 5.923, West 8.269, Stable 21.280, average for all property 8.167. Net revenue if taxes and insurance were paid by the Cumberland Telephone Company out of the rental revenue. Main exchange 6.4689, East 6.5846, South exchange 3.5577, West 6.2009, Stable 18.2123, average for all property, 6.277.

2681 Q. Now for the year 1908, please answer the same question which I asked you in regard to 1906?

A. Per cent of revenue from rentals. Main exchange, 8.494, East 8.458, South 5.923, West 8.269, Stable 19.950, average for all property 8.324. The revenue if insurance and taxes were paid out of their rental revenue. Main exchange 6.533, East 6.837, South 3.620, West 6.444, Stable 16.786, average for all property 6.418.

Q. I will ask you to file as a part of your deposition a paper being substantially the same copy as exhibit No. 11 for the year 1908 showing the assessed value of the property, the ledger value of the property, the rental charged the insurance on the buildings, the taxes charged and the percentages as they appear on that exhibit?

A. I will do so.

The exhibit in question was furnished by the witness and for identification was marked by the stenographer Exhibit Warren No. 8 and was filed with his deposition.

Q. Did the pay rolls for the year 1905 show any salaries and wages paid out on account of employes in the toll depart-

2682 ment?

A. They did.

Q. Just explain in a general way what class of employes appear on those pay rolls as employes in the toll department?

A. Toll operators, the toll chief operator and assistant, the telegraph operator, the toll trouble man, the messenger boys, toll clerks, and the toll switching operators. I think I got them all in.

Q. Was there a chief toll operator?

A. Yes, sir.

Q. Was there an assistant to the chief toll operator?

A. I don't recall at this late date. I believe there was, though.

Q. Was there a toll wire chief?

A. There was.

Q. Was there an assistant toll wire chief?

A. Yes, sir.

Q. Was there a toll trouble man?

A. I believe that the toll trouble man was the assistant operator—one and the same, if my memory serves me correctly.

2683 Q. Were there any toll clerks whose names appeared on those pay rolls?

A. There were.

Q. How did they appear? I mean did they appear as toll clerks or could it be told from the pay roll——

Mr. GRANBERY: I suggest that you ask the witness how the names appeared.

Q. From the pay roll, whether they were toll clerks or what they were?

A. It could not be told from the pay roll that these toll clerks were toll clerks.

Q. How about the toll wire chief and assistant toll wire chief as to the manner in which their names appeared on the pay roll?

A. They could be designated.

Q. How about the chief toll operator?

A. He could also be designated.

Q. How about the other toll operators?

A. They were specifically mentioned as toll operators on the pay roll.

Q. How about the messenger boys, how did their names appear?

A. Sometimes office boys, sometimes messengers.

2684 Q. Were there any names appearing on the pay rolls as collectors of toll bills?

A. Their names appeared as collectors only.

Q. Were there any names appearing on the pay rolls as operators of private branch exchanges?

A. Yes, sir.

Q. Were there any names appearing on the pay rolls as toll switching operators?

A. Yes, sir.

Q. I notice in the report made by the Mutual Audit Company to the Master in this case, that it shows that salaries and wages under the heading of operating expenses to the extent of $13,269.95 were required and expended at the Louisville plant on account of salaries and wages for employes connected with the toll department. Will you please explain how that item was arrived at?

A. We listed from the pay rolls of the salaries and the wages paid to the toll operators, we also listed all the salaries paid the toll wire chief and the telegraph operators and their assistants whenever they had any. We also took the chief toll operator and the private branch exchange operators in hotels and buildings, and charged one-third of their time to the toll work. Our reason

2685 for so doing was the knowledge that the private branch exchange operators in all the Hotels do a great deal of long distance toll work and our information was to the effect that the chief operator spent a great deal of her time in the toll department. We therefore considered one-third of the pay of these people mentioned to be a fair proportion chargeable to the toll department. We added to those figures all of the toll clerks' salaries, all of the messengers, and one tenth of the salaries of various collectors. We did this for the reason that the toll clerks are busy making out statements of toll accounts and the messenger boys are used for service on long distance calls only, and the collectors we considered one tenth of their time to be a very small percentage occupied in the collection of accounts and indebtedness due to the toll messages. I could go on and say that these items which I have just outlined added together make a total of $13,269.95.

Q. For what year?

A. For the year of 1905.

Q. Can you tell how much the salaries of the employes whose names appear on the pay roll as engaged in the toll depart-
2686 ment amounted to, eliminating the salaries of others, the percentages of whose salaries you included in that item?

A. The salaries of the toll operators for the year 1905 amounted to $7,616.74, for the toll chief and telegraph operators $1,591.76. I have not in detail, or have not figured the salaries and wages of the messenger boys and toll clerks, all which we have deducted, or a total of the two items mentioned for toll operators, toll chiefs and telegraph operators of $9,208.50.

Q. In what way is the balance of the $13,000 made up?

A. The balance is made up by taking a proportion of the salaries and wages of the chief operator, private branch exchange operators and the collectors, for the amount of work that it is estimated they would do for the toll department, and adding it to this figure mentioned.

Q. I notice that for the year 1905 opposite the item rent, light and heat on Exhibit No. 9 of the Mutual Audit Company's Report an item of $1,218.24. Please explain that item, what does that item mean?

A. That is 16.92 per cent of $7,200. In estimating or percentaging the proportion of toll expenses from the exchange expenses, we proportioned a certain amount to rent, light and heat, on all expenses of the Main exchange only. The rental of the
2687 Main exchange for the year was $7,200, and we proportioned 16.92 to the toll department on that amount only, charging them nothing for light or heat because it was impossible to arrive at any light or heat figures, and we did not charge any porportion of rent, light or heat on the sub-exchanges.

Q. Now on the same exhibit I notice an item under maintenance repairs of insurance of $635.26. What does that item represent?

A. That is a deduction which is made to the figures charged to insurance Louisville exchange as agreed upon by the Accountants. Our reason for deducting that figure was that in computing the actual amount of insurance paid upon the properties of the Cumberland Telephone Company in Louisville, we discovered that they amounted to $635.26 less than actually charged, it being the custom of the Cumberland Telephone Company to pro-rate the insurance of the entire system to the various exchanges, and wishing to arrive at the exact figures chargeable to insurance Louisville exchange, we deducted this $635.26.

Q. I also notice opposite the same line an item of $379.65 under the heading of "Charge real estate expense." What does
2688 that item mean?

A. That represents the insurance chargeable to the buildings of the Cumberland Telephone Company in Louisville other than the Main exchange. This item was charged in the expenses of the Louisville exchange and we wished to take it out and charge it up to the real estate expense.

Q. I also notice an item of $765 opposite insurance and under

the heading of "Charge real estate expense." What does that item mean?

A. That is the insurance chargeable to the building known as the Main exchange. That represents the insurance on the building only, and in making this charge we wish to deduct the insurance from the expenses of the Louisville exchange, inasmuch as they are paying a good high rate of rental.

Q. When you say on the building alone, do you mean on the building and land on which it is located?

A. I am not aware that the land is insured. I find no such record.

Q. Now opposite the same line of insurance and under the heading of "Charge supply expense" I notice an item of $307.05. What does that item mean?

2689 A. That represents the insurance charged to Louisville expenses which was paid for insurance on the warehouse building and the contents thereof. This is properly chargeable to the supply department, as the supply department is maintained by the Cumberland Telephone Company separate and distinct from the exchange.

Q. I also notice an item of $99.40 opposite insurance and under the heading of "Charge toll department." What does that mean?

A. That represents 16.92 per cent of the balance of the insurance at the Main exchange after deducting insurance on the real estate buildings. This is for insurance on toll board and equipment, etc., pertaining to the handling of toll business.

Q. I notice on the same page an item opposite damages and under the head of "Charge toll department," of $1500. Explain that item.

A. That consists of the amount of damages paid to an operator for injuries received while in the performance of her duties at the Louisville exchange. This girl was a toll operator and performed toll work only, and was injured in the toll department.

Q. How did you ascertain that fact?

A. I inspected the voucher calling for the payment of
2690 this money. It had several papers attached to it, describing the nature of the injury, the cause thereof and the date thereof, and I inspected the pay rolls on or about that day and for sometime previous and found that on that date and for several weeks previous she had been working as a toll operator.

Q. What is the total then as the amount you have indicated as an overcharge on account of insurance—not on account of insurance, charged to real estate, supplies, etc.?

A. The amount is $635.26.

Q. What is the total amount appearing in the joint report of the taxes and insurance which should properly have been charged to the real estate expense?

A. $2,976.22.

Q. What is the total amount appearing in the item of expenses as made up by the Accountant and which should have been charged to the supply expense rather than to the Louisville exchange proper?

A. $427.19.

Q. And what is the total of the expenses appearing in the items as prepared by the two Accountants and which should have been charged to the toll department rather than to the operation of the Louisville exchange?

2691 A. $23,536.25.

Q. What is the total of those four items you have just testified to?

A. $27,574.92.

Q. Now if you deduct from the total which the Accountants found to be the amount expended for the year 1905 under the four heads of general expense, operating expense, maintenance repairs and maintenance reconstruction, the amount which they found to have been expended in maintenance, reconstruction and instrument expense, a balance of how much would be left?

A. $186,120.27.

Q. Now deducting $27,574.92 from that leaves a balance of how much?

A. $158,545.35.

The further taking of these depositions was adjourned until Monday morning, Oct. 18th, at 10 o'clock A. M.

2692 LOUISVILLE, KY., *Oct.* 18, 1909.

Met pursuant to adjournment and the direct examination of H. B. Warren continued by Mr. Blakey:

Witness files Exhibits Warren No. two, six and eight heretofore promised to be filed by him.

By Mr. BLAKEY:

Q. Now Mr. Warren, in connection with the expenses for the year 1905 as testified by you on Saturday, were the items about which you have testified and which were chargeable against real estate expense and supply expense and toll department gone over between the joint accountants in any way?

A. The specific items about which I testified were not gone over between the joint accountants. The idea or method followed by the Mutual Audit Company in arriving at these specific items was discussed by the accountants, Mr. Wilkinson for the plaintiff could not agree with us that such deductions were fit and proper.

Q. Did those items appear on your working papers in any way at the time any such deductions were had?

2693 A. I believe not; I believe that these specific items were figured out after the discussion took place.

Q. Now were items similar to the ones about which you have testified for the year 1905 prepared from the record of the company for the years 1906, 1907 and 1908?

A. They were, with the exception or with the difference rather that the percentage of expenses charged to toll department varied with each year.

Q. Now I will ask you to file as part of your deposition four

separate exhibits showing items of expense for the year- 1905 and 1906 and 1907 and 1908 as agreed upon between the two accountants, Mutual Audit Company and Mr. Wilkinson and also showing deductions about which you testified to on Saturday in regard to the year 1905 and items representing similar accounts for the years 1906, 1907 and 1908?

A. I do so marked respectively "Exhibits Warren Nos. 9, 10, 11 and 12.

Q. Coming to Exhibit Warren No. 10 which you have filed for the year 1906, were there any items deducted by the Mutual
2694 Audit Co. as an improper charge on account of over charge as appears in the Exhibit which you have filed for that year?

A. There was one item.

Q. What was that item?

A. An item of $257.46 deducted from the sub-heading of insurance under the expense heading maintenance repairs.

Q. Is the explanation of that deduction the same as the explanation of a similar item for the year 1905?

A. It is exactly the same.

Q. Now coming to the head of Charge Real Estate Expense on Exhibit No. 10 for the year 1906, are there any items deducted as appears on that exhibit under that heading?

A. There are three such items deducted.

Q. What is the first item so deducted?

A. The first item is $1755.39 taxes under "General Expenses."

Q. Is the explanation of that item the same as that for the year 1905?

A. It is.

Q. Now what are the other two items?

2695 A. The other two items are under Insurance, General Heading, Maintenance, repairs $556.30 deducted from insurance on branch exchanges; $765 deducted from insurance on main exchanges.

Q. Is the explanation of that item under that head the same as that for the year 1905?

A. Yes, sir; it is.

Q. Coming to the head charged Supply Expense as appears on Exhibit No. 10, are there any deductions under that heading, and if so, what are they?

A. There are two deductions, one of $114.14 deducted from taxes under general expenses.

Q. What is the explanation of that item?

A. The explanation of that item is the same as the explanation for the item under the similar account for the year 1905. There is also a further deduction in this year 1906 of $695.93 from insurance under maintenance, repairs, the explanation for which is the same as a similar deduction for the year 1905.

Q. Now taking up the heading charged toll department, what percentage did the total receipts from toll earnings at the Louisville bear to the total receipts from both toll earnings and exchange earnings for the year 1906?

2696 A. 16.95 per cent.

Q. Are there any items or deductions appearing under charge toll department for the year 1906 on the Exhibit you have filed?

A. There are several items.

Q. Now what is the first item appearing under that heading?

A. The first item is an amount of $1,910.29 under the account "Pro rate of General Office Expenses," under the general heading "General Expenses."

Q. What does that item represent?

A. That item represents the proportion of the General Office's expenses at Nashville chargeable to the toll department on account of the proportion which Louisville exchange is charged.

Q. Is that item 16.95 per cent $11,270.15?

A. It is.

Q. What is the next item under that head?

A. The next item is an amount of $638.91 chargeable to the toll department account, postage, printing and stationery.

Q. What does that item represent?

A. That item represents 16.95 percent of $3,769.38.

2697 Q. What does the next item?

A. $2,435.26 under the heading of "Taxes," under the general heading "General Expenses" which amount is 16.95 percent of the difference between $16,236.82 and the amount previously testified to as being charged to Real Estate Expense and supply expense.

Q. When you say items previously testified to, do you mean items previously testified to and appearing on this Exhibit No. 10?

A. I do.

Q. What is the next item under this head?

A. The next item is $572.87, legal expenses, under general head of General Expenses. This item is 16.95 percent of the amount $3,379.78.

Q. What is the next item under that heading?

A. The next item under that heading is—when you speak of that heading?

Q. The next item under that heading representing deductions?

A. The next item is $15,472.43.

Q. What does that item represent?

A. That item represents the actual amount of salaries and wages paid to the toll operators, the actual amount of salaries and

2698 wages paid to the toll chief operator and the toll trouble man and the telegraph operator, the percentage on the chief operator and the private branch exchange operators, all of the salaries and wages paid to the toll clerks and messenger boys and a percentage of the salaries and wages paid to the collectors and all of these employés working at and being paid by the Louisville exchange.

Q. Do the pay rolls for the year 1906 show in detail the character of work done by the toll operators and toll chief operator and toll trouble man just as they do for the year 1905?

A. They do.

Q. What is the actual amount shown on the pay-rolls as salaries and wages for that year paid to the toll chief operator and assistant toll chief operator and toll operators generally and toll wire chief and telegraph operator and similar employés whose names appear on the pay rolls as doing work exclusively in the toll department?

A. Salaries and wages for this year for the employés designated on the pay rolls as toll operators amounts to $8,470.41. The salaries and wages for employés appearing on the pay rolls as toll chief operator, toll trouble man, telegraph operator and assistant
2699 toll chief operator amounts this year to the sum of $2,526.60.

These amounts appear on the pay rolls so designated that they can be readily dissected.

Q. Now how is the difference between the sum of those two items and $15,472.43 made up?

A. That is made up on a percentage basis.

Q. Is a percentage basis similar to that which you followed for the year 1905 in reaching a similar result?

A. It is exactly the same.

Q. What is the next item appearing under that heading?

A. The next item appearing under that heading is $1,220.40.

Q. What does that represent?

A. That represents 16.95 percent of $7,200 for rent, light and heat under the general heading of Operating Expenses.

Q. What is the next item under that head?

A. The next item under that head is $1,104.99.

Q. What does that represent?

A. That represents 16.95 percent of $6519.14 charged advertising and canvassing under the head of Operating Expenses.

Q. What is the next item under that head?

2700 A. The next item under that head is $449.62.

Q. What does that represent?

A. That represents 16.95 percent of $2,652.61 charged to incidental expenses under the general head of Operating Expenses.

Q. What is the next item appearing under that heading as a deduction?

A. $672.63.

Q. What does that represent?

A. That represents 16.95 percent of $3,968.30 charged to traveling under the general head of Maintenance repairs.

Q. What is the next item appearing under that head?

A. $112.45.

Q. What does that represent?

A. 16.95 percent of $1,428.45 charged to insurance under the head of Maintenance repairs.

Q. Was any part of the insurance and the other expenses deducted or any part of it placed in this Exhibit as a deduction from the expenses as agreed upon between the accountants?

A. There was but *none* charged to the toll department.
2701 The items deducted appear on this Exhibit and have been previously testified to as being properly chargeable to supply

expense, real estate expense and a deduction on account of an overcharge.

Q. What is the next item under that heading?

A. $82.05 which is 16.95 percent of $484.06 charged to incidental expenses under the general heading of Maintenance repairs.

Q. Are there any more items appearing on that Exhibit and which the Mutual Audit Company claimed to be proper deductions from the total expenses for the year as agreed upon by the two accountants?

A. There are none.

Q. What is the total of those figures about which you have testified as appearing on this Exhibit?

A. $28,816.12.

Q. Now if the amount of maintenance reconstruction for the year 1906 is deducted from the amount which the accountants agreed on as the expenses for that year, what total will be shown?

A. $193,272.21.

Q. And if the $28,816.12 is deducted from that item what total will be shown?

A. $164,456.09.

Q. What does that item represent?

2702 A. That item represents the amount properly chargeable to the expenses of the Louisville exchange for the year 1906.

Q. Now taking up Exhibit No. 11 for the year 1907, is that prepared on the same basis as Exhibits 9 and 10 for the years 1905 and 1906?

A. It is.

Q. Does that Exhibit show deductions similar in character to those about which you have testified for the years 1905 and 1906?

A. It does.

Q. For that year, what relation did the total receipts at the Louisville office from toll messages bear to the total receipts from both toll messages and exchange receipts?

A. 17.5 per cent.

Q. And in your deductions on account of general office expense, postage and printing, legal expense, advertising and canvassing, incidental expenses—what percentage did you use in arriving at the amount appearing on the Exhibit as deductions from the total as agreed to by the accountants?

A. 17.5.

Q. What amount of salary and wages appear under the

2703 heading charged toll department for that year?

A. $15,041.28.

Q. Now, what proportion of that $15,041.28 is represented on the pay roll for that year as being the actual amount paid to employés engaged in the toll department?

A. Salaries and wages indicated on the pay roll as being paid toll operators $8,252.36; salaries indicated on the pay roll as having been paid to toll wire chief and assistant, telegraph operator, and toll trouble man $1,965.72 for the year 1907.

Q. What is represented by the difference of the sum of those two

amounts and the $15,041.28, the total amount appearing on Exhibit No. 11 for that year?

A. A portion of the salary of the chief operator private branch exchange operator and the salaries of toll messenger boys and a portion of the salaries of collectors and all the salaries of the toll switching operator.

Q. Now under the head of "Added Account Undercharge" appearing on that exhibit, is there a heading representing a similar account on Exhibits 9 and 10?

A. There is a heading representing an exactly opposite
2704 account for the years 1905 and 1906.

Q. Please explain the item appearing on the "Added Account Undercharge" on Exhibit 11.

A. This amount, $1,126.85 is added to the expenses of the Louisville Exchange for the reason that actual amount of insurance paid by the Cumberland Telephone Company for its Louisville exchange should have been in excess of the amount charged by the Cumberland Telephone Co. just this amount. I arrived at this amount by checking with the insurance papers of the assistant Treasurer the amount of premiums paid on the Louisville exchange for this year and found they exceeded the charge of the operating expenses by this amount of $1,126.85.

Q. What disposition have you made of this item as shown on this Exhibit No. 11?

A. I have added it to the operating expenses, under Insurance, Maintenance Repairs.

Q. Do you mean that you have added it to the amount that the accountants agreed was the total expenses for that year?

A. That is correct.

Q. Now taking that item into consideration, what are the totals of the amounts appearing on this Exhibit as deducted from
2705 the total expenses of the year as agreed to by the accountants?

A. $27,621.05.

Q. Deducting from the total amount found by the accountants to be the expenses for the year 1907, the amount which they found to have been expended in the way of Maintenance Reconstruction, what balance would be shown?

A. $204,703.51.

Q. Deducting from that amount $27,621.05 about which you testified leaves a balance of how much?

A. $177,082.46.

Q. What does that item represent?

A. That item represents the expenses chargeable to the Louisville exchange for the year 1907.

Q. Now coming to the year 1908, Exhibits No. 12, what does that Exhibit show?

A. That exhibit shows the expenses of the Louisville Exchange as agreed to by the accountants that were properly chargeable for the work done at Louisville. It also shows deductions therefrom made by the Mutual Audit Co. for work done at Louisville but not prop-

erly chargeable to the Louisville Exchange. It also showed an addition to the expenses made by the Mutual Audit Co. on ac-
2706 count of undercharge in insurance.

Q. What is the amount of the addition?

A. $971.16.

Q. Is the explanation of those items the same as that made for the year 1907 of the similar item?

A. It is.

Q. Now under the head of "Charge Real Estate Expense" and "Charge Supply Expense" and "Deduct Account Overcharge," I notice certain figures. Is the explanation of those figures the same as that appearing on Exhibits Nos. 9, 10, and 11 under similar heading?

A. It is, except that on Exhibits 9 and 10 there was no column called "Deduct Account Overcharged."

I want to correct that. I should have said that under the column "Deduct Account Overcharged," there was no item on Exhibits 9 and 10 opposite "Taxes."

Q. What items appear under the head of "Deduct Account Overcharge"?

A. An item of $54 for taxes.

Q. What is the explanation of that item?

A. This item represents an overcharge made by the Cumberland Telephone Company on account of telephones furnished free.
2707 It was the custom of the Cumberland Telephone Co. to credit earnings each month with the amount that the earnings would have been on free telephones had they been paid for and the charge expenses each month with this same amount. In doing this for the year 1907 there was a mistake made of $54.

Q. Do you mean 1907 or 1908?

A. 1908. I thought we were on 1907. In other words, Operating Expenses were charged $54 more than earnings were credited. This item of telephone rentals on free telephones is charged by the Cumberland Telephone Company to taxes as an Operating Expense. Therefore, this difference of $54 is deducted by us from taxes.

Q. Do the expenses as complied by the joint accountants include this item which represents what the earnings would be for free telephones as an expense?

A. They do.

Q. Do you mean to say that the accountants agree that one of the expenses of conducting the Louisville Exchange was an item representing what the earnings from free telephones would be if the regular rate had been charged.

A. They did.

2708 Q. Did the accountants agree that that was a proper charge to be made against the expenses of conducting the exchange?

A. Inasmuch as the earnings statements were already prepared and the expense statements had also been prepared before we discovered this item of free telphone and inasmuch as the amounts

were the same on both sides, rather than change all our figures we left them in both places as it made no difference in the result.

Q. Have you any record showing the item appearing on both sides of the book representing this particular feature of expenses for the year 1908?

A. I have not.

Q. Now for the year 1908 what ratio did the earnings from the toll department on Long Distance messages bear to the total of the receipts from both Long Distance messages and exchange earnings from the Louisville office?

A. Fifteen per cent.

Q. Now do the items appearing opposite the toll rates of general office expenses, postage and printing, legal items, taxes and
2709 similar items about which you have testified in connection with the Exhibit for the years 1905, 1906, 1907 and 1908 represent fifteen per cent of the total as made up by the two accountants?

Q. Now when it comes to the item of salaries and wages under the heading of Toll Department as shown on Exhibit No. 12, what amount is represented by that item of salaries and wages?

A. $11,590.16.

Q. How much of that is represented by actual salaries and wages as they appear on the pay roll of that year?

A. The amount representing salaries and wages toll operators which the pay roll indicates to be such employment was $6,018.80. The amount of salaries and wages indicated by the pay roll as paid to the wire chief and wire chief's assistant, telegraph operator, toll trouble man was $976.30. The actual amount of salary and wages paid and indicated on the pay roll to the toll switching operator was $199.03.

Q. Is the last figure you mention the total paid that operator for that year?

A. That is the total paid for six months of that year. The
2710 last six months of the year there was no toll switching operators indicated on the pay roll.

Q. What account did you take of that item for the remaining six months of the year?

A. I did not take any for the reason that we were unable to indicate any one or more operators engaged in that work and therefore would not be justified in continuing to charge up what we could not fairly state was being done and we had no means of knowing whether or not the toll switching operators were discontinued from that date or not.

Q. Now as to the balance of the $11,000, how was that made up and arrived at?

A. That was arrived at by taking a proportion of the chief operator, private branch exchange operators, a portion of the collectors salaries and wages, messenger boys and toll clerks and also certain amounts which were indicated on the pay rolls as moneys having been paid to persons for toll line work exclusively on account of a storm.

Q. Now what does the total of the items appearing on Exhibit No. 12 about which you have testified amount to taking into consideration the added account of $971.16 which appears on that Exhibit?

2711 A. $23,282.68.

Q. If you deduct from the total agreed to as the entire expenses for that year, the amount which the accountants agree to was the total of the Maintenance Reconstruction for that year, what balance will be shown?

A. $185,945.46.

Q. And if you deduct from that amount the $23,282.68 what balance will be shown?

A. $162,662.78.

Q. What does that item represent?

A. That item represents the expenses for the year 1908 properly chargeable against the Louisville Exchange.

Q. Does that item include the item appearing on the books of the company as instrument expense?

A. It does.

Q. Do all four exhibits which you have filed representing the expenses for the year 1908 include that item?

A. They do.

Q. Now is any portion of the salaries of the exchange operators proper contained in these exhibits which you have filed for these four years? In other words, have you deducted any part of their

2712 salaries on account of the expenses of the toll department for those years?

A. None but that of the chief operator.

Q. Does there appear in any of these exhibits No. 9, 10, 11 or 12 any percentage or portion of the salaries of any of the employés of the company such as foreman, laboring men, reconstruction force, maintenance forces, charged by itself to the toll department? I mean have you in these Exhibits deducted any portion of their salaries on account of labor they might perform in connection with the toll lines and the upkeep of the toll property?

A. We have not.

Q. Now are those figures which you have testified to in regard to these expenses for the four years the actual figures as taken from the books of the company or as agreed to by the accountants?

A. These figures are the figures as agreed to by the accountants.

Q. Now the figures appearing on Exhibits Nos. 9, 10, 11 and 12 other than those agreed to by the accountants are derived from what source?

A. They are derived from direct information which was

2713 taken from the books, records and accounts of the Cumberland Telephone Co.

Q. Now what did you say was the amount which the accountants agreed was the proper amount representing the 15 percent of the outgoing toll messages from the Louisville exchange for the year 1908?

A. $7,809.95.

Q. I will ask you to file an Exhibit and make it a part of your deposition, a statement showing the toll earnings or rather 15 percent of the toll earnings for that year, showing what the general expenses were for that year properly chargeable to operating the toll department and what the Operating Expenses for the toll departmnt amounted to and what the Maintenance Repairs for the toll department properly amounted to and the percentage that those items bear to each other?

A. I file same herewith and mark it "Exhibit Warren No. 13."

Q. Now what item appears on that Exhibit opposite "General Expenses"?

A. $5,074.08.

Q. How do you arrive at that figure?

2714 A. That is the total of the items on Exhibit Warren No. 12 under the column charged Toll Department, under the general heading "General Expenses," the same items being 15 percent on the total charged to Louisville as found by the accountants under the respective accounts.

Q. Just indicate again what individual items go to make up that total of $5,074.08?

A. Fifteen percent of the general office expenses, amounting to $1,429.69.

Q. Fifteen percent of postage, printing and stationery amounting to $502.84.

Fifteen percent of taxes after first deducting those taxes chargeable to real estate, supply expense and that amount deducted on account of overcharge leaving a total of $2,651.21.

Fifteen percent of legal expenses or $490.34.

Making a total of $5,074.08.

Q. What item appears on this Exhibit No. 13 opposite Operating Expenses?

A. $14,535.13.

Q. In a general way please state how that item is arrived at.

2715 A. That item is the sum of the salaries or wages properly chargeable to the toll department as already testified to and appearing on this Exhibit Warren No. 12 the amount being $11,590.16. It is also made up of several other items to-wit: Rent, light and heat, main exchange, advertising and canvassing, messengers and incidental expenses, which items are arrived at by taking fifteen percent of the total found by the accountants as charged to the Louisville with the one exception being that of messengers which amount represents the amount of money expended for—that has gone from me, just what that $794 for messengers is. I cannot recall just what those items represent but it was all placed in the toll account because at the time we went into it we discovered that it was for toll business only but just what class I cannot now recall.

Q. As to the item of $630.44 on Exhibit 13 opposite Maintenance Repairs, please explain in a general way what that item represents?

A. That item consists of traveling expenses, insurance on main

office, incidental expenses, the amount- going to make this up
2716 are fifteen percent of the amount found properly chargeable to Louisville by the accountants and represent a total of $630.44.

Q. What is the total of the expenses for operating the toll department as shown by this Exhibit No. 13?

A. $20,239.65.

Q. What is the difference between $7,800 which is credited to Louisville on account of the toll earnings at Louisville and the $20,000 which appears to have been the expenses of conducting the toll department at Louisville

A. The difference is a deficit of $12,429.70.

Q. I notice on this same exhibit some items representing percentages: Please explain those items.

A. The first percentage is percentage of expenses for the toll earnings. It shows what proportion of the earnings was consumed in expenses and it is found to be $259.15 per cent of the earnings or a little over one and a half times more than the earnings. The second percentage represents the percentage of the net revenue to earnings which, of course, would naturally be the difference between 100 per cent and the percentage of the expenses to earnings and is shown by this exhibit to be 159.15 per cent deficit.

2717 Q. Do you mean to say that the Cumberland Telephone Co. credited Louisville on account of toll earnings for the year 1908 the sum of a little over $7,800 and that according to the books of the company as dissected by you it cost them over $20,000 to conduct that toll business?

A. I do say so.

Q. In connection with those expenses is there any part of the salary of the General Manager, Mr. Boardman or the Superintendent Mr. Hall charged to the operations of the toll department?

A. There is not.

Q. Now I think you testified on Saturday in regard to the amount of rental paid the Cumberland Telephone Co. by the Louisville Exchange for the use of real estate and buildings for the year 1905: Have you made similar calculations to show the net per centage on ledger value of the property which the Louisville Exchange paid for the years 1906, 1907 and 1908?

A. I have.

Q. Based on their rental charged up against the Louisville
2718 Exchange as a part of its expenses for the year 1906 and assuming that the company would pay the insurance and the taxes on the property, what would be the net rental derived from each of the exchanges and the stable for that year if the company had paid the insurance and taxes and not charged it to the Louisville Exchange?

A. The net revenue for the main exchange would have been 5.981 per cent.

For the East Exchange 6.498 per cent, for the South Exchange 3.585 per cent, for the West Exchange 6.162 per cent, stable 16.919

per cent. The average for all the property would have been 5.908 per cent.

Q. Now what would have been the percentages on a similar basis for the year 1907?

A. For the Main Exchange 6.4689 per cent, for the East Exchange 6.5846 per cent, for the South Exchange 3.5577 per cent, for the West Exchange 6.2 per cent, for the stable 18.212 per cent and for all the property 6.277 per cent.

Q. What would have been the similar percentage on the same basis for the year 1908?

A. For the Main Exchange 6.533 per cent, for the East Exchange 6.837 per cent, for the South Exchange 3.620 per cent, for
2719 the West Exchange 6.444 per cent, for the stable 16.786 per cent, average for all property 6.418 per cent.

Q. I believe you have filed as Exhibit No. 8 a statement in detail showing the ledger value of the property for the year 1908 and insurance taxes paid and percentages about which you have testified. I will now ask you to prepare and file a similar statement showing the value of the East Exchange as $10,500, instead of $17,734.11, the value of the South Exchange as $11,000 instead of $15,195, the value of the West Exchange as $10,200, instead of $15,964, and show by that exhibit what the net percentage would be on a basis of the questions asked you in regard to the years 1905, 1906 and 1907 and 1908?

A. I will do so.

Q. I hand you a pamphlet marked "Copy of Smith's Exhibit No. 6" with numerous subscribers arranged as to "classification of service" and I will ask you if you have compared that pamphlet with this Exhibit No. 6 as filed by him with his deposition?

A. I have.

Q. Do all of the names appearing in this pamphlet which
2720 you have prepared appear in Smith's Exhibit No. 6?

A. They do.

Q. Are the names as they appear in this pamphlet arranged any differently from the arrangement of Smith's Exhibit No. 6?

A. They are classified the same with the exception of forty-one names, a list of which I have before me.

Q. I will ask the stenographer to read that question to you.

The question was read.

A. I did not answer it correctly; they are.

Q. In what way are they arranged in the pamphlet before you?

A. In this pamphlet which I have before me the names are arranged in alphabetical order according to the various classifications of service, each class of service being separated from any other class of service. In Smith's Exhibit No. 6, the names were arranged alphabetically without regard to the classification of service.

Q. Does Smith's Exhibit No. 6 show the class of service given each subscriber?

2721 A. It does.

Q. Does the classification of the names as they appear in

this pamphlet follow identically the classification as given in Smith's Exhibit No. 6?

A. It does with the exception of the 41 names, the classification of which is different on the pamphlet before me from that of Smith's Exhibit No. 6.

Q. Now I will ask you to file that pamphlet and make it a part of your deposition?

A. I do so, marking the same Warren No. 14.

Q. Now will you also file as an exhibit the paper showing the names of the subscriber-, the classification of which you have changed from that appearing in Smith's Exhibit No. 6?

A. I do so and I mark the exhibit Warren No. 15.

Q. Now, in a general way, state what names of subscribers you placed under a different classification from that appearing in Smith's Exhibit No. 6?

A. The subscribers whose classifications were changed are in the most part churches or charitable institutions or church institutions.

Q. From what classification did you change them and under what classification did you place them in this Exhibit War-
2722 ren No. 14?

A. Those which appeared under classification of Residence Direct, I placed under the classification of Business Direct and those changed which appeared under the classification of residence Party I placed under the classification of Business Party.

Q. Will you glance through this Exhibit No. 14 under the head of Business Direct and indicate, if you can, any names of charitable institutions or institutions of a similar nature which appear in Smith's Exhibit No. 6 as Business Direct Telephone.

A. Ancient Order of United Workmen,
Board of Children's Guardian,
Board of Church Extension of the M. E. Church,
Catholic Woman's Club,
Business Woman's Club,
Cavalry Church,
Cemetery Adath Isreal,
Christ Church Cathedral,
Christian Orphan's Home,
Deaconness Hospital,
First Christian Church,
First Church of Scientists,
Home of the Friendless,
2723 Home of the Innocents.
Hope Rescue Mission.
Jewish Hospital Association.
Kentucky Humane Society.
Newsboys' Home.
St. Xavier's Laundry.
Young Men's Hebrew Association.

That is all I find under Business Direct which are classified as Business Direct on Smith's Exhibit No. 6.

Q. Now how many names appear in this Exhibit No. 14 as having a Business Direct telephone?

A. 970.

Q. How many as having a Business Party telephone?
A. 953.
Q. How many as having Residence Direct telephone?
A. 939.
Q. How many as having Residence Party?
A. 2,009.
Q. How many business pay stations?
A. 525.
Q. How many residence pay stations?
A. 886.
Q. How many business and residence extension sets?
2724 A. 616.
Q. How many extension sets on instruments attached to private branch exchanges?
A. 2,023.
Q. How many trunk lines appearing as leading to private branch exchanges?
A. 257.
Q. How many private branch exchange switchboards?
A. 75.
Q. How many joint users?
A. 184.
Q. How many lists?
A. 439.
Q. 439 or 429?
A. 439.
Q. Are any of those in the country?
A. I believe ten of them are in the country. 429 in the city.
Q. How many extension bells?
A. 146.
Q. Are any of those in the country?
A. Yes; nine of them.
Q. Leaving how many of them in the city?
2725 A. 137.
Q. How many gongs?
A. Two.
Q. Do any instruments appear in Smith's Exhibit No. 6 as non-exchange service instrument-?
A. Yes.
Q. How many?
A. 37.
Q. Do they also appear in Exhibit No. 14 which you have filed?
A. Yes, sir; they do.
Q. How many telephone instruments appear in Smith's Exhibit No. 6 and also in your Exhibit No. 14 as being connected with the country service?
A. 303.
Q. What other items appear in Smith's Exhibit and also in your Exhibit 14 as items for which earnings are due on account of country service.
A. Extension set 35; list ten; extension bells 9; gongs 1, joint users 1.

Q. How many instruments appear from those two exhibits as the total number of instruments connected with the Louisville exchange?

A. 9,296 telephone instruments.

Q. How many of the pay stations are direct lines as they
2726 appear in Smith's Exhibit No. 6 and also in your Exhibit No. 14 and how many of them are on party lines?

A. I assume that your question has reference to city telephones only and not the country service.

Q. Yes.

A. 560 direct pay station phones, 851 party pay station phones.

Q. Are there any pay stations in the country?

A. There are two.

Q. How are they classified in Smith's Exhibit No. 6?

A. Merely as pay stations.

Q. How do you classify them in your Exhibit No. 14?

A. As country pay stations.

Q. Do they appear in the classifications as pay stations under the heading of Pay-stations in your Exhibit No. 14?

A. They do.

Q. What are the rates that Smith's Exhibit No. 6 shows as being charges made for pay stations?

A. There are various rates. Those under business shows two classes of rates, one class being the rate of $1 per month guaranteed by the subscriber, the other class or rate being all the local
2727 earnings of the pay stations to go to the telephone company with the exception of ten percent which is a commission to the subscriber there being no definite amount required to be paid in each month on account of this class of pay stations. The residence pay stations are under two classes, one of which guarantees $1 per month to the telephone company and the other which has no guaranty whatsoever to the telephone company and no commission paid to the subscriber, the telephone company receiving any and all revenue that may be in the coin box.

Q. How many business pay stations are there which guaranty 4 per month?

A. 213.

Q. How many on the ten percent basis?

A. 312.

Q. How many residence pay stations guaranty $1?

A. 569.

Q. How many guaranty nothing?

A. 317.

Q. Now if the telephone company should charge all of its customers having a direct business line $5.50 per month, what would be its receipts per month from that class of service?

2728 A. $5,335.

Q. And if it charged all of its subscribers having business party lines $4 per month what would be its receipts per month for that class of service?

A. $3,812.

Q. If it charged all of its subscribers for residence direct telephone

$3 per month what would be its receipts from that class of subscribers?

A. $2,817.

Q. And if it charged all of its subscribers having residence party lines $2 per month what would be its revenue from that service?

A. $4,018.

Q. Are your figures on this branch of your testimony based on Smith's Exhibit No. 6 and your Exhibit No. 14 about which you have been testifying?

A. They are.

Q. Do you know as of what date that Exhibit No. 6 of Smith's purported to have been made up?

A. I believe it was made up as of date April 1st 1909.

Q. What was the average number of telephones in use for the Cumberland Telephone Co. in the city of Louisville during the year 1908?

2729 A. The average number of telephones per month during the year 1908 was 9996.

Q. What was the greatest number of telephones they had for any month during that year?

A. For the month of January 10,551.

Q. Now if it be assumed that the Cumberland Telephone Co. will charge the lowest rate which they are required to charge under the ordinance which is being attacked in this case for any class of business telephone that lowest rate being $4 per month for a party business telephone, then making your calculation at the rate of $4 per month on the basis of the number of business pay stations in force on April 1st 1906 what would be the receipts from that class of service per month?

A. You have asked me a question pertaining to April 1st 1906.

Q. I mean 1909.

A. The monthly revenue from business pay stations at the rate mentioned would be $2,190.

Q. Now if it is assumed that the Cumberland Telephone Co. will charge to all subscribers for residence telephones at least the lowest rate which the ordinance fixes for that class of service, namely

2730 $2 per month and basing your calculation at the rate of $2 per month, how much would be the revenue on the residence pay stations which the company had in force on April 1st 1909 as shown by Smith's Exhibit No. 6 and also by your Exhibit No. 14?

A. The revenue per month would be $1,772.

Q. Now if the company were to charge all users of extension sets the rate of $1 per month being the rate named in the rate ordinance, what would be its revenue per month from extension sets based on the number they had on April 1st. 1909, as shown by Smith's Exhibit No. 6?

A. The earnings per month would be $616.00.

Q. Does Smith's Exhibit No. 6 show what rates the company charges for private branch exchanges?

A. It does.

Q. What rate is charged some of the users of private branch exchanges as shown by Smith's Exhibit No. 6?

A. In answer to your question I will state that I have not this information immediately before me. I can get it for you.

Q. If we assume that the rates shown in Smith's Exhibit
2731 No. 6 as the charge for the use of private branch exchanges is $5.50 per month and basing your calculation on that figure, what would be the earnings from private branch exchanges per month as appears on this Exhibit No. 6?

A. Before I answer your question, I would like to state that there are several parts of private branch exchanges that go to make up a private branch exchange.

Q. When I say private branch exchange I mean a private branch exchange switchboard.

A. The revenue derived from the private branch exchange switchboard would be $412.50.

Q. Is that at the rate of $5.50 per month?

A. It is.

Q. Now at the rate of $1 per month for extension sets or stations connected with the private branch exchange switchboards, what would be the revenue from that source basing your calculation on the ordinance rate of $1 per month.

A. The monthly revenue would be $2,023.

Q. What would be the revenue from trunk lines leading into private branch exchanges basing your calculation on the
2732 ordinance rate of $5.50 per month for the use of a business direct telephone?

A. The monthly revenue would be $1,413.50.

Q. What would be the earnings from joint users, basing your calculation on the charge of $1 which seems to be about the average charge now made by the telephone company for such service based on Smith's Exhibit of April 1st, 1909.

A. The monthly revenue from joint users would be $184.

Q. What would be the revenue from the lists appearing in Smith's Exhibit No. 6, basing your calculation at the rate of twenty-five cents each per month, which seems to be the amount charged by the company for that service?

A. The monthly revenue therefrom would be $107.25.

Q. What would be the earnings per month from the extension bells, basing your calculation on Smith's Exhibit No. 6 and placing the amount charged for each bell at fifteen cents per month?

A. The monthly revenue would be $20.55.

Q. What would be the earnings from gongs on the same basis?

A. $1 per month.

Q. On the same basis, what would be the earnings from
2733 the 37 instrument- classified under "Non-exchange Service"?

A. The earnings for the non-exchange service instrument aggregates $741.13 per year.

Q. Is that the actual amount that that class of service would aggregate as shown by Smith's Exhibit No. 6?

A. It is.

Q. Now what is the total per month's earnings for the various

classes of service about which you have just testified, eliminating the non-exchange service mentioned by you?

A. $24,631.80.

Q. And twelve times that amount would amount to how much?

A. $295,581.60.

Q. Now did you go through Exhibit No. 6 filed by Smith to ascertain what were the actual earnings from country service as appears in that exhibit?

A. I did.

Q. According to that exhibit what would be the actual earnings from country service per month?

A. $1,381.46.

Q. And twelve times that amount is how much?

2734 A. $16,577.52.

Q. And totaling the $295,581.60, the $741.13 and the $16,577.52 what would the result be?

A. $312,900.25.

Q. Now when we were dealings with the earnings of the company I asked you in regard to the total earnings for the year 1908. I do not recall whether you filed an exhibit showing those total earnings and I ask you to file an exhibit showing the following items: Exchange Earnings, Earnings from Commissions on American Telephone & Telegraph messages, Earnings from Telegraph companies for telephone service, pole service attachments, private lines, lists, advertisements, renewals and miscellaneous, telegraph drops for the year 1908?

A. I will do so.

Q. What were the total earnings from those sources for the year 1908 eliminating exchange earnings proper?

A. The earnings from the sources mentioned amounted to $13,229.26.

Q. Does that include private lines?

A. It does not because private lines are included for the year 1908 in the exchange earnings and cannot be separated

2735 therefrom.

Q. What were the earnings from private lines for the year 1907 if they were separated for that year?

A. For the year 1907 we were enabled to get them separate and they amounted to $1,153.91.

Q. Adding that to $13,229.26 makes a total of how much?

A. $14,383.17.

Q. That added to the $312,900.25 as the total exchange earnings, about which you have just testified, makes a total of how much?

A. $327,283.42.

Q. What is the average amount lost on account of bad debts for the years 1906, 1907 and 1908?

A. The average for the three years is $3,131.52.

Q. Deducting that amount from the total of $327,283.42 leaves a balance of how much?

A. $324,151.90.

Q. I will ask you to file a paper showing the figures about which

you have testified and wherein you reached these totals, with the stenographer making it a part of your deposition?

A. I do so, marked Exhibit Warren No. 16.

2736 Q. Have you prepared a statement showing the gross earnings and the expenses for the year 1908 and based on the figures arrived at by the joint accountants as to gross earnings and based on the figures as arrived at in Exhibit Warren No. 12 which you have filed?

A. I have.

Q. Will you please file such a statement making it part of your deposition?

A. I do so herewith marked Exhibit Warren No. 17.

Q. What does that exhibit show to have been the net earnings of the company for the year 1908?

A. $151,612.74.

Q. On the same basis what were the net earnings for the years 1905, 1906 and 1907?

A. 1905, $101,010.80.

1906, $118,737.95.

1907, $130,012.58.

Q. I believe that you have stated the construction account of the Cumberland Telephone Co. classified under the head of "Aerial Underground Equipment poles Office furniture and fixtures"—is that correct?

A. Yes, sir.

2737 Q. I will ask you to file a statement showing the construction account of the company for the years 1900 to 1908 inclusively showing the amount charged up each year as well as the total under each of those headings?

A. I file same herewith marked Exhibit Warren No. 18.

Q. Does that Exhibit show the construction account as it appears on the books of the Cumberland Telephone Co.?

A. It does not. This exhibit shows the construction account as corrected by the Mutual Audit Company and agreed to by Mr. Wilkinson.

Q. Were you present all the time this work was done by the Mutual Audit Company on the books of the Cumberland Telephone Co.?

A. I was.

Q. Did you have direct charge of all that work?

A. I did.

Q. What did you do with the working papers that you used in connection with that examination made by the Mutual Audit Co.?

A. I took them up to the office of the Master Commissioner in the case and gave them to him.

Q. How extensive in volume were those working papers?

2738 A. They would make a package probably 14 x 16 inches long, and ten or 12 inches high probably. They were more than enough to fill a small grip.

Q. How long would it have taken to cross examine Mr. Blair

Smith the auditor of the company concerning the vouchers in the construction department?

A. By that question do you mean all the vouchers in the construction account?

Q. Yes; I believe you said you were present when Mr. Smith's cross examination was had?

A. Well of course it is impossible for me to state how long it would have taken because there is no way for me to judge the nature of the questions that would be asked or the length of time which would be required to answer the questions.

Q. At the rate we did examine the vouchers in the construction department while Mr. Smith's cross examination was being had how long in your opinion would it have taken to complete the work?

A. I expect we would have been there a month at it.

Q. Would we not have been there nearer six months?

Mr. GRANBERY: You don't think that is leading your witness?

A. I don't think it would have taken six months to go
2739 through the construction account vouchers.

Q. What was the condition of the general books of the Cumberland Telephone Co. at the time this examination was had?

A. Not having investigated the general books of the company I am not competent to state anything as to their condition.

Q. Were any of the books which were examined by you and which should have been balanced unbalanced?

A. There were.

Q. What books were they?

A. The books containing the detailed statement of expenses and earnings separated into exchanges, each exchange by itself, had not been balanced for the year 1907 or 1908 at the time we were engaged upon our work.

Q. Now as to the vouchers which were examined and testified about by Mr. Smith on his cross examination—were they a fair example or fair sample of the vouchers generally which appeared through all the years 1900 to 1908 inclusively?

A. Are you referring now to the vouchers of expense or vouchers of construction?

2740 Q. Vouchers of construction.

A. They were in my opinion good samples.

Q. I believe you said you were present at a conference between the Master and the attorneys for the two sides at Nashville along about June 7th 1909?

A. I was present.

Q. I hand you a paper as attached to a letter from O. E. Ritter addressed to Clayton B. Blakey, City Attorney, Louisville Kentucky and which paper purports to be a stenographic report of that conference and I ask you to look over that paper in a general way and see if it appears to be what it purports to be?

A. It appears to be a report of a conference held in Nashville some time in June.

Q. Do you know whether any stenographic reporter was present and took down what was said at that conference?

A. I know there was a party present who was taking notes of the meeting but as to whether he was a stenographic reporter I have no knowledge.

Q. On whose letter head is that letter written which appears attached to the report?

2741 A. On the letter head of the Cumberland Telephone & Telegraph Co.

Q. I will ask you to file this letter and the stenographic report as an exhibit with your deposition?

A. I do so marked Exhibit Warren No. 19. In running through that I notice an error that the stenographer made in that but it is an insignificant one and it does not make any difference.

Q. Now the auditor of the Cumberland Telephone Co. has stated, as I remember, that the company's methods of keeping books insofar as reconstruction is concerned is to set aside a fund for reconstruction purposes and when a pole line for instance, wears out and must be replaced that the cost of replacing that pole line is taken from the reconstruction fund or depreciation fund and the sale price of all junk, such as wire and poles which is derived from the sale of the old wires and poles taken out is taken into consideration with the cost of reconstructing the pole line. In other words, the auditor seemed to say that the sums derived from the sale of junk are credited to the reconstruction fund or turned into the recon-

2742 struction fund. Did you at any — during the examination of these books find any item representing the sale of junk credited to the reconstruction account or wherein any such fund was turned into the reconstruction account or depreciation fund?

A. We did not.

Q. In what way do the books show that the sale of junk is treated as you found them?

A. The sale of junk is credited to the cost of construction account at the price at which it was sold.

Q. Now the two accountants, the Mutual Audit Company and Mr. Wilkinson state I believe that the earnings under the rate ordinance according to their figures would be about $19,000 less per year than under the rates now charged by the Cumberland Telephone Co. Please explain how the accountants reached that conclusion and what basis the conclusion was reached on?

A. Those figures were obtained from Smith's Exhibit No. 6 and were arrived at by taking each telephone subscriber as it was listed on said exhibit and taking the revenue that would be derived

2743 from the rental rate as indicated by the exhibit and also taking the rental that would be derived if the rental charged were at the rate as fixed by the ordinance of the City of Louisville for the same classification of telephone except in cases where the rates for services were less than the regular rates for such service in which case the revenue remained on both places and in both statements the same as that charged by the Cumberland Telephone Co.

Q. Do you mean to say that if the telephone Company charged $2.00 for a direct business telephone in reaching a conclusion as

to what the company would earn under the rate ordinance that that telephone subscriber was treated as only paying $2 rather than $5.50?

A. We did.

The further taking was adjourned until 2:30.

2744 Afternoon Session.

The parties met pursuant to adjournment at 2:30 o'clock p. m. and the direct examination of Mr. E. W. Warren was resumed by Mr. Blakey as follows:

Q. In your Exhibit No. 14, being a list of subscribers which you say is based on Mr. Smith's Exhibit No. 6, have you especially indicated by memorandum or by memoranda opposite the names of any of the subscribers, rates showing discrimination among these same class of subscribers?

A. I have.

Q. Please point out some of those names. I do not mean to point out all them, I mean point out a few of them.

A. Under the classification "Business Direct Telephone Service" there appears a telephone for the Board of Children's Guardians for which a rate of $2.50 is charged. There is another one for the Board of Church Extension, M. E. Church South under the same classification at the same monthly rate. Another business

2745 direct telephone for the Board of Park Commissioners for which $6.50 is charged per month. Two to the Board of Trade, one at a monthly charge $6.50 and one free. There is one for the Catholic Woman's Club for which $2.50 per month is charged, also one to the Calvary Church for which $2.50 is charged, one to the Cemetery Adath Israel for which a rate of $4.50 is charged; one to the Commercial Club for which no charge is made. The Commissioners of Sewerage have seven telephones, business direct at a monthly rental of $4.00 each. There is a telephone in the Common Pleas Court which pays no rental. The County Sheriff's office and the County Circuit Clerk's telephone at the rate of $4 per month. The County Health Office and the County jail. The Fiscal Court and County Judge and County Coroner, have a telephone for which a monthly rental of $4.00 is paid. The Deaconess Hospital for which a monthly rental of $2.50 is paid. The First Regiment Armory pays no rental for their telephone. H. B. Grant

pays a monthly rental of $2.50. Thomas R. Gordon $1.50,

2746 Hope Rescue Mission has a phone for which no rental is charged. The Home of the Friendless and the Home of the Innocents $2.50 a month. Iroquois Park $6.50 per month. The Juvenile Court and the Kentucky National Guard Armory both have phones for which no charge is made. The Kentucky Institute for the Blind pays a monthly rental of $7 for a phone. The Jewish Hospital Association and the Kentucky Humane Society $2.50 each. The Louisville Free Public Library has two phones at $2.50 each and one at $4.00. The Louisville Law Library pays $3.00 a month for a phone.

Q. I do not mean to point all of them out.

A. I have pointed out a few.

Judge FAIRLEIGH: How many more.

A. I beg your pardon.

Judge FAIRLEIGH: Go ahead.

Q. Go ahead.

A. Joseph Pryor pays a monthly rental of $4.00, also Robinson Bros. and Wilson. St. Xavier's Laundry pays $2.50 per month. The Tavern Club pays $5.00 a month. Young Men's He-
2747 brew Association pays $2.50 a month. Shall I continue on the business two party?

Q. Turn over to the residence direct.

A. Under residence direct: J. J. Anderson and Jno. W. Barr, Jr. both phones free; W. K. Boardman $3.00; Boyle G. Boyle free, Seigel Bronner free, Robt. W. Brown free, Rev. W. R. Brown $2.50, Rev. Chas. Yewell Craik, $2.50; Rev. James T. Cronin, two phones, $2.50 each; H. G. Enelow, $2.50; J. T. Featherston free; H. N. Gifford free; Charles Grainger free; O. D. Green, free; Rec. J. W. Graybill $2.50; E. A. Fox $2.50; Geo. G. Hall free; Rev. T. M. Hawes $2.50; J. P. Hughes $3.50; Rev. L. E. Johnson $2.50; B. Liebert $3.00; Rev. J. S. Lyons $2.50; Rev. R. L. McCready $2.50; H. J. McCutchen free; G. F. McMurchy $3.00; A. W. Metzger free; Rev. W. H. Miley $2.50; Miss Carrie Minton free; Rev. Alonzo Monk $2.70; Rev. G. Nutter, $2.50; Rev. Chas. P. Raffo, $2.50; Henry Shuman free; Chas. Smith free; Rev. D. W. Smith $2.50; J. B. Speed free; J. E. Sohn free; Frank P. Straus free; Mrs. Homar Stucky $2.50; Rev. Henry Sweets $2.50; Rev. F. J. Walz free.

2748 Q. Do you find any names of ministers in there who are charged more than $2.50?

A. I do.

Q. Call some of those.

A. Rev. E. S. Alderman $4.00; Rev. W. W. Landrum $4.00; Rev. Jno. K. Mason $4.00; Rev. John Lockridge $4.00; Rev. Roger T. Nooe $4.00; Rev. H. A. Porter $4.00; Rev. Aquilla Webb $4.00; Chas. E. Woodcock $4.00.

Q. Do you know who Chas. E. Woodcock is?

A. I believe he is—in fact I know he is Bishop of the Diocese of the Protestant Episcopal Church.

Q. Turning over to the private branch exchanges please state what the company charges the Louisville Hotel for telephone service at that hotel as appears on Mr. Smith's Exhibit No. 6?

A. Louisville Hotel has six trunks free, a switchboard free, three stations free, 153 stations at sixteen and two-thirds cents per month, net.

Q. Turn to the Galt House?

A. Eight pay stations free at the Louisville Hotel?

Q. What are the rates charged at the Galt House?

A. One trunk at $8 per month, no discount, with two
2749 lists and extension bells 73 1-3 cents. Three trunks at six and a quarter per month net. Two switchboards free. 249 stations at fifty cents a month each net.

Q. Are the Louisville Hotel and the Galt House prominent hotels in this city?

A. They are.

Q. Is either one of them any further from the exchange than the other—from the main exchange than the other?

A. I think there is a difference of probably three blocks, maybe four.

Cross-examined by Mr. GRANBERY for the Cumberland Telephone & Telegraph Company:

Q. How many employes were there of the Mutual Audit Company making this investigation at Nashville?

A. Five aside from Mr. Farnham the General Manager.

Q. Who were they?

A. Mr. Farnham, General Manager; H. B. Warren, Chief
2750 Clerk of the Mutual Audit Company, and the man in charge of the work, Mr. Castleman, Mr. Key, Mr. Kimbel, assistants, all engaged at the office of the Cumberland Telephone Company, and Mr. Settle who was not employed at the office of the Cumberland Telephone Company.

Q. Is Mr. Key an expert accountant?

A. That I do not know.

Q. How old is he?

A. He must be 32 or 33 years old.

Q. Is Mr. Kimbel an expert accountant?

A. I don't think so.

Q. Who was the other one beside yourself and Mr. Farnham?

A. Mr. Castleman.

Q. Mr. Castleman, is he an expert accountant?

A. No, sir.

Q. You were an expert accountant were you?

A. No, sir.

Q. Is Mr. Farnham an expert accountant?

A. Well, I don't know. I never asked him that question. I believe he is so considered.

Q. Did he tell you what experience he had had in ac-
2751 counting?

A. Never to any great amount of detail.

Q. How long has he been engaged in the accounting business?

A. Further than his connection with the Mutual Audit Co. I am not able to state.

Q. When did you become connected with the Mutual Audit Co.?

A. Along in the summer of 1907.

Q. In the summer of 1907, about when?

A. I think August, maybe September.

Q. What part of Mr. Farnham's time did he spend in Nashville during the time this investigation was going on?

A. I could not answer that question because I did not keep track of Mr. Farnham's time.

Q. You were there all the time, were you not?

A. I was there all the time—yes, sir.

Q. What part of the time did you see Mr. Farnham there?

A. Mr. Farnham made several trips between Nashville and Louisville and Nashville and Chicago during the progress of our
2752 work at Nashville.

Q. Would you say he was in Nashville one-half of the time you were there?

A. I should think so, fully—yes, sir.

Q. You spoke of the President and General Manager of the company coming up into the room where you had been doing your work. What were you doing, you and your associates at the time they came up?

A. I distinctly remember that two of my associates were engaged upon computing the revenue and mileage of outgoing toll calls from the Louisville Exchange.

Q. What were the others doing?

A. As to just what work I was engaged upon I could not say.

Q. Were you doing anything?

A. Most certainly I was doing something.

Q. Were you not sitting on a table not doing any work of any kind?

A. Well, I can't say as to that. I may have been sitting on a table.

Q. Didn't you state to the President that you had exhausted your instructions from Mr. Farnham and that you were through so far as you knew?

2753 A. To the best of my recollection I did state that I had exhausted my instructions from Mr. Farnham but I don't remember that I stated that I was through at that time.

Q. At least you told him that you had nothing else to do then?

A. I believe I did remark that after I got through with what I was then engaged upon I was through.

Q. How many employés were engaged in measuring the toll line messages from Louisville?

A. Two.

Q. How long had they been engaged on that?

A. You asked me solely regarding the measuring of the distance?

Q. Yes.

A. I don't think that could have been more than a few days.

Q. What use did you make of that information?

A. I don't believe any use was made of it.

Q. Were you present at every interview between Mr. Wilkinson and Mr. Farnham?

A. No, sir.

2754 Q. Didn't the Auditor take you down into the supply department and show you the books and the method and system of handling the supplies?

A. He did and I believe I testified to that effect.

Q. A memorandum of the basis of the examination was drawn up and entered into between Mr. Farnham and Mr. Wilkinson, was it not?

A. It was.

Q. File a copy of it with your deposition?
A. I will do so.
Mr. BLAKEY: Is that one of the papers filed with the Master?
A. I believe it was.
Mr. BLAKEY: I do not see how Mr. Warren can file it then if it is filed with the Master.
A. It was filed with the Master by Mr. Farnham and concurred in by George Wilkinson, a letter accompanying same dated March 6th, 1909, Nashville, Tenn., which letter was signed by Mr. Farnham and concurred in by Mr. Wilkinson.
Q. Well, you will file a copy of it as an exhibit with your deposition, will you?

Mr. BLAKEY: So far as the paper itself is concerned Mr.
2755 Warren has no control over it and I will have to object to him filing the original paper.
Mr. GRANBERY: I did not ask him to file the original paper. I asked him to file a copy.
Mr. BLAKEY: You first asked him to file the original paper as I understood it. As to a copy of it, if he has a copy or if you furnish him with a copy, I have no objection to him filing it.

Q. Have you not a copy of it before you—have you not the original before you now?
A. The original was sent to the Master. I have a copy of it signed by both accountants.
Q. Will you file that copy as an exhibit to your deposition?

Mr. BLAKEY: I have no objection to Mr. Warren having a copy made and filed. I think possibly Mr. Farnham would want that copy himself that he has retained.
Mr. GRANBERY: I have no objection to that, just so I can get a copy in the record.

The copy was furnished and was filed with this witness's
2756 deposition, and was marked by the stenographer "For identification Exhibit Warren No. —."

Q. Have you not had access to the working papers of the Mutual Audit Company in the hands of the Commissioner?
A. Not while in the hands of the Commissioner—no sir.
Q. Have you seen them since they were filed with the Commissioner?
A. I have—yes, sir.
Q. Have you had every access to them whenever you wanted to?
A. Yes, sir.
Q. Has anybody ever undertaken to deny you access to them in any way at any time?
A. No, sir.
Q. You say you have made a specialty of railroad investigation and municipalities, is that correct?
A. Yes, sir.
Q. What period of time have you devoted to the examining of railroads and municipalities?

A. All the time that I have been connected with the
2757 Mutual Audit Company with the exception of eight or nine weeks that I was engaged in this Cumberland Telephone case in Nashville.

Q. What municipalities have you examined?

A. I have examined the City of Jacksonville, Florida, and have set up statements of accounts for the cities of Norfolk, Va.; Wilmington, Delaware—have assisted in the setting.

Q. Has that been since August, 1907?

A. Yes, sir.

Q. Now these railroads that you have investigated, did you investigate the entire records?

A. No, sir.

Q. In other words you have just been working on parts of the records of these various railroads that you have mentioned, is that correct?

A. Well, now that statement would have to be qualified.

Q. Well, qualify it.

A. That is, the question would have to be qualified. I have examined all records pertaining to any one division or divisions required under the Court orders of our examination, and all
2758 records of the railroad pertaining to the division of that particular state for which we were working, and those records consisted of practically the entire railroad work for that portion of the railroad only.

Q. How many other people were engaged with you in that work?

A. The number has varied from time to time, from two to twelve or fourteen.

Q. Were you in charge of all that work?

A. I was not always in charge. I was in charge of some parts of it at some times.

Q. What parts and what times were you in charge of it?

A. I was in charge of the examination of the records of the Louisville and Nashville Railroad Company from the 1st of January 1909 up to some time in April 1909. I was in charge of the examination of the Chicago and Northwestern Railroad from the early part of April up to the time I went to Nashville. That is all the time I have been in charge of any railroad work—at the head of it.

Q. Did you make up the report of the Mutual Audit Company in this case?

A. I did not. I made up the exhibits only.

2759 Q. Did you make up all of the exhibits?

A. I believe there was one or two exhibits that were made at the suggestion and under the instructions of Mr. Farnham but I made them up at his suggestion. The balance of them I made up myself.

Q. Who wrote the report?

A. Mr. Farnham.

Q. Did you assist him in that?

A. I don't believe so, past possibly reading and correcting some things.

Q. You had nothing to do with the constructive part of it, your part was only mechanical?

A. I think there was possibly a page or two that I may have given the ideas about, something like that.

Q. Do you know whether the Mutual Audit Company was being paid by the job or by the day in this work?

A. My duties are not those of the Treasurer of the company, and I do not see any contracts or have anything to do with them.

Q. I didn't ask you that. I asked you if you knew whether the Mutual Audit Company was being paid by the day or job for this work?

2760 A. Yes, I know it.

Q. How were they paid or how are they to be paid?

A. To be paid by the day.

Q. That is so much for Mr. Farnham's time and so much for yours and so much for each of the other men?

A. Yes, sir.

Q. What was the compensation per day of Mr. Farnham?

A. Am I competent to answer that question, Mr. Blakey?

Q. Answer the question, Mr. Warren.

A. I am perfectly willing to answer the question. It is a question of whether the Mutual Audit Company would care for me to testify as to their business.

Q. Well, answer the question or decline to answer it, one way or the other.

A. Well, I will answer the question. I believe Mr. Farnham's time was reckoned at the rate of $25 a day and his expenses when he was on the job.

Q. And what was your time reckoned at?

A. $10 a day and expenses.

Q. And what was Mr. Key's time reckoned at?

A. $10 a day and expenses.

2761 Q. And Mr. Castleman?

A. At the same rate, $10 a day and expenses.

Q. And the other one?

A. The same rate, $10 a day and expenses.

Q. And Mr. Settle?

A. There was no charge made for Mr. Settle's time to the City of Louisville.

Q. That was a matter between him and the Mutual Audit Company entirely?

A. Yes, sir.

Q. At the time that the President and the General Manager came through the room where this work was going on Mr. Wilkinson was present, wasn't he?

A. Yes, sir.

Q. And his assistant?

A. Yes, sir.

Q. And the Telephone Company was paying them for their time was it not?

A. I suppose so.

Q. You so understood, didn't you?

A. Yes, sir.

Q. And they could not make their report until the Mu-
2762 tual Audit Company was ready to join them in working it up, could they?

A. I suppose not. Now when I say that, I mean they could not make their joint report?

Q. That was your instructions, to make a joint report, was it not?

A. Yes, sir.

Q. So if time was being killed by the Mutual Audit Company employés, the telephone Company was suffering to the extent that they were paying their accountants, was it not?

A. If such was the case, it would.

Q. Have you lived in Louisville all your life?

A. No, sir.

Q. How long have you lived in Louisville?

A. About six years.

Q. Had you been engaged in book-keeping prior to the time you came to Louisville?

A. Yes, sir.

Q. For how long?

A. Since I was 18 years old.

2763 Q. What character of books did you keep prior to coming to Louisville?

A. I kept books for large manufacturing establishments, for a telegraph company and the grain business, and commission brokerage business.

Q. Were you in entire charge of the books for these large manufacturing concerns?

A. For a time I was not, until I had learned my business.

Q. How long were you in entire charge of them?

A. Probably four or five years.

Q. What concern was it that you were in entire charge of the books?

A. I had entire charge of the books of W. A. Case & Son, Wholesale Plumbers and Manufacturers of plumber's supplies, Buffalo, New York. Do you want to know their address? I had entire charge of the books of the Commission and Brokerage business entitled H. F. Guthrie, and entire charge of the books of the Postal Telegraph Cable Company at Buffalo New York.

Q. Their branch office at Buffalo?

A. Yes, sir.

2764 Q. How long were you with the Postal?

A. I have not finished yet. A portion of the time I had entire charge of the books of Sidney, Shepherd & Company, Manufacturers of tinware.

Q. Are you through now?

A. Yes, sir.

Q. How long were you in charge of the books of the local office of the Postal Company in Buffalo?

A. Probably 20 months.

Q. Now that covered a period of how many years prior to your coming to Louisville, these positions you have mentioned?

A. From the time I went to work until I came to Louisville.
Q. I want to know how long a time that comprised?
A. Five or six years, I should say.
Q. Now you have been in Louisville you say about six years?
A. About that—yes, sir.
Q. What did you do in Louisville?
A. I kept books for a large manufacturing establishment in Louisville.
2765 Q. What concern?
A. Kentucky Drill Co.
Q. How long did you keep books for them?
A. About four years.
Q. Did you have entire charge of their books?
A. I did.
Q. Then what did you next do?
A. I went to work for the Mutual Audit Co.
Q. What did you do in between the time that you left the manufacturing concern and the time you went with the Mutual Audit Co.?
A. I did nothing.
Q. Did you ever keep books or were you ever bookkeeper and local cashier for the American Seeding Co.?
A. I was.
Q. What time was that?
A. At the time I was engaged with the Kentucky Drill Company.
Q. At the same time?
A. Yes, sir.
Q. You had charge of both sets of books?
A. It was the same concern.
2766 Q. The same concern?
A. Yes, sir.
Q. How come you to leave them to go with the Mutual Audit Co.?
A. I did not leave them to go with the Mutual Audit Co.
Q. When did you leave them?
A. Three or four months before I went with the Mutual Audit Co.
Q. What did you do in the meantime?
A. Nothing.
Q. You were in Louisville?
A. I was not.
Q. Why did you leave the American Seeding Company?
A. The American Seeding Machine Company was making arrangements to close up their plant here in Louisville and go out of business, and I had an opportunity or thought I had an opportunity to go in business in the East where I had come from. I wanted to go back there and I went back there to see if I could get in business.
Q. Is that the reason you left the American Seeding Ma-
2767 chine Co.?
A. Mr. Granbery, I do not undertand what all this has to do with the Cumberland Telephone Company case.
Q. Is it not a fact that you were discharged by the American

Seeding Company because you had falsified your books and were a defaulter?

A. No, sir; I was not discharged.

Q. Wasn't that the charge against you?

A. There was no charge brought against me.

Q. Didn't the Traveling Auditor check you up short?

A. See here, Mr. Granbery——

Q. Answer my question.

A. I will answer the question. I have never been accused nor arrested nor convicted of any crime or any offense against the law.

Q. Wasn't your shortage made good by your relatives or your relatives-in-law and wasn't that the reason that you were not arrested and tried for a crime?

A. I have answered your question, I think.

Q. No, you have not answered that one.

A. You are asking me personal questions.

2768 Q. Yes, and I want answers to them.

A. I don't think I have to answer them. They do not pertain to this piece of work.

Q. Will you give me an answer or not?

A. No, sir.

Q. Well, we will have to send for the Master Commissioner, Mr. Blakey, or suppress this deposition, one or the other.

Mr. BLAKEY: I am perfectly willing if you want to send for him, to send for him.

Mr. GRANBERY: Won't you ask the witness to answer my question?

Mr. BLAKEY: I don't think any of it has anything to do with the case and I am not going to object to it one way or the other. I am going to let you bring out anything you want to bring out.

Mr. GRANBERY: Will you tell the witness it is proper for him to answer the question?

Mr. BLAKEY: I do not think it is proper for him to answer the question.

Mr. GRANBERY: Well, we will have to get the Master Commissioner.

At this point in the taking of the deposition plaintiff's
2769 counsel called for the special Master and he was not to be found, and thereupon counsel again asked the question if he would answer the question.

A. I will answer the question if the special Master rules that it is essential or necessary.

Q. Is it not a fact that you confessed to the Traveling Auditor of the American Seeding Company that you had falsified your books in order to conceal a defalcation, the proceeds of which defalcation you had taken as Local Cashier and appropriated to your own use?

A. The answer to that question is covered by the answer to the preceding question.

Q. And is it not a fact that your defalcation was made good by your relatives-in-law and that you immediately left the city and stayed away for two or three months?

A. The answer to that question is covered in my answer to the question second preceding.

Q. Didn't you have trouble before you came to Louisville of the same general character?

A. If you mean of the character as you have mentioned,
2770 and without committing myself to any of your preceding questions, I say no, sir.

Mr. BLAKEY: Do you want to get the Master to rule on those preceding questions?

Mr. GRANBERY: I do not care anything about it. I tried to get him and he was not in.

Mr. BLAKEY: Do you want the matter certified to the Master?

Mr. GRANBERY: Well, we could not get the Master, let it stand as it is.

Re-examined by Mr. BLAKEY:

Q. I believe you said you did not consider yourself an expert accountant? Are you an experienced accountant?

A. I believe so.

Q. Were you present all the time during the making up of the joint report between Mr. Wilkinson and Mr. Farnham?

A. I was.

Q. You have stated that your pay or rather the city paid the Mutual Audit Company $10 a day for your time during the
2771 progress of this work. Do you know whether any additional amount was paid for your time during the time Mr. Farnham was not present?

A. I believe there was—yes, sir. I believe there was a charge of $15 per day for me during Mr. Farnham's absence, but I won't be sure about that. I think something like that was stipulated in the contract, although I did not see the contract.

Q. Who are your relatives-in-law in this town?

A. My father-in-law is R. M. Hartwell.

Q. What is his business?

A. He is in the grain and feed business.

Q. What is the title of the firm or corporation in which he is engaged?

A. The name of the firm is H. Verhoff & Company.

By Mr. GRANBERY:

Q. How long had the Mutual Audit Company been engaged in business when you became connected with it?

A. I believe only a month or so.

Q. Do you know whether Mr. Farnham was ever connected
2772 with any other Audit Concern?

A. I do not.

By Mr. BLAKEY:

Q. Do you know whether the accountants—each of the accountants who organized the Mutual Audit Company were prior to the Mutual Audit Company engaged in the same class of work?

A. They were.

The further taking of these depositions was adjourned to meet pursuant to notice.

H. B. WARREN.

2773 EXHIBIT WARREN No. 1.

LOUISVILLE, KY., *May* 3, 1909.

E. W. Farnham, Esq., Louisville, Kentucky.

DEAR SIR: An expert accountant selected by the City of Louisville, in pursuance of the agreement between counsel for the Cumberland Telephone & Telegraph Company on the one side, and for the City of Louisville on the other side, I wish to say to you that your duties will be to examine and investigate the books and papers of the Cumberland Telephone & Telegraph Company which are referred to directly or indirectly in the questions and answers contained in the deposition of Mr. Smith, the Telephone Company's Auditor.

In conjunction with an expert accountant to be appointed by the Telephone Company, you are to make your investigation, and to make it as complete as may seem to you necessary and proper. Your investigations are to be confined to the matters and things suggested in the order of reference made by the United States Circuit Court, at Louisville, and it will not be your duty to investigate any matter or thing not embraced by such order of reference, unless same be clearly pertinent thereto.

You and the Company's accountant shall make such report of your examination to me, as Special Master, as you may agree upon.

Should you and the Company's special accountant differ in any particular as to the matters and things investigated, you shall make separate reports to me as Special Master covering all matters of difference. I shall expect each of you to give in writing the reasons for such position.

It is very important that your investigation shall be made as expeditiously as may be possible without endangering their correctness.

I trust that you may have no difficulty in coming to a speedy agreement with the Company's accountant as to the best and most expeditious course of procedure.

Very respectfully yours,

HENRY BURNETT,
Special Master.

(Here follow Exhibits Warren Nos. 1 to 13, marked pages 2773 to 2787.

Assets

Exchange Construction:
Aerial
Equipment
Underground Conduits
Cable

Office Furniture and

Toll Line Construction
Real Estate
Franchise
Supply Account
Cash
Unearned Rentals
Board of Trade Stock
Amount due from Subscribers
Agent's toll Accounts
American Telephone and Tele
Cumberland " "
Central Union Telephone Co.
East Tennessee Telephone Co
Louisville Railroad Co.
Sundry Small Accounts
H. H. Brown, Foreman
Sundry Managers' Accounts

o any.

nuary 1st, 1905 as per records of
y Telephone Company.

Liabilities

Capital Stock		$ 99,400.00
Bonds outstanding		14,000.00
Surplus Account		12,322.00
Reserve for Taxes	4,000.00	
Reserve for interest	1,770.00	
" " S.B. Royalty	2,404.59	
" " Depreciation	8,000.00	
" " Toll Line Reconstruction	9,000.00	
" " Special Account	38,874.16	70,049.75
L.C. Madelox		139.68
Agents Toll Accounts		1.35
Cumb. Tel. and Tel. Co.		21,997.93
Bills Payable		221,005.07
Exchange subscribers		2,039.93
American Bell Telephone Co.		14,197.91
Western Electric Co.		23,950.21
Other Line Accounts		1,408.16
		$932,532.08

"Exhibit Warren No. 2."

2775

	Western Electric Co.	not Examined. Supplies for Supply
1900	1 1 19375	4 4 4029 3
1901		6 1 5881 5
1902		3 7 44604
1903		2 7 67938
1904		4 4 8 4973
1905		2 1 34343
1906		4 8 3341 2
1907		380373
1908		295329
Up to Mch 6-1909		
	1 1 19375	29 4 14186

Recapitulation — Bevel Construction

	Not Examined.	Palos.	Miscellaneous Freight. Etc.	Pay Rolls.	Add — Error in Book-keeping.	Total.	Ex
2	599820	133716	417863	2370619	10000		
8	857796	99300	110000	2158202			
4	333396		396780	3491432			
8	1025735	20700	108749	3883158			
3	976284		28144	7679918			
3	133700	31050	413944	1618061			
2	88224	9300	736540	2491688			
3	79360		139333	1443461			
9	21001			419593			
			11491.2				
	4115367	319046	2416164	29096181	10000	60650337	

2776

~~7833~~

Amount Carrying	Total	Excerpts	Credits Journ.	Credits Miscellaneous	Credit Totals	Net Total
10000						
		30225				
		104943	230650			
			366236			
		18450	347702			
		21375	139203			
		16610	1033144			
		31404	184810			
			21144	184508		
10000	6065337	229007	3642811	184508	395324	5670013

Exhibit Mann. No. 3.

Recapitu

	Western Electric Co	Surplus from Supply not examined
1900	2627518	151470 3
1	3962179	3635067
2	7135808	410345
3	4899223	194739 8
4	390034	171250 5
5	390852	86099 3
6		94429
7		79307
8		7483
up to March 1909		
	19400661	15515720

Recapitulation Equipment Construction

Labor only Check	Not Examined	Miscellaneous	Pay Rolls	Telephone Booths	Add Error for Bookkeeping	Pay Stations	Total
1470 3	7530 9	5418 4		102752	1000		
3506 1	2795 0	12012 7					
00345	76140 3	59451 7	928 6				
4739 8	139490 0	95716 7					
1250 5	14922 7	64609 5		42100		140000	
6099 3	7291 1	38362 1	1215 6				
4412 9	7406 8	18782 1	268 8				
9310 7	18848 1	7500 9					
7483	4927 3		19 5				
15720	279301 7	302134 1	2482 6	145452	100 0	140000	4104221 9

2777

~~2824~~

Total	Credit Junk	Credit Supply	Credit Mules Horses	Credit Miscellaneous	Excerpts	Credit Total	Net Total
	139500						
	12953 0	17025 6	5750 0	456 5			
	45 7	25553 2	18000	53867 0			
		10555		5255 7	610 5		
				8197 3	2 5		
		7023 1		9828 2	3372 2		
		109878 5		17674 7			
				7865 8			
4104221 4	26948 7	137537 9	75500	1482	3985 2	271301 2	3832920 1

Exhibit Warren No 4.

Cumberland Telephone Co

Summary of Toll Sys

		Outgoing Calls	Cash Rec. Collected	
1906	March,	18,967	$ 4,461.92	
	April,	18,142	4,269.39	
	May,	15,668	4,421.26	
	June,	12,191	4,390.61	
	July,	11,125	3,963.26	
	August,	11,384	4,007.08	
	September,	11,192	3,990.73	
	October,	11,198	4,268.09	
	November,	10,878	4,218.36	
	December,	12,009	4,469.43	
Only 10 months available for year 1906	Totals,	132,754	$ 42,457.01	
1907	January,	11,846	$ 4,329.24	
	February,	10,390	3,918.26	
	March,	12,306	4,636.69	
	April,	11,524	4,251.23	
	May,	13,043	4,811.13	
	June,	12,518	4,599.11	
	July,	12,472	4,423.90	
	August,	12,421	6,056.61	
	September,	11,417	4,755.23	
	October,	11,814	5,904.88	
	November,	11,110	6,764.90	
	December,	9,973	4,744.74	
	Totals,	140,740	$ 51,096.93	
1908	January,	9,712	$ 4,415.32	
	February,	9,250	4,221.13	
	March,	9,611	4,361.65	
	April,	9,016	4,263.47	
	May,	9,598	4,542.95	
	June,	9,701	4,653.24	
	July,	11,050	4,252.41	
	August,	10,736	3,941.95	
	September,	10,914	4,346.00	
	October,	9,785	4,649.34	
	November,	9,776	4,654.16	
Only 11 months available for year 1908	Totals,	109,207	$ 48,293.07	
			2229	

Cumberland Telephone and Telegraph Company

Summary of Toll Service in and out of Louisville Ky.

going Calls	Cash Rec. Collected	Average per call	Incoming Calls
67	$ 4,461.92	23.58¢	9,963
12	4,269.39	23.53¢	10,552
68	4,421.26	28.22¢	11,300
91	4,390.61	36.01¢	11,485
25	3,963.26	36.62¢	10,822
84	4,007.08	36.19¢	10,367
12	3,990.73	36.65¢	9,853
8	4,268.09	38.09¢	10,852
78	4,218.36	38.78¢	10,527
09	4,469.43	37.22¢	10988
784	$ 42,457.01	31.98¢	107,099
16	$ 4,329.24	38.16¢	10,324
90	3,918.26	38.71¢	9,450
06	4,636.69	38.86¢	12,066
24	4,251.83	34.87¢	11,043
43	4,111.13	34.89¢	11,179
18	4,599.17	34.74¢	11,080
72	4,423.90	34.91¢	11,481
128	6,056.61	40.67¢	10,818
17	4,755.23	40.93¢	9,134
14	5,904.88	39.98¢	10,480
10	6,747.96	51.89¢	7,730
773	4,744.74	47.68¢	8,140
140	$ 51,096.93	40.94¢	124,371
712	$ 4,415.32	47.62¢	8,036
250	4,221.13	45.63¢	7,283
611	4,361.45	45.38¢	8,244
076	4,243.67	46.91¢	8,101
598	4,542.95	47.23¢	8,209
701	4,653.24	46.93¢	9,094
050	4,252.44	38.49¢	9,278
735	3,941.95	36.72¢	8,631
914	4,345.00	39.81¢	8,884
785	4,669.34	46.70¢	8,286
176	4.656.16	46.60¢	7,822
9,207	$ 48,233.07	44.16¢	91,773

"Exhibit Warren No. 6"

		Pay Stations	Dead Heads
1905	January	699	106
	February	697	106
	March	690	109
	April	673	111
	May	656	116
	June	699	114
	July	629	110
	August	622	105
	September	601	102
	October	589	102
	November	511	103
	December	565	102
1904.	January	547	105
	February	537	104
	March	684	107
	April	533	107
	May	820	110
	June	517	110
	July	513	111
	August	508	111
	September	605	112
	October	500	112
	November	497	111
	December	594	111

2980
~~4809~~

C. P. Co.	D. H. S. B.	Telegraph	P. O. Exch.
5	129	5	
	129	5	
	129	5	
	129	5	
	128	5	
	124	5	
	124	5	
	126	6	
	126	6	
	125	6	
	122	6	
	120	7	
73	117	7	
422	113	7	
617	112	7	
692	111	8	
767	111	8	
794	106	8	
815	100	8	
844	100	8	
918	98	8	
956	98	8	
1133	96	8	
1284	95	8	

Extension Sets	Actual Subscribers	Total Phones	
906	5927	8774	
922	5907	8744	
932	5936	8800	
936	5847	8100	
171	5833	8909	
189	5798	8876	
174	5621	8666	
196	5600	8653	
236	5165	8829	
274	5834	8930	
344	5901	9009	
328	5990	9112	
331	6014	9203	
354	6048	9406	
342	6044	9764	
348	6030	9846	
893	5981	9880	
888	5934	9869	
853	5806	9706	
861	5791	9741	
920	5898	9764	
983	5974	10080	
937	5953	10237	
948	5909	10379	

		Pay Station	C.P. Co
1901	January	488	1393
	February	483	1562
	March	479	1492
	April	475	1143
	May	462	1780
	June	456	1739
	July	454	1893
	August	447	1896
	September	439	1981
	October	432	1896
	November	429	1841
	December	423	1817
1908.	January	435	1747
	February	481	1490
	March	480	1664
	April	440	1604
	May	450	1637
	June	454	1481
	July	454	1416
	August	473	1326
	September	466	1222
	October	463	1450
	November	462	1094
	December	454	1031

D. & S. B.	Telegraph	P.B. exchange and Gilman S.L.	Actual Subscribers	Total Phones	Total Earnings	P.B. Exc. & Tel. Sub. Earnings
71	8	2636	5890	10614	2312851	222234
78	8	2665	5901	10700	2378051	249295
81	8	2571	5889	10841	2384224	272180
84	8	2400	5836	10864	2407634	277075
84	8	2462	5831	10926	2432429	281980
82	8	2491	5798	10918	2432441	281651
81	8	2471	5796	10886	2417152	274699
80	8	2485	5796	10851	2411048	284965
79	7	2714	5802	10919	2442042	290418
76	1	2739	5848	10882	2464924	291204
76	8	2756	5826	10882	2462473	291263
76	8	2761	5804	10768	2448473	292205
75	8	2763	5434	10551	2491019	291007
75	9	2819	5405	10501	2438949	301707
75	9	2828	6591	10480	2461180	301894
75	9	2819	5123	10156	2727877	303228
75	9	2803	5085	10049	2509806	301519
76	9	2193	5085	9969	2447467	300119
73	9	2789	4956	9780	2422591	298406
72	9	2789	4948	9696	2414743	298184
71	9	2789	5280	9722	2446706	298843
71	9	2820	5130	9725	2491812	308042
71	1	2821	5114	9756	2481753	308108
71	7	2841	5165	9767	2499718	309402

"Exhibit Warren No. 8"

Cumberland Telephone a

Per Cent of Revenue Derived

1908.	—	Main Exchange	East Exchange
1	Assessed Value,	$ 42,000.00	$ 9,250.00
2	Ledger "	102,419.20	17,734.11
3	Rental Charged,	8,700.00	1,500.00
4	Insurance on Bldg.,	90.50	6.40
5	Taxes Charged,	1,032.15	223.52
6	Per Cent of Rental Revenue on ledger value,	8.49 4/10	8.45 8/10
7	Per Cent of Insurance on ledger value,	.08 4/10	.36 1/10
8	Per Cent of Taxes " on ledger value,	1.07 7/10	1.26 9/10
9	Per Cent of Total " on ledger value,	10.45 5	10.07 9/10
10	Per Cent of Rental " if Taxes and insurance were paid by the C. T. & T. Co., instead of by the Louisville Exchange	6.53 3/10	6.83 7/10

2788

nberland Telephone and Telegraph Company

f Revenue Derived From Louisville Real Estate.

Exchange	East Exchange	South Exchange	West Exchange	Stable	al Property
	$ 9,2500 0	$ 8,5000 0	$ 9,2500 0	$ 6000 0	$ 69,6020 0
2,0000 0					
0 2,4192 0	17,7341 1	15,1950 0	15,9640 0	1,5032 4	1 5 2,816.1 5
8,7000 0	1,5000 0	9000 0	1,3200 0	3000 0	1 27200 0
9050 0	640 0	1412 0	640 0	240 0	1,1982 0
1,0321 5	2235 2	2088 9	2273 2	2359	1,7154 7
8.49 4%	845 8%	592 3%	826 9%	19.75 0%	8.32 4%
.88 4%	.36 1%	.92 9%	.40 1%	1.59 6%	.78 4%
1.07 7%	1249%	137 4	1.42 4%	1.56 8%	1122%
10.45 5	10079%	8.22 6%	10.09 4%	23.11 4%	10.23 0%
6533%	6837%	3620%	6444%	16.78 6%	6418%

Expenses

General Expenses	As Budgeted by Accountants for Analysis	Distributed Account Charge
1 Prorate of General Account	$ 3,139.93	
2 Prorate of General Office Expenses	11,205.84	
3 Postage, Printing and Stationery	3,527.16	
4 Directory Expenses	1,309.36	
5 Taxes	13,609.44	
6 Legal Expenses	1,603.60	
7 Total		$ 40,476.83
Operating Expenses		
1 Prorate of General Account	429.38	
2 Salaries and Wages	59,231.81	
3 Rent, Light, Heat ---- Other	5,401.48	
" " " ---- Main	1,200.00	
4 Advertising and Canvassing	9,121.96	
5 Incidental Expenses	2,561.86	
6 Total		84,264.84
Maintenance Repairs		
1 Prorate of General Account	916.18	
2 Salaries and Wages	29,100.97	
3 Rent, Light and Heat	1,331.64	
4 Materials	6,701.11	
5 Traveling	3,264.81	
6 Conduit, Pole and Roof Rent	547.75	
7 Insurance ---- Others	2,959.54	136.26
" Main	1,852.80	
8 Damage and Compensation	2,951.65	
9 Incidentals	481.21	
10 Total	$ 49,811.14	$ 136.26
Maintenance Reconstruction		
1 Salaries and Wages	32,722.44	
2 Rent, Light and Heat		
3 Materials	1,125.81	
4 Traveling	1,202.71	
5 Incidentals		$ 41,051.02
Total		11,559.76
6 Maintenance Expenses		$ 227,177.28
Total		41,051.02
7 Deduct Main Reconstruction Chargeable to Depreciation Reserve		$ 186,120.27

Cumberland Telephone and Telegraph Co.

Louisville Kentucky.

For year 1905.

quoted by Summit for Analysis	Discount Amount Discharge	Charge Real Estate Expense	Charge Supply Expense	Charge Toll Department 16.92%	Charge Louisville Exchange
3,139.93					$ 3,139.93
11,205.37				$ 1,895.99	9,309.40
3,524.16				594.27	2,929.89
1,309.36					1,309.36
13,209.49		$ 1,831.57	$ 120.14	1986.19	9,752.59
1,601.60				272.01	1,329.59
	$ 40,476.83	$ 1,831.57	$ 120.14	$ 4,150.42	$ 33,714.10
429.38					429.38
59,231.81					45,911.99
6,401.98				13,289.96	5,401.98
7,200.00				1,218.29	5,981.16
9,121.96				1,585.21	7,836.75
2,561.86				434.48	2,133.37
	84,264.84			16,527.91	67,741.66
916.18					916.18
29,100.97					29,100.97
1,331.64					1,331.64
6,701.11					6,101.11
3,264.61					2,711.74
547.75				552.27	547.75
2,959.54	136.26	379.65	301.00		1,637.58
1,352.50		765.80		99.40	486.10
2,951.65				1,500.00	1,451.63
681.21				116.28	670.93
	$ 49,811.14 $ 136.26	$ 1,144.45	$ 301.00	$ 22,679.86	$ 45,464.93
32,122.44					
1,125.81					
1,202.71					
	$ 41,051.02				
11,659.76					11,559.76
$ 221,171.29					
41,051.02	$ 136.26	$ 2,975.22	$ 421.14	$ 39,536.25	$ 188,545.35
$ 186,120.27					

Exhibit Warren No. 10."

Cumberland Te
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Expenses

	Co calculated by Account ants from Analysis	Deduct Accounts	
General Expenses			
1 Prorate of General Account	$ 3,460.20		
2 Prorate of General Office Expenses	14,270.16		
3 Postage, Printing and Stationery	3,169.88		
4 Directory Expenses	9,102.19		
5 Taxes	14,231.82		
6 Legal Expenses	3,379.78		
7 Total	$ 47,218.52		
Operating Expenses			
1 Prorate of General Account	429.40		
2 Salaries and Wages	59,318.78		
3 Rent, Light, and Heat Mem	7,200.00		
" " " — Others	4,618.13		
4 Advertising and Canvassing	4,519.14		
5 Incidental Expenses	4,152.41		
6 Total	$ 80,738.06		
Maintenance Repairs			
1 Prorate of General Account	1,102.19		
2 Salaries and Wages	31,422.91		
3 Rent, Light and Heat	1,375.91		
4 Materials	3,134.89		
5 Traveling	3,748.30		
6 Conduit, Pole and Roof Rent	168.23		
7 Insurance ---- Others	3,144.23	251.41	
" ---- Mem	1,528.45		
8 Damage and Compensation	5,918.20		
9 Incidental	484.61		
10 Total	$ 52,796.93	$ 251.41	
Maintenance Reconstruction			
1 Salaries and Wages	22,103.10		
2 Rent Light and Heat	25.19		
3 Materials	16,911.81		
4 Traveling	1,611.04		
5 Incidentals	2 75		
6 Total	$ 40,626.07		
7 Instrument Expense	12,518.70		
8 Total	$ 233,898.28	$ 2	
9 Deduct Maintenance Reconstruction			
Chargeable to Reconstruction	42,626.01		

Cumberland Telephone and Telegraph Co.
Louisville Kentucky
For Year 1906

noted by Account in Analysis	Deduct Rec and Wire charge	Charge Real Estate Expense	Charge Supply Expense	Charge Toll Dept 16.96%	Charge Louisville Exchange
$ 3,460.20					$ 3,460.20
14,270.16				$ 4,910.29	9,359.87
3,169.88				639.91	3,130.47
9,102.19					9,102.19
14,934.82		$ 1,755.39	$ 114.14	2,435.26	11,938.63
3,379.78				512.81	2,866.97
$ 47,218.52		$ 1,755.39	$ 114.14	$ 8,551.33	$ 38,791.66
429.40					429.40
59,318.78				16,472.43	42,846.35
7,200.00				1,220.40	5,979.60
4,618.13					4,618.13
6,519.14				1,104.99	5,414.15
2,152.61				449.62	2,202.99
$ 80,738.06				$ 19,247.44	$ 62,490.62
1,102.19					1,102.19
31,422.97					31,422.97
1,375.91					1,375.91
3,134.89					3,134.89
3,148.30					3,296.61
168.23				672.63	168.23
3,144.23	261.41	661.30	670.93		1,653.84
1,728.45		765.00		112.45	551.00
5,918.20					6,768.20
484.01				82.06	402.01
$ 52,796.93	$ 261.41	$ 1,321.30	$ 670.93	$ 867.19	$ 49,655.11
22,703.10					
25.19					
16,911.31					
1,677.06					
2.75					
$ 40,624.01					
12,518.70					12,518.70
$ 233,898.28	$ 261.41	$ 3,076.69	$ 810.01	$ 29,666.96	$ 164,455.01

"Exhibit Warren No. 11" Cumberland Tel

Expenses	As delegated by amount ante for analysis	Added account under charge
1 General Expenses		
2 Proratc of General Account	3,147.31	
3 Proratc of General Office Expenses	14,226.16	
4 Postage, Printing and Stationery	14,018.66	
5 Directory Expenses	7,997.31	
6 Taxes	11,700.82	
7 Legal Expenses	1,297.81	
8 Total	$46,053.67	
1 Operating Expenses		
2 Proratc of Gen'l Account	114.34	
3 Salaries and Wages	54,311.11	
4 Rent Light and Heat — Main	1,810.00	
" " " " Other	6,642.81	
5 Advertising and Canvassing	4,949.25	
6 Incidental Expenses	3,116.91	
7 Total	72,661.01	
1 Maintenance Repairs		
2 Proratc of Gen'l Account	4,971.57	
3 Salaries and Wages	44,685.03	
4 Rent, Light and Heat	2,892.39	
5 Materials	3,860.14	
6 Traveling	6,105.85	
7 Conduit, Pole and Roof Rent	489.47	
8 Insurance ---- Other	2,021.32	$1,124.16
" Main	1,281.00	
9 Damage and Compensation	179.85	
10 Incidentals	311.41	
11 Total	66,416.31	$1,124.16
1 Maintenance Reconstruction	17,811.41	
2 Salaries and Wages	22,141.93	
3 Rent Light and Heat	1,938.93	
4 Materials	3.83	
5 Traveling	Total — 41,895.10	
6 Incidentals	13,372.49	
7 Total	$246,588.61	
8 Retirement Expenses	$41,895.10	
9 Total	$204,703.51	
Deduct Maint Reconstruction charge to Plant Accts	1,126.85	
Add Maintenance Account Expenses	$205,830.36	

2783
1922

Cumberland Telephone and Telegraph Co.
Louisville Ky.
For Year 1907.

Amount	Credited account Sundry charge	Charge Real Estate Expense	Charge Supplies Expense	Charge Toll Dept. 11.5%	Charge Louisville Exchange	Deducted Amount Exchange
					$3,614.27	
31				$ 1,964.68	9,262.08	
.16				702.12	3,312.83	
65					7,999.86	
931					13,086.76	
82		$ 1,791.06	$ 124.52	2,778.91	1,069.87	$ 122.80
681				221.74		
$ 96,053.67		$ 1,791.06	$ 124.52	$ 5,670.33	$ 28,345.21	$ 122.80
14					716.84	
11				15,041.28	43,274.00	
00				1,204.10	5,176.00	
81					3,442.81	
.25				869.61	4,099.64	
91				545.29	2,570.62	
79,661.08				$ 17,660.18	$ 62,000.96	
7					4,976.51	
03					44,685.63	
19					2,892.89	
4					3,860.14	
8					4,707.35	
7				998.53	699.97	
2	$ 1,124.13	464.85	4,023.61		1,445.11	
0		742.50		95.29	449.81	
5					170.86	
6				54.54	257.12	
6,416.31	$ 1,124.13	$ 1,207.35	$ 4,023.61	$ 1,148.34	$ 63,363.97	
11						
43						
99						
83						
del — 41,895.10						
13,372.49					13,372.49	
$ 246,558.61	$ 1,124.13	$ 2,998.41	$ 1,148.13	$ 24,718.84	$ 177,082.44	$ 122.80
895.10						
703.61						
126.83						

Canton Warren 1902 Comparison

Expenses

	General Expenses	Co adjusted by Account Auds for Co Year	Called Comparison Undistributed
1	Proch of Genl Account	$ 1,921.03	
2	Proch of Genl Office Expenses	9,531.29	
3	Postage Printing and Stationery	3,352.24	
4	Directory Expenses	1,489.64	
5	Taxes	19,513.85	
6	Legal Expenses	3,268.96	
7	Total	$42,016.13	
	Operating Expenses		
1	Proch of Genl Account	268.47	
2	Salaries and Wages	53,118.09	
3	Rent Light and Heat mun	1,120.00	
	" " other	6,584.64	
4	Advertising and Canvassing	6,631.21	
5	Messengers	727.94	
6	Incidentals Expenses	2,429.01	
7	Total	$75,440.28	
	Maintenance Repairs		
1	Proch of Genl Account	1,624.13	
2	Salaries and Wages	21,834.17	
3	Rent Light and Heat	2,747.21	
4	Mechanical	1,374.10	
5	Traveling	3,123.21	
6	Conduit Pole and Roof Rent	601.19	
7	Insurance ——— mun	1,341.80	
	" ——— other	2,241.23	$97
8	Damage and Compensation	1,945.81	
9	Incidentals	142.40	
10	Total	$54,705.91	$97
	Maintenance Reconstruction		
1	Salaries and Wages	23,773.04	
2	Rent Light and Heat		
3	Mechanical	5,175.23	
4	Traveling	2,921.76	
5	Incidentals	11,603.08	
6	Total	31,450.11	$ 50.01
7	Abatement Expenses		129.52
	Total	$ 31,450.11	$ 2 11,393.63
	Total mun Conduit charged to Light & Power Accounts	$ 185,746.72	
	Total mun charged to Accounts	991.18	
		$ 186,737.90	

Telephone and Telegraph Company.

Louisville Ky.

For the year 1908.

	Charge Real Estate Expense	Charge Traffic Expense	Deduct General Overcharge	Charge Toll Dept. 15%	Charge Louisville Exchange
					$ 1,721.03
				$ 1,429.49	8,100.60
				502.84	2,848.70
					4,431.94
	$ 2,716.47	$ 117.62	$ 64.00	2,451.21	16,123.53
				490.34	2,778.56
	$ 1,713.97	$ 119.62	$ 64.00	$ 3,074.08	$ 38,113.35
					248.47
				11,590.16	1,529.93
				1,000.00	5,712.00
					6,598.69
				794.68	4,784.53
				127.91	
				34.85	2,064.66
				$ 14,536.13	$ 60,908.16
					6,624.16
					28,836.17
					2,967.27
					6,316.10
				373.48	3,079.73
					601.19
	905.00			65.53	311.35
	403.80	$ 814.80			1,772.21
					1,748.81
				21.43	124.47
	$ 1,308.80	$ 816.80		$ 620.14	$ 82,921.63
					13,292.52
911.14	$ 3,033.17	$ 936.42	$ 64.00	$ 20,232.35	$ 182,411.14

Results of Operations of Toll Department for 1908

Earnings being based on amount credited
to 15% going messages

Proportion of Toll earnings credited to
Louisville being 15%. Toll out going messages.

Expenses
General Expenses
Operating "
Maintenance Repairs
Net Revenue — "Deficit"

Percent of Expense to Toll earnings
" " Net Revenue to earnings "

~~1904~~ 2787

"Exhibit Warren No 13"

All Departments for 1908
for amount credited to Louisville
15 0/0 going messages

0 of 15			
ssages			780996
2		307408	
		1453513	
fees		43144	2023965
0			$ 1242970
nings			259, 165/0
earnings	"Deficit"		169156/0

* 2787

M. 2673 Adams Express Co.
M. 2674 " " "
M. 2675 " " "
M. 2676 " " "
M. 2677 " " "
M. 977 Aetna Life Ins. Co.
M. 884 Albrecht & Heick.
M. 441 Allen, Lafon.
M. 641 Almstedt Bros.
M. 1622 Altsheler & Co.
S. 770 Alvoy-Ferguson Co.
M. 2446 American Butter & Cheese Co.
M. 1656 American Chicle Co.
M. 2829 American Dist. Telg. Co. of Ky.
S. 959 American Eng. & Const. Co.
M. 152 American Express Co.
M. 297 American Ice & Cold Storage Co.
M. 305 American Laundry Co.
E. 67 American Naval Stores Co.
M. 1099 American Oak Leather Co.
M. 425 American Steel & Wire Co.
M. 3131 American Surety Co. of N. Y.
W. 225 American Tob. Co.
M. 1375 Ancient Order of United Workmen.
M. 583 Anderson & Co., A. J.
M. 930 Anderson, Mary, Theater.
M. 282 Anglo American Tar Product Co.
M. 1166 Anti-Saloon League.
M. 695 Archer-Daniels Linseed Co.
M. 49 Armour & Co.
M. 48 " " "
M. 649 Aronson Co.
M. 870 Atherton Realty Co.
M. 2455 Atlas Coal Co.
M. 957 Avery, Saml. & Co.
M. 1219 Bacon, J. & Sons.
M. 575 Bailey, Dr. Wm.
S. 2605 Aufenkamp, Geo.
M. 61 Baldwin Co.
W. 255 B. & O. S. W. R. R. Co.
M. 291 " " " "
M. 230 " " " "
M. 321 Bank of Commerce.
M. 248 Barbee & Castleman.
M. 2239 Barber Asphalt Co.
M. 27 Barbour & Davidson.
M. 980 Barnett & Barnett.
M. 542 Barrett, Jno. J., & Son.
M. 90 Batman, T. J., & Son Co.

M. 2360 Bax, L. D.
M. 1403 Bayley, J. W. E., & Co.
W. 274 Beckwith Organ Co.
E. 257 Beechhurst Sanitarium.
W. 12 Bell & Coggeshall.
M. 2291 Bell, J. S.
M. 752 Benedict, Jennie C., & Co.
M. 907 Benedict Tea & Coffee Co. W. R.
M. 777 Bernheim Bros.
S. 2294 Baptist Seminary.
M. 2192 Childrens Free Hospital.

2788½

M. 686 Bessire & Co.
M. 364 Besten & Langen.
M. 706 Bickel, C. C. & Co.
M. 846 Big Store.
M. [illegible] Big Spring Dist. Co.
M. 548 Bingham-Hewitt Co.
M. 2109 Bingham & Davies.
M. 212 Blackford, Dr. W. F.
M. 214 " " " "
M. 2300 Bloom, Bronner & Robbins.
M. 1611 Blow, Hiram & Co.
M. 52 Blue Ridge Dispatch.
M. 138 Blum Bros.
M. 938 Board Childrens' Guardians.
M. 1906 Board of Church Ext. of M. E. Church.
M. 342 Board of Fire Underwriters.
M. 1066 Board of Park Coms.
M. 174 Board of Trade.
M. 1393 " "
S. 480 Dr. Board's Sanitarium.
M. 206 Boden Bros.
M. 15 Dr. Boggess, C. F. & Marvin, L. Thomas.
M. 1101 Bohannon, Thos., & Co.
M. 301 Boldt. Chas. Glass Co.
M. 93 Bomar, Summers Hdwe.
M. 592 Booker, Kinnard.
M. 615 Booth, A. & Co.
M. 616 " "
M. 1022 Bosse, H. & Son.
M. 541 Bourbon Stock Yards Co.
M. 670 " " " "
M. 905 Bourne & Bond.
M. 404 Boyd, Dr. A. J.
M. 268 Bradas & Cheens.
M. 72 Bradstreets Mercantile Agency.
M. 1105 Brand, Jno. H. & Co.
M. 390 Brandeis, A. & Son.
M. 391 " " " "

S. 345 Brandeis, Dr. Florence.
M. 1433 Brandeis, Robt. E. & Co.
M. 795 Bray Clothing Co.
M. 177 Breecher-Buch Co.
M. 28 Brewer Printing House.
W. 343 Bridgeport & Co.
M. 446 Bridges, C. A. & Co.
M. 635 Bridges, Smith & Co.
S. 1815 Brooks, H. G. & Co.
S. 1814 " " " " "
S. 528 Brown, W. P. Lumber Co.
M. 335 Bruce, Helm.
M. 1751 Bruner, Ambrose.
M. 1923 Buchanan & Lytle.
M. 839 Buckingham Theater Co.
M. 2106 " " "
M. 78 Bullitt Bros.
M. 42 Bullitt & Bullitt.
M. 613 Burkley & Tierney.
M. 1381 Burnett, Dr. E. Duff.
M. 640 Burnett, Henry.
M. 479 Buschmeyer, Bros.
M. 66 Buschmeyer, Dr. Jno. H.
M. 1996 Bush, Krebs Co.
M. 2500 Federation of Jewish Charities.
E. 95 German Baptist Orphans Home.
S. 600 Holy Rosary Acad.

2789

M. 314 Byrne & Speed.
M. 315 Byrne & Speed.
M. 1781 Byrne, Martin & Co.
M. 2629 Business Women's Club.
M. 972 Button Bros.
M. 1008 Button, The Jas. H. Co.
M. 2027 Cal. Fig Syrup Co.
M. 464 Callahan & Sons.
S. 2471 Calvary Church.
M. 585 Camden Coal Co.
M. 486 Cannon & Beyers.
M. 1013 Caperton, J. H.
M. 2794 Carpenter & Dudley.
M. 201 Carter & Carter, Drs.
M. 2672 Carter Dry Goods Co.
M. 250 Carter Dry Goods Co.
M. 776 Cartledge & Ireland, Drs.
M. 2596 Case, J. I. Thresh. Machine Co.
M. 350 Catholic Womans Club.
E. 170 Cave Hill Cemetery.
E. 381 Cave Hill Cemetery.
S. 1950 Caxton Printing Co.

S. 502 Cemetery Adath Israel.
M. 157 Central Coal & Iron.
M. 73 Chandler, John H.
M. 2146 Chatterson & Blitz.
M. 576 Cheatham, Dr. Wm.
E. 335 Cherokee Park.
M. 272 Ches. & Ohio Ry. Co.
M. 263 " " " " "
M. 68 C. & C. & St. L.
M. 275 " " " " " "
S. 572 Chess & Wymond.
M. 145 Chicago Rock Island & Pac. Ry.
M. 1220 Christ Church Cathedral.
S. 1346 Christian Orphans Home.
M. 2044 Cin. Gas Coal Coke & Min. Co.
M. 162 Citizens Nat'l Bank.
_____ City of Louisville 29 Phones City of Louisville.
_____ Police Dept. of City, 21 "
_____ Police Dept. of City, 2 "
_____ Fire Dept. of City, 29 "
_____ Fire Dept. of City 3 "
M. 939 Clift, J. L.
M. 261 Cohen & Mann.
M. 132 Coleman, Jno.
W. 212 Columbia Steam Laundry.
M. 125 Commercial Club.
M. 500 Commissioner of Sewerage.
M. 427 " " "
M. 428 " " "
S. 682 " " "
W. 682 " " "
S. 681 " " "
S. 1410 " " "
M. 383 Commonwealth Life Ins. Co.
W. 202 Conner, Chas. H. & Co.
M. 447 Coon, Dr. G. S.
M. 1343 Cooper Hewitt Co.
M. 1598 County Sheriff's Office.
M. 1367 County Circuit Clerk.
M. 1067 County Common Pleas Court.
M. 1353 County Clerk.
M. 1599 County Surveyor.
M. 2076 Chess & Whist Club.

2790

E. 60 Church Home & Infirmary.
E. 313 County Health Office.
M. 1183 County Jail.
M. 1655 County Fiscal Court.
M. 1025 County Judge.
M. 2394 County Coroner.
} Pays $4.00 each.

M. 430 Cralle, Lee E.
M. 1320 Crawford Film Ex. Co.
M. 2104 Crawford, W. R. & Co.
M. 998 Credit Rating Co.
M. 2526 Creel Comm. Co.
E. 634 Crescent Grocery.
M. 851 Crescent Laundry Co.
M. 2163 Crescent Turkish Bath House.
S. 1334 Crown Laundry Co.
M. 1146 Chutcher Bros. Co.
S. 1651 Culbertson, S. A.
M. 359 Cumberland Gap Dispatch.
M. 1246 Cunningham, R. M.
M. 262 Current, W. D.
M. 651 Currie, Chas. Earl
M. 518 Cuscaden Ice Cream Works.
M. 1350 Dabney, Dr. S. G.
M. 199 Danforth, J. L. & Co.
M. 196 Davies, Hywell.
M. 20 Davis, E. & Son.
S. 815 Davis, Edw. L. Lumber Co.
M. 2139 Davis, H. V. & Co.
M. 330 Davis, Urwick Co.
M. 2420 Deaconess Hospital.
M. 559 Denunzio Fruit Co.
M. 2419 " " "
S. 1263 Diehl, Andrew.
.. 2758 Diem & Wing Paper Co.
S. 2212 Dietrich, Geo.
M. 400 Dinkelspeil, L. S.
M. 872 Dodd, C. P. & Co.
M. 22 Dodd & Dodd.
M. 326 Dolfinger, J. & Co.
E. 219 Doll, F. Grocery Co.
M. 1720 Domestic Laundry Co.
M. 57 Donnigan & Barrett.
M. 3014 Doyle, Drs. O. B. & H. S.
M. 914 Drabelle & Yager.
S. 105 Dreher, K.
S. 137 Dresel, A. J.
S. 157 " " "
S. 136 " " "
S. 38 " Jno. H.
S. 39 " " "
M. 1351 Drummond, Mfg. Co.
M. 172 Duffy, M. J.
S. 764 Dugan, Thos. S. & Co.
M. 41 Dun, R. G. & Co.
M. 510 Duncan, Dr. Ellis
M. 1563 Duncan, T. B. & Son.
S. 2410 Duncan, W. G. Coal Co.

M. 431 Dunlap, Jno. L.
M. 555 Dunnington, W. G. & Co.
M. 148 Durbin & Martin.
M. 10 Du Relle & Fleece.
M. 30 Economy Life Ins. Co.
M. 19 Edinger & Co.
M. 1390 Edmonds, Dr. R. L.
S. 219 Cook's Benevolent Institute.
M. 350 Catholic Woman's Club.

2791

M. 2200 Evans. Dr. T. C.
M. 1055 Ewald, Iron Co.
S. 1028 Ewing, E. H. & Sons.
S. 1029 " " " " "
M. 2 Fairleigh, Straus & Fairleigh.
W. 69 Falls City Brewing Co.
M. 1203 Falls City Const. Co.
M. 251 Falls City Meat Market.
S. 2376 Falls City Woolen Mills Co.
M. 866 Farmers, Oscar & Son.
M. 1414 Federal Chemical Co.
M. 467 Fehr, Frank Brewing Co.
M. 856 " " " "
W. 505 " " " "
M. 440 Ferguson & Scott.
S. 1058 Ferre Concrete Const. Co.
S. 1080 " " " "
M. 2266 Fidelity & Casualty Co.
M. 4600 Fidelity Guaranty Co.
M. 58 Fifth Ave. Hotel.
S. 1840 Fihe, Theo. J.
S. 2600 Finck, Dr. T. D.
S. 732 Finzer, Jno. Bros.
M. 3291 Fireproof Storage Co.
M. 2504 First Christian Church.
M. 1683 First Church of Scientists.
M. 220 First Natl. Bank.
M. 1651 First Regiment Armory.
M. 2121 Fisel, Jno. C.
M. 124 Flexner & Campbell.
S. 990 Flexner, Dr. J. A.
M. 116 Flexner, Washington & Co.
M. 975 Forcht, Fred, Jr.
M. 88 Ford & Johnson Co.
M. 2604 Frank, Dr. Louis.
S. 2610 Frankel Coal Co.
M. 45 Franklin Printing Co.
M. 382 Frazee, Mrs. M. R.
M. 1878 Freuchtenicht, Henry.
M. 1470 Fruit Dispatch Co.

M. 721 Geher & Son.
M. 598 Gem Lace Curtain Laundry.
M. 232 German Bank.
M. 243 German Ins. Bank.
M. 159 German Security Bank.
M. 281 Gibbs-Inman Co.
M. 1153 Gilmour, Alex.
M. 2113 Golden Rule Store.
M. 4113 Golden Rule Store.
W. 631 Goodwin Preserving Co.
M. 455 Graham, S. P. Lumber Co.
S. 14 Gray, J. P. Sanitary Milk Co.
S. 15 " " " " "
M. 509 Gray, J. S. & Sons.
M. 687 Great Atlantic & Pac. Tea Co.
M. 688 " " " " "
M. 55 Green, Jno. W. & D. S.
M. 664 Greene & Co.
M. 663 Greene & Co.
M. 925 Gregory & McHenry.
M. 2275 Grinstead & Tinsley.
M. 801 Grubbs & Grubbs.
M. 1291 Gutman, H. J. & Co.
M. 164 Gordon, Thos. R.
S. 521y Gowair, Catherine.
M. 1773 Green, Dr. Winifred.
E. 211 Gruneis, Meat Market.

2792

E. 58 Habich, A.
E. 59 " Adolph.
M. 3514 Hail & Cotton.
M. 880 Haldeman, W. B.
M. 94 Halsey & Halsey.
M. 4694 Hammerle.
M. 2339 Hammersmith, L.
M. 8 Hardin, Hamilton & Lewman.
S. 36 Hardy, Jno.
S. 35 " "
M. 900 Harper, Goodridge & Mattingly.
M. 154 Harris, Smith & Webb Co.
M. 678 Harris, W. O.
M. 1578 Haupt, F. C.
E. 475 Hendon, Dr. G. A.
M. 2279 Hendricks & Harding
M. 727 Henning, S. C. & Co.
M. 484 Herald Publishing Co.
M. 1948 Herrman Bros.
M. 704 Hess, Geo. & Bros.
M. 1921 Hickman, Williams & Co.
M. 18 Hidden, Otis & Co.

M. 1516 Hilliard, J. J. B. & Son.
M. 2737 Hilpp, Meyer H.
W. 489 Hirsch Bros. & Co.
M. 450 Hite W. W. & Co.
M. 1088 Hoffman, Adlers & Co.
M. 6 Hogan, W. J.
M. 226 Home Ins. Co. of N. Y. List.
S. 1342 Home of the Friendless.
S. 526 Home of the Innocents.
M. 3722 Hope Rescue Mission.
S. 2202 Hope Worsted Mills.
M. 2618 Horn Transfer Line.
M. 2180 Hosch, C. F.
M. 1021 Howe Co.
S. 2238 Hulskamp, John T.
M. 2277 Humler & Nolan.
M. 21 Humphrey, Davie & Humphrey.
M. 17 Humphrey, Ed. P.
E. 181 Humphrey, Dr. Heman.
M. 1491 Humler & Meyers.
M. 412 Hunter & Hellman.
S. 23 Hydraulic Brick Co.
M. 1173 Hyman, Jacob.
M. 1379 Hyman, L. P. & Co.
M. 751 Hyman Pickle Co.
M. 2395 Illinois Glass Co.
S. 1390 Imorde B. & W.
S. 1389 " " " "
W. 41 Independent Ice & Coal Co.
M. 1142 Indianapolis & Louisiville Trac. Co.
S. 1002 Ingram & Lawrence.
M. 1012 International Harvester Co.
M. 673 Inter-Southern Life Ins. Co.
M. 401 Interstate News Bureau.
M. 402 " " "
S. 1071 Iroquois Park.
S. 820 Irwin, Dr. J. W.
M. 106 I. C. R. R. Co., 15 phones.
M. 600 James, Edgar.
E. 501 James, Geo. R.
M. 60 James, Sam'l R. Coal Co.
M. 194 Jefferson & Co.
M. 1841 Jefferson Noyes & Brown.
M. 834 Jeffries, W. H. & Co.
M. 828 Jenkins, Dr. Wm. A.

2793

M. 1296 Joint Rate Inspection Bureau.
S. 2500 Jessup & Antrim Ice Cream Co.
S. 1036 Jewish Hos. Assn.
M. 432 Jones, Miller & Co.

M. 1057 Jones, Paul & Co.
S. 202 Jones, T. B. & Co.
M. 1253 Juvenile Court.
S. 244 Kaiser Mr. & Mrs. H.
M. 1548 Kearns, Dr. Leo.
M. 1903 Keisker Fred W. & Son.
M. 319 Kelly, Ritter, Abell & Spalding.
M. 308 Kelly, Mrs. R. M. Jr.
M. 1452 Kendrick, Wm. & Sons.
M. 2748 Kennett, P. C. & Son.
W. 178 Ky. & Ind. Bridge Co.
W. 121 " " " " "
S. 94 Ky. Auto Co.
W. 376 Ky. Dists. & W. H. Co.
E. 873 " " " "
M. 1481 Ky. Electric Co.
M. 37 Ky. Humane Society.
M. 892 Ky. Inspection Bureau.
E. 707 Ky. Institute for the Blind.
E. 180 Ky. Laundry Co.
M. 773 Ky. Litho. & Printing Co.
M. 2060 Ky. Malt & Grain Co.
M. 1651 Ky. Nat'l Guard Armory.
S. 824 Ky. Packing Co.
M. 69 Ky. Public Elevator Co.
M. 502 Ky. Saw Works.
M. 494 Ky. State Fair.
S. 2006 " " "
M. 989 Ky. Stock & Grain Co.
S. 605 Ky. Tob. Product Co.
S. 606 " " " "
S. 68 Ky. Refining Co.
S. 130 " " "
M. 2267 Ky. Wall & Plaster Co.
E. 20 Kettler, H. B.
E. 11 Kiefer, Dr. F. J.
S. 378 " J.
S. 379 " J.
S. 399 " Jno.
E. 202 King, J. B.
M. 2382 Klauber, E.
M. 413 Klein & Son.
M. 535 Kline, O. S. Bayes & Co.
M. 1428 Knights & Ladies of Washington Supreme Lodge.
E. 1087 Knopf & Hudson.
E. 963 Knopf, Peter Sons.
S. 792 Koehler, Dr. F. W. & H. H.
M. 955 Kohlepp & Iula.
M. 77 Kosmos Portland Cement Co.
M. 794 Kraft, Henry A.
M. 2150 Kurfees, J. T. Paint Co.

M. 340 Lackawanna Line.
S. 1476 Lasch, C. F. W.
M. 2538 Laub Bros.
M. 901 Layer, Gottleib.
S. 112 Leachman, Dr. Geo.
S. 296 Leavell, Dr. Hugh N.
M. 26 Lee Line Steamers.
M. 53 Levy, Hubert Auto Co.
M. 352 Lewis & Chambers.
M. 303 Lewis, Marvin H.
M. 139 Lincoln Institute Fund Ex. Com.
M. 1143 Lincoln Savings Bank.
M. 2436 Loevenhart & Co.
M. 1656 Kis-me Gum Co.
S. 1223 Louisville Baptist Orphans Home.
S. 1845 " Free Kindergarten Ass'n.

2794

S. 58 Lohmeyer Bros.
S. 62 Lohmeyer, S. H.
M. 392 Long, Chas. R. Jr. & Co.
M. 780 Loomis, Arthur.
M. 796 Lorch & Levi Co.
S. 1259 Lortz & Frey Planing Mills.
M. 283 L. & N. R. R. Co.
M. 258 " " " " " "
S. 270 " " " " " "
M. 279 " " " " " "
M. 257 " " " " " "
S. 665 " " " " " "
M. 2402 " " " " " "
S. 513 " " " " " "
S. 290 " " " " " "
M. 918 L. H. & St. L. Ry. Co.
M. 1134 "
M. 1135 "
M. 1492 "
M. 1595 "
M. 1750 "
M. 2073 "
M. 2074 "
M. 827 Louisville & Evansville Packet Co.
M. 742 Louisville & Portland Canal.
M. 623 Louisville Anzeiger Co.
M. 1600 Louisville Carriage Co.
M. 1768 " Car Service Assn.
S. 1889 " " Wheel & Ry. Supply Co.
M. 260 " Clearing House.
M. 13 " Coal & Coke Co.
W. 170 " Cooperage Co.
S. 1568 " Cotton Mills Co.

S. 1213 " Cotton Oil Co.
S. 403 " Cotton Feed Products Co.
E. 140 " Drying Machine Co.
W. 629 " Fertilizer Co.
S. 1304 " Fire Brick Works.
E. 370 Louisville Free Pub. Library.
W. 84 " " " "
E. 812 " " " "
W. 643 " Gro. Co.
M. 65 " Herald.
M. 2490 " "
M. 2489 " "
M. 1188 " Laundry & Shirt Mfg. Co.
M. 878 " Law Library.
W. 179 " Lead & Color Co.
M. 133 " Lithograph Co.
W. 1076 " Lumber Co.
M. 476 " Meat Market.
M. 590 " Nat'l Bank Co.
M. 1 " Packing Co.
M. 2219 " " "
M. 142 " Paint Mfg. Co.
M. 863 " Pub. W. H. Co.
M. 3541 " Seed Co.
S. 940 " Soap Co.
S. 180 " " "
M. 995 " Stock Exchange.
M. 1254 " Title Co.
M. 1864 " Towel/ Supply Co.
M. 329 " Transfer Co.
M. 621 " " "
M. 2016 " " "
S. 1382 " Bridge Co.

2795

M. 1930 Louisville Transfer Co.
M. 1268 " Varnish Co.
M. 2515 " Veneer Mills.
E. 1031 " Water Co.
E. 1030 " " "
M. 1030 " " "
M. 1227 " Whist Co.
M. 59 Lyons, W. L. & Co.
M. 1867 " " "
M. 1406 Maas, John & Bro.
S. 1856 Mack, E. K.
S. 1513 Mackin & Glynn,
M. 652 Mammoth Gro. Co.
M. 691 " " "
M. 1204 Mandel E. V. & Co.
M. 1372 Manget, Fred.

M. 1435 Mansfield Hawley & Co.
M. 1777 " R. & Son.
M. 2000 Marcus, Edw. H.
S. 1131 Marshall, Dr. Ewing.
S. 889 Marvin, Dr. J. B.
S. 97 Marx, Hide & Tallow Co.
M. 2414 Mason, A. H. & Co.
W. 437 Masson, J. B. & Co.
E. 43 Mathews, C. B.
M. 242 Mathews & Hanes, Drs.
M. 617 Matlack, W. H.
M. 1164 Mayer, W. F.
M. 1836 McAtee & Co.
M. 1330 McBee, A. E. & Co.
E. 237 McCall, W. W.
M. 154 McCampbell, Figg & Burnett.
M. 1271 McChord, C. C.
M. 632 McChord, Hines & Norman.
M. 705 McCord & Co.
M. 1643 McGill, A.
M. 207 McHenry, L. H. & Co.
M. 1872 McKnight, W. H. & Sons.
M. 180 McLean & Boone.
M. 1700 McMurtry & Shreeil, Drs.
M. 2294 McNutt, H. S.
M. 1212 McWilliams & Co.
M. 2003 Mendel, Weinstock & Co.
M. 679 Menne, Frank A. Candy Factory.
M. 1582 Merchants Ice & Cold Storage Co.
M. 101 " " " " "
M. 117 " " " " "
M. 31. Michigan State Life Ins. Co.
M. 81 Miles Auto Co.
W. 490 Miller, C. & Sons.
S. 250 Miller, Chris & Sons.
M. 765 Milner, B. C. & Sons Co.
M. 32 Model License League.
M. 1425 Monon Route.
M. 1181 " "
M. 1880 Monongahela C. C. & C. Co.
M. 127 " " " "
M. 2670 Monroe, Herman F. & Co.
M. 292 Montenegro Rehm Music Co.
M. 136 Moody-Mitchell Lum. & Bldg. Co.
M. 638 Moore, Jos. W.
M. 211 Moorman & Co.
M. 104 Morgan E. H. & Co.
S. 1182 Morthorst, Jos.
S. 143 Morton, Dr. D. C.
M. 470 McDonald, Kenneth & W. J. Dodd.
S. 397 Methodist Episcopal Church Home.
M. 736 Neighborhood House.

2796

M. 1480 Morton, E. B. & Co.
M. 1899 Moses & Nicholls.
M. 1898 " "
M. 1965 Moses, L. & Co.
M. 574 Muldoon Monument Co.
M. 2120 Mullen & Watkins.
M. 903 Murphy, D. X. & Bros.
M. 361 Muth, Frank E. & Co.
M. 513 Myer Bridges & Co.
S. 611 Nall-Williams Tob. Co.
M. 2509 National Cash Register Co.
M. 3529 " Concrete & Constr. Co.
M. 29 " Foundry & Machine Co.
S. 624 " Ice Cream Co.
M. 353 " Lead Co.
M. 92 " Life Ins. Co. of Vermont.
M. 1800 Nave, E. G. Bros. Co.
M. 847 N. C. & St. L. Ry.
M. 1138 Neboe Con. & C. C. Co.
M. 383 Neill, W. H. & Co.
M. 1260 Nettleroth, H. H.
M. 2171 New Louisville Jockey Club.
M. 693 Newman Drug Co.
M. 1197 Newman, Scott.
M. 3719 New Pantorium.
M. 514 New York Laundry.
M. 1497 " " Life Ins. Co.
M. 942 Nieders Groc.
M. 178 Norman, E. B. & Co.
M. 2476 Norman & Taylor.
M. 2177 North Jellico Coal Co.
M. 288 Nunnemacher, F. C.
S. 1010 Nurses' Central Directory.
M. 666 Office Supply Co.
M. 1871 Ohio River Sand Co.
M. 387 " " Saw Mills.
M. 1274 Ohio Valley Tie Co.
M. 1522 Old Ky. Distilling Co.
M. 630 Olds Motor Works.
M. 84 O'Neill Coal & Coke Co.
M. 1214 O'Reilley & Pontch.
S. 1046 Otis Elevator Co.
M. 160 Otter & Co.
M. 1592 Newsboys' Home.
M. 2726 McElroy & Shannon Mfg. Co.

2797

M. 1389 Pabst Brewing Co.
M. 170 Pearson & Son.
S. 581 *Pearless* Mnfg. Co.

M. 341 " Stock & Grain Co.
M. 1184 " Tent & Awning Co.
W. 220 " R. R. Co.
M. 277 " " " "
M. 568 " " " "
M. 770 " " " "
M. 941 " " " "
M. 1886 " " " "
M. 1937 " " " "
M. 2131 " " " "
S. 2308 " " " "
M. 190 Sowders Fish Market.
M. 189 " " "
M. 2863 " " Co.
M. 1887 Spalding Steam Laundry.
M. 634 " & Steitz.
S. 76 Speed, J. B. & Co.
M. 1112a Standard Club.
M. 491 " Furnace & Range Co.
M. 3210 Starr Fire Ins. Co.
M. 229 " Union Line.
S. 76 Speed, J. B. & Co.

2799

M. 898 State Fire Marshall.
M. 193 State Tob. Whse. Co.
S. 1024 Stein Henry W.
M. 2085 Sterling Co.
M. 64 Stock Yards Bank.
S. 82 Storch J. F.
S. 1807 Straker Bros. Tob. Co.
M. 320 Straus John Mason.
M. 2090 Straus Julius.
M. 50 Streng & Thalheimer.
M. 40 Strack Alfred The Co.
M. 655 Sutcliffe The Co.
S. 2093 Swartz & Co. B. F.
M. 2566 Swift & Co.
M. 238 Swift Creek Dist. Co. The.
M. 2207 Swiss Cleaners & Dyers.
W. 317 Tabb C. S.
S. 1546 Tachaue E. S.
M. 755 Tatum Embry Co.
M. 130 Tavern Club.
M. 131 " "
M 462 Taylor & Williams.
M. 1140 Tennis Co. The.
M. 529 Thixton Millett & Co.
M. 1150 Thompson C. B.
M. 2059 Thompson James & Bro.
M. 552 Thomson & Co. W. A.

M. 1337 Timmins & Co. L.
M. 534 Tinsley Mayor Eng. Co.
M. 95 Todd Donigan Iron Co.
M. 85 Trabue Doolan & Cox.
M. 109 Tracy & Co.
M. 333 Treber Drug Co.
M. 1408 Trumbo W. B.
S. 1077 Tuley Dr. Henry E.
M. 556 Tyler Box Co.
W. 254 Underwood Dr. E. C.
M. 204 Union Central Life Ins. Co.
S. 277 Union Whse. Branch.
M. 74 U. S. Cast Iron & Pipe Fdy. Co.
M. 807 " " " " " "
M. 1942 " " " " " "
M. 49 U. S. Express Co.
M. 869 U. S. Life Ins. Co.
M. 1834 " Clerk's Office.
M. 3383 " District Attorney.
M. 2883 " Judge.
M. 854 " Engineer.
M. 416 " Pension Agy.
M. 176 " Surveyor of Customs.
M. 300 " Weather Bureau.
M. 1075 University of Lou. Hops.
M. 380 Utica Lime Co.
M. 1308 " " "
M. 385 " " "
S. 350 Vance Dr. A. M.
M. 56 Varble & Frazier Co.
M. 310 Verhoff H. & Co.
M. 309 " " "
S. 229 Victor Cotton Oil Co.
M. 2008 Victoria Hotel Co.
M. 161 Viglini P. & Co.
M. 774 Vissman C. F. & Co.
M. 782 " " " "
M. 756 Vogel Phil A.

2800

M. 944 Vogt-Appelgate Co.
M. 327 Wahking & Co.
M. 2041 Walker Alonzo.
M. 1089 " C. E.
M. 558 " Wm.
M. 75 Wallace J. Richard.
M. 209 Walter John E. & Frank.
M. 523 Walton C. J. & Son.
M. 35 Walton Joe & Co.
S. 1252 Washburn Crosby Milling Co.
M. 252 " Geo. R.
M. 183 Waters Billing & Co.

M. 71 Waters-Garland Co.
M. 105 Wathen R. E. & Co.
M. 1869 Watkins Carrithers & Co.
M. 1254 Watts W. A.
M. 1020 Weber Co. The.
S. 1020 " " "
M. 1293 " & Son S.
M. 480 Wedekind & Co. H.
M. 236 Weller W. L. & Son.
M. 530 Western Cement Co.
M. 492 " Tanning Co.
M. 2830 " Union Tel. Co.
M. 2831 " " " "
M. 2832 " " " "
M. 2833 " " " "
M. 540 Whittaker Paper Co.
M. 1490 White & Co. Allen G.
M. 399 " & Co. John.
M. 2318 Whitesides Bakery.
M. 2166 " H. R.
W. 191 Wiedeman Brewing Co. The. Geo.
M. 1076 Willett W. R.
M. 97 Williams Jas. S.
M. 841 " Messenger Parcel & Delivery.
M. 822 Winter & Co. J. Jr.
S. 081 Wolf Josephine.
M. 2681 Wood & Co. Harry I.
M. 2368 Wood Stubbs Co.
M. 43 Wood-Walter A. M. & R. Mch. Co.
W. 1577 Wurach J. B.
W. 1047 Yeager Amos.
M. 849 Yaeger Dr. M. T.
M. 2819 Young Mens Hebrew Assn.
M. 784 Zapp & Short Co.
M. 785 " " " "
M. 781 Zinsmeister J. & Bro.

2801

E. 833 Orphange of Good Shepherd.
S. 212 Presby. Col. Mission.
S. 2182 Presby. Orphans Home.
S. 205 Presentation Academy.
M. 2751 Preston Lodge F. & A. M.
S. 2860 Prot. Epis. Orph. Home.
E. 778 Saint Anthony's Hospital.
W. 410 Saint Benedict Cedar Grove Academy.
M. 1920 Saint Geo. Lodge, F. & A. M.
M. 1015 Saint Joseph's Infirmary.
S. 93 Saint Mary & Elizabeth Hospital.
E. 1040 Saint Vincent Orphans Asylum.
M. 2160 Salvation Army.

S. 363 Second Presbyterian Church.
S. 535 Warren Memo. Presby. Church.
M. 737 Wayfarers Rest.
M. 2551 Woman's Christian Assn.
S. 1716 Woman's Club House.
S. 1308 Young Men's Christian Assn.
S. 72 " " "
S. 360 " " "

2802 *Business, 2 Party.*

M. 703a Adamo, Nic & Co.
M. 496a Adamo, Mrs. Rosa.
S. 1693a Adams, W.
M. 996y Addison, L. B.
M. 3715a Adolph & Shacklette.
M. 2093y Alvus Drug Co.
M. 2810y Alexander Bros.
S. 1325y American Auto Garage.
S. 763a American Clothing Co.
M. 461y American Credit Indemnity Co.
M. 1376a American Dye Works.
M. 463a American Dye Works.
M. 3522a American Express Co.
E. 286a American Garment Cleaning Co.
M. 2201y American Restaurant.
M. 2823a Andriott & Sons, Peter M.
M. 1468a United Spring Water Co.
M. 2340y Appel, Louis
M. 459y Appel, Louis
M. 2712y Arts & Crafts Co.
S. 883y Askenstedt, Dr. F. C.
M. 2978y Asman, Dr. Bernard
M. 1053a Associated Eng. Co.
E. 486a Atkinson, J. B. & Co.
M. 1760m Atlas Coal Co.
M. 694a " Mch. Co.
M. 1861a Austin, J. R. & Co.
M. 595a Axton-Fisher Tob. Co.
M. 1254a Babey Lace Curtain Laundry.
M. 3916a Baer, H.
M. 2093a Bagby, Sauter Drug Co.
S. 2633a Bailey & Kaerner.
M. 1304a " " "
S. 1745y Bailey, Smith T.
S. 1779a Bakrow, Chas. & Co.
M. 825z Bald Bros.
M. 825a " "
S. 1876a Bald, P. H.
M. 2964a Baldauf, Arthur N. & Co.
M. 597a Baldridge Tob. Co.

M. 1242y Ballard, Austin & Co.
M. 210a Ballard, Wm. C. & Co.
M. 422y Baptist Book Concern.
M. 741y Barbee, J. T. & Co.
M. 3586a Barnes, Dr. C. W.
M. 2884y Barnes, Dr. W. W.
M. 3149a Barrett, J. J.
M. 2971y Barringer & McKnight.
M. 493y Bartman, Jno. & Son.
M. 557a Bayse, Hyatt Co.
M. 1192y Bauer, C. W. & Sons.
S. 941a Baumer, Aug. R.
M. 1638a Bayless Bros. Co.
M. 2634a B. & B. Towel Supply Co.
M. 974a Bettinger, Henry G.
M. 3927y Bailstein, J. W. & Co.
M. 3925mBate, V. A.
M. 1281y

2803

E. 397m Benners, Dr. J. W.
M. 993y Bennett-Diller & Co.
M. 1392a Bensinger Outfitting Co.
M. 885y Bentley, E. W.
M. 1289a Bernard & Crum.
M. 1238a Berry Land Co.
M. 1421a Berry Surgical Inst. Co. W. P.
S. 1349a Beutel & Frederick.
M. 183a Beville, M. B. & Co.
M. 396a Bickel, Geo. F.
M. 843a Bickel, Henry & Co.
W. 439y Bickel, J. H., Jr.
W. 250a Bickel, J. H. & Son.
M. 1722a Birchler, Frank
M. 840y Bitzer, Peter
M. 837y Blain, Randolph H.
S. 2477y Blanford, T. A.
M. 1278z Blaufield, Bros.
M. 485a Blatz, Val. Paint & Varnish Co.
S. 964a Bloch, Dr. Leo
M. 2492y Block Bros.
M. 956y Bluegrass Lumber Co.
M. 703y Blue Rock Mineral Spring Co.
M. 155a Bodine, Dr. J. M.
S. 2171y Boebel, Theo.
M. 680y Bohannon Transfer Co.
M. 2096a Boniface, Weber & Allen.
S. 2707a Bonnie View Jersey Dairy.
E. 121a Bonnycastle Feed Co.
W. 158y Borgman, C. W.
M. 377a Bornwasser, Louis P.
S. 1537a Bosemer, J. J.

M. 2478a Bosler Bros.
M. 1779a Boston, The
M. 1946y Boston Shoe Co.
M. 397y Botto, P. J. & Co.
M. 618a Bowman, A. H. & Co.
M. 858a Bowman, Hite D.
M. 2312a Bowser & Browning.
M. 2682y Bradford Worsted Spinning Co.
W. 147y Bonnie Bros.
M. 2403a Brady, W. J.
M. 3135a Brand & Bohrman.
M. 760z Brandeis, A. J.
E. 986y Braun & Tabler.
M. 2406y Brenner, B. C. & Co.
W. 941a Brian, J. H.
E. 203a Broadway Bedding Co.
S. 176y Broadway Hotel Co.
M. 732y Brocar, T. A.
M. 522a Brown, J. W.
W. 727a Brumleve, Ben J.
S. 1255z Bryan, Dr. J. T.
M. 1972y Bryan, W. E.
M. 208a Buchanan & Son.
M. 724a Buckner-Dunkerson Co.
M. 83a Building Con. Ex.
M. 547a Bullitt, A. Scott
M. 2823y Bullock, Tom
S. 1741a Burke, M. E.
M. 51y Burnett, Wm. A.
M. 2427y Burrell & Walker Clay Mfg. Co.
M. 1010m Burton, Whayne & Co.
S. 153a Burwinkle, J. H.

2804

M. 997a Buschmeyer, W. G.
S. 691a Bush, Dr. Evelyn R.
M. 1642y Bush, Mme.
M. 3479m Byck Bros. & Co.
M. 515a Cain Martin Machine Co.
M. 1642a Caldwell, H. M. Adv. Agency.
W. 566y Campbell, L.
M. 1776y Campbell & Young.
M. 2924a Cain, Dr. C. E., Robt. F.
M. 2984a Caron Directory Co.
M. 398y Carroll, Chas.
M. 1962a Carroll & Middleton.
M. 1766a Carson Proctor Co.
M. 1472y Cassilly, John P.
M. 2742y Cammissar, T. C.
M. 249a Central Boarding & Liv. Stable.
E. 1065y Cen. Con. & Construction Co.

M. 1733a Central Furniture Co.
M. 659a Central Painting & Roofing Co.
S. 390a Central Planing Mill Co.
S. 845y Central Stock Yds. Hotel.
S. 299a Chawk, Dr. John T.
E. 285z Cherokee Hardware Co.
E. 1078a " Livery & Boarding
M. 3123y Chicago & Alton R. R.
M. 1272a Chickering, A. E.
M. 589a Childers & Waters.
M. 567a Chowning Electric Co.
M. 906a Chreste, Chas. & Co.
M. 1429a Citizens Warehouse Co.
M. 2992a Clarke, J. S. & Co.
M. 478a Clarke, Dr. J. W.
M. 12a Clarke, R. L. & Co.
S. 939a Clarke School of Shorthand.
M. 2910m Clarke, P. N. & Co.
M. 1682a Coca Cola Bottling Works.
M. 1098a Coffield.
M. 3339y Cohen, Dan
S. 1916y Cohen, J.
M. 82a Cohn, Geo. & Co.
M. 1014a Coldeway, Wm. G.
S. 1066y Coleman, C. C.
W. 217y Coleman, Patrick
M. 3492z Coleman, T. C. & Sons.
S. 318a Coleman, Dr. W. H.
M. 924y Collier, Dr. J. R.
S. 2502a Collins, Hilton
S. 2188a Collyer, Dr. Frank & Lilly
M. 3547a Columbia Phono Co.
M. 2574y Columbia Novelty Co. Inc.
M. 245y Colvin & Nicholson.
M. 144y Comingor, L. & Co.
M. 3575y Conkling, Jos. E.
M. 1694a Conrad Shoe Co.
M. 984y Converse Co.
S. 741a Cook, C. Lee Mfg. Co.
W. 725a Cook & Co.
M. 107y Coomes, Dr. M. S.
M. 1272y Cornelison, Frank S.
S. 587m Coggell, Dr. H. A.
W. 176a Coupe & Gray.
M. 406a " " "
E. 996a Clifton Christian Church.

2805

M. 1562a Elwang, A. W.
M. 2234a Cowles, Jno. H. & Co.
M. 1285a Cowman, Misses.

M. 3975a Credit Clearing House.
M. 1098y Cree, Jno. A. & Co.
E. 529a Crescent Drug Co.
E. 233a Crescent Hardware House.
M. 426a Cropper Stable Co.
M. 246a Cross, Geo. E. Co.
M. 2482a Crystal Laundry.
M. 2689a Culbertson, S. A.
M. 978a Cummins, E. L.
M. 2904y " T. F.
M. 832a Cuneo, J. P.
M. 656a Cunning, Lewis & Co.
M. 1238y Dallam, Farnsley, Heans.
S. 1006y Dale, Dr. W. E.
M. 1355y Dannenbold, J. F.
W. 355a Daunehold, J. F.
M. 3661a Dant, J. P.
S. 792y Daubert & Schrecker.
S. 216y Davidson, L. T.
M. 1023a Davis, B. B.
M. 1104y Davis, Jas. G.
M. 1100a Dawkins, J. E. & Co.
E. 966y Day & Co.
M. 3155y Dearing, Chas. T.
M. 1508a Dearing, Chas. T. Printing Co.
M. 1056a Deckel, Chas.
M. 1633a Deckman, Geo.
M. 2167a Dehler, Bros.
M. 2912y Democratic City & Co. Ex Comm.
M. 3267z Denhard Co.
M. 3625y Dennis, W. W. & Co.
M. 1242a Deltidder & Griffith.
M. 393a DeSopo & Co.
M. 1945a Devejin, Jno.
M. 931a Dick, Al. M.
M. 2934a Diehl, Fred.
M. 3383y Dillon, Miss Mamie.
M. 3382a Dinkelspiel, Sam.
M. 1373y Disch. & Co., Lewis A.
E. 221a Doll, F. Grocery Co.
M. 3260mDoll, J. & Son.
S. 562a Donan, Henry.
M. 916y Doolan, W. L.
M. 971a Dorsey, McNally & Dorsey.
M. 2998a Dougherty & McElliott.
S. 478y Duckwall, E. G.
M. 1979a Dufficy, T. & Co.
M. 2904a Dye, Eugene B. Paper & Mfg. Co.
M. 406y Elde, Dr. Max M.
M. 1988a Eclipse Stable.
S. 1565a Edelen, Chas. A.

M. 3706a Edwards, Ogden & Peake.
M. 2112a Eggers, H. D.
E. 966a Ehrmann Bakery.
M. 4738y Eisenmann, A. D. & F.
M. 2228a Eisenman Horse Shoe Forge.
S. 1519a Electric Cleaning Co.
M. 1317a Electro-Automatic Display Co.
M. 337a Elite Garment Co.
M. 407y Ellison, Chas.
M. 29a Ellmore, Dr. R. R.
M. 537y Emerson Shoe Co.
M. 597y Daylight Acetylene Gas Co.
M. 210y Diozo Scales Co.

2806

M. 2439y Englehard & Son.
M. 410a Eng. & Architects Club.
M. 626a Engleman, H. M.
M. 2807z English Woolen Mills.
E. 478a Epperson, Dr. Sue.
M. 1018a Erie Dispatch.
M. 1303y Ernwine, Jacob.
M. 1962y Euller, Miss Margaret.
M. 993a Fairbanks-Morse Co.
S. 1797a Fallis, Dr. Robt. G.
M. 1736y Falls City Buggy Top Co.
M. 948 Falls City Job Printing Co.
S. 1044a Falls City Tannery.
M. 324a Falls City Transfer Co.
M. 1189y Farmers' Home Journal.
M. 2287y Farmer & Short.
M. 1068y Federal Sign System Electric.
M. 54a Felsenthal, I.
S. 1302y Fern Cliff Distilling Co.
M. 681a Fidelity Mutual Life Ins. Co.
M. 716a Fifth Ave. Fish Market.
W. 724a Fihe, G. A.
M. 3140a Finck, Carl H.
M. 715y Fink, Phil & Sons.
E. 402a Fischer Bros.
E. 109y Fischer, Dr. R.
M. 732a Fishback's Compressed Air Carpet C'l'g.
M. 245a Fisher, Geo. H. Co.
M. 1245y Fitch, & Co.
S. 566y Fitch, Chas. F. & Co.
S. 410 Flack & Co.
M. 2702a Fleddermann, H. W.
S. 552a Fleischaker, K.
M. 1327y Flexner, Edw. M.
M. 202a Flexner, Wm. M.
W. 833a Floyd & Bohr.

W. 307y Flynn, Mrs. B. G.
M. 477y Focus, The.
M. 3986y Forman, Breem Mfg. Co.
M. 2228y Forrester, W. S. & Co.
M. 935y Fort, Dr. F. T.
M. 2406a Forum, The.
M. 1545y Fountaine, Dr. E.
M. 1209y Fox & Lucas.
M. 2835a Franco-American Hygenic Co.
M. 629y Frankenstein, A.
M. 295y Franklin, Bank.
M. 2788a French Fancy Dye Works.
S. 864a Frey, Dr. E. S.
M. 3258a Fritschner, Geo. & Co.
M. 2130y Fromm, F. & J.
E. 676a Fruin-Colnon Cont. Co.
M. 2712a Fuchs, Henry.
M. 3996a Fulton-Conway Co.
M. 867a Furlong, Wm.
M. 1263a Gable, Martin.
M. 3112y Gaertner, P. A.
M. 2287a Gaffney, J. J.
M. 2307a Gage, W. M.
M. 1806a Gardiner & Co.
M. 1473a Gardner, Benj. F.
M. 2788z Garrety, Mrs. P. A.
M. 760y Gatchel, W. D. & Sons.
S. 1268y Gathright, R. O.

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M. 2628z Gebhard, R. L.
M. 3337z Gee, Miss Cora H.
M. 1261z Geher, Fisher & Co.
M. 1931a Geiger Mfg. Co.
M. 537a Gem, The.
S. 685a Gernert Bros. Lumber Co.
M. 1292a Gilbert, Dr. R. B.
M. 1682y Gilbert Transfer Co.
M. 3026m Gividen & Co.
M. 1760y Globe Furn. Co.
M. 3710z Globe Printing Co.
M. 99a Globe Tailoring Co.
M. 1691a Glover, Walter E.
S. 897a Godfrey, Jno. H.
M. 179a Goddard & Co.
M. 212a Godshaw, Dr. C. C.
S. 861y Goodman, Dr. H. M.
W. 427y Gosnell, Dr. T. E.
M. 1119a Gould Levi Co.
W. 307a Graf Webb Iron Mfg. Co.
M. 1638y Grant, Drs. W. E. & R. E.

M. 654y Grant, W. E. & W. C.
M. 2042y Grauman, Phil J.
M. 589y Gray Paper Box Co.
M. 1806y Green & Sanders.
M. 3176a Green & Sons.
M. 3054y Green, W. O.
M. 146a Greenbaum, S. J.
M. 241a Greenbrier Distilling Co.
M. 3454a Greene, Jas.
M. 1858a Gresham & Quinlan, Inc.
S. 452y Grocers Baking Co.
M. 386a Grocers Biscuit Co.
S. 487y Grom, Jos.
E. 217a Gruner's Meat Market.
M. 1421y Guthrie's Trunk Store.

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W. 256A Hackett, Edw. J.
W. 966a Haller's Bird Store.
M. 1289y Hampton & Smith
M. 791a Hancock, Dr. Jethra.
M. 646a Harcourt & Co.
M. 1556a Hardesty, D. L.
M. 1557a Harrington, Dr. I. H.
M. 1281mHarris, Abner.
S. 983y Harris Engineering Co.
M. 938y Harrison & Harrison.
M. 2820y Hartford Steam Boiler Insp. & Ins. Co
M. 451a Harthill, Alex. & Henry C.
M. 3927a Hathaway & Hathaway.
S. 1553a Hausman, J. & Bros.
M. 1498AHawkins Furn. Co.
M. 1024a Hawn, O. E. Dental Laboratory.
M. 3064mHay Market Scales
M. 2147y Hays Cloak & Suit Co.
E. 581a Hedden, Curtis.
M. 3421mHegan Mfg. Co.
M. 1064y Heidelberg, Miss M.
M. 1261A Hellmuller, Englebert..
M. 3140y Henry Drug Co.
M. 3939a Herndon-Carter Co.
M. 1581a Hero, J. C.
M. 986a Hertle, Frank
S. 1044y Heuser & Casper, Drs.
M. 2033a Heuser, Chas. A.
M. 1727y Hickey, Alice B.
M. 1100y Hieatt, Joe.
S. 176m Hikes Gro. Co.
M. 1733y Hilton, J. S.
M. 2307y Hodgins, John E.
W. 194y Hohman, Frank.
M. 826y Holt, M. J.

M. 481A Holt, O. G.
M. 3600Y Home & Farm Pub. Co.
M. 3026y " & Fund Co. Bldg. Assn.
M. 395 Home Bldg Co.
S. 1991A " " "
S. 1418A Home Carriage Co.
M. 2535A Home Electric Co.
M. 1436A Home Industry Pantaloon- Co.
M. 1303A Home Laundry Co.
M. 963y Home Life Ins. Co.
M. 717A Hopkins, Wm.
M. 1305M Howard, J. H.
M. 3762Y Howard Skirt Co.
M. 2305A Hughes, E. L. & Co.
M. 1090y Hughes, W. J. & Sons Co.
S. 1724A Hunt, M. A. & Co.
M. 3592a Husch Bros. & Co.
M. 949y Hutchings, John Bacon.
M. 3181z Hyman, E.
M. 805y Hynes & Co.
W. 514M Illinois Leather Co.
M. 1839A Implement Trans. Co.
M. 1873A Inland Farmer.
S. 1999A Inman Ice Co.
M. 984A Insurance Field
M. 1187a Iring Henry & Son
W. 408y Iring Transfer Co.
S. 478A Isaacs, Jacob.

2809

M. 2983a Italian Fruit Co.
M. 106 I. C. R. R. Co. 6 phones.
M. 1742A Jackman, John S.
M. 939A Jefferson Co. Medical Society.
W. 102z Jefferson Wood Working Co.
S. 1558y Jobson Printing & Mfg. Co.
M. 837a Johnson, Chas. Thruston.
M. 2806y Johnson, Dr. E. Y.
M. 625A Johnson, Morgan & Co.
M. 126a Johnston Bros. & Co.
S. 411A Johnson, Tom L.
E. 798A Jones, Frank G. & Co.
S. 597Y Jones, Fred G. & Co.
M. 2096Y Jones, Jos. H.
S. 1072y " Dr. R. M.
W. 982y " T. B. & Co.
S. 1991Y " T. B. & Co.
M. 2376A " Thos. S. & Co.
M. 2309y Joseph, Herman.
M. 627Y " Emma M.
M. 1985A Joyes, Martin V.

M. 1973 Kahlert, A., Jr.
M. 805A " C. H.
M. 2439A Kahn Bros.
M. 938A Kalb, Wm.
M. 566z Kazanjian, K. G.
M. 365A Keenan, Thos.
M. 1476Y Keightly, Mrs. Ella V.
M. 349A Keiper, Wm.
M. 2835Y Keller, Bldg.
W. 641A Kenner, Dr. R. C.
M. 36A Ky. Mutual & Louisville Mutual Ins. Co
M. 1062A Ky. Anti-Tuberculosis Ass'n.
M. 883A Ky. Board of Fire Under Writers.
M. 906Y Ky. Central Life & Accident Co.
M. 2233Y " " " " "
M. 753A Ky. Clothing Co.
W. 147A Ky. Consumers Oil Co.
M. 126Y Ky. Dairy Lunch.
E. 1096A Ky. Dist. & W. H. Co.
E. 1096Y Ky. " " "
M. 2234Y Ky. Engraving Co.
S. 566A Ky. Hardwood Floor Co.
S. 2110A Ky. Heating Co.
S. 2110Y Ky. " "
S. 2427Y Ky. Sash & Door Co.
M. 2447A Ky. Tent & Awning Co.
S. 3053Z Ky. Veneer Works.
M. 2408A Ky. Wall Paper Co.
S. 818Y King, E. A.
M. 2158A Kinkead, R. C.
E. 179A Kirchdorfer, Jos. C.
M. 2075A Klee, Coleman & Co.
M. 2628A Klein & Son.
M. 965Z Klotz, F. C.
M. 2065Y Knocke, A. C.
E. 128A Knopf, Mrs. J. A.
M. 1368A Kochenroth, Clarence.
M. 840M Koehler, Henry & Co.
S. 896A " Henry Z.
M. 2344a Koellner, L.
S. 883A Koenig, Jos. B.
M. 996A Korfhage, H. C.
M. 716Y Kraft, Geo. C.
M. 1139y Kramer & Co.
M. 2650 Koch, P. F.

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M. 1474A Kratz & Shouse.
M. 1234Y Kremelberg & Co.
W. 638Y Krider, C. E.
M. 2155A Kubaugh Braun & Co.

S. 1904Y Kuhn, Mrs. H.
M. 2299A Lammers, Dr. B. J.
M. 2325Y Lammlein, M.
S. 3053A Lanham Hardwoo- Floor Co.
M. 1858Y Latta Optical Co.
M. 1863Y Laven, Miss Celia B.
M. 3993Y Leahy, J. K. & Son.
M. 2127A Leanhard, J. F. & Co.
M. 627A Lee, Dr. Harry S.
S. 206Y Lee, R. C.
M. 787A Lehman Whitehouse.
M. 1542Y Leisman & Co.
N. 2340A Lemon, Jas. K. & Son
M. 337Y Leonard Brush & Woodenware Co.
M. 642Y Leopold, Lawrence S.
M. 3524Y Levi, Henry.
M. 3049A Lieber & Lincoln.
M. 1951A Lindsey, T. N.
M. 3277M Lion Brand Shoe Store
M. 1265Y " " " "
M. 3058M Lippold & Maas.
W. 614A Locke, Wm. P.
M. 861Y Lonberg, C. F. C.
M. 8654A Long & Evans
M. 2130M Long Towel Supply Co.
S. 861A Longest Bros.
M. 2981A Looms, Geo.
M. 1476A Lord, A. & Co.
M. 384Y Louisa, Miss.
M. 141A Louisville & Cincinnati Packet Co.
M. 2189A " & Southern Indiana Traction Co.
M. 2189Y " " " "
M. 595Y " Automatic News. Dist. Co.
M. 1758Y " Butchers Hide & Tallow Co.
W. 406 " Candy Co.
W. 367M " Cement Co.
S. 1265A " Cereal Mill Co.
M. 3568A " Clothing Co.
M. 83Y " Daily Record.
M. 516Y " Dental Depot.
M. 3533A " Dental Laboratory.
M. 3957A " Engraving & Embossing Co.
S. 1890M " Fire Brick Works.
M. 1633Y " Fruit Co.
S. 306Z " Girth & Blanket Mills
M. 1423A " Glove Cleaning Co.
M. 1144A " Insurance Co.
M. 1863A " Interior Decorating Co.
E. 406A " Leather Co.
W. 273A " Overall Laundry.
M. 1735Y " Pie Co.

M. 1376Z " Pillow Co.
M. 1712A " Point Lumber Co.
S. 2855A " Pottery Co.
S. 418Y " Planing Mills.
M. 179Y " Selling Co.
M. 1758A " Silvering & Beveling Co.
S. 1921Y " Stock Yards.
M. 1742Y " Testing Laboratory.
M. 962A " Tin & Stove Co.
M. 2262A " " " "
E. 1065A " Tob. Warehouse Co.
S. 3032A Lohmeyer, S. H.

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W. 535A Louisville Tob. Warehouse Co.
S. 818A " Wire Bound Box Co.
S. 3044A " Woolen Mills.
M. 3976Y Love, R. H.
M. 192Y Lucas, Dr. Chas. G.
S. 813Y Luesing, W. H.
W. 1019Y Lutz, C. R.
M. 3715Y Lyons, Fred. W.
S. 1456A Lytle, Mrs. E.
M. 3600A Macauley's Theatre.
M. 620Z MacPherson & Co.
M. 336Z Main St. Tob. W. H. Co.
M. 2834Y Majestic Theatre Co.
M. 715A Mammoth Stables
M. 1388Y Manos, Jas.
M. 895A Marine Electric Co.
M. 354Y Market Growers Journal Co.
E. 986A Marrett, J. E.
W. 238Y Martin, H. W.
M. 4738A Marx Nathan & Son.
M. 1154A Masonic Theatre.
M. 725A Massachusetts Mut. Life Ins. Co.
M. 1542A Masters, J. R., & Co.
M. 1048A Maurer Trager Co.
M. 317A Maury, Mason & E. W. Hillerich.
M. 1487A Mayer, Geo. & Son.
S. 423A Mayer, Louie.
M. 3039Z Mayfield Woolen Mills.
M. 824Y McAllister, J. S.
M. 2099A McAllister & Co.
M. 2978A McCall, Dr. Wm.
S. 768A McConathy, Dr. Herbert.
M. 1974Y McCoy, W. D., & Co.
M. 545A McCurdy Mfg. Co
M. 2884A McDonald Stockdall Co.
M. 3112A McDowell, R. A.
M. 964A McGinn & Honaker Boot Shop.

M. 384A McManna, Dr. W. C.
S. 1042A McPherson, Henry.
M. 2689Y McQuiddy, John H.
W. 734A McShane, Thos.
S. 1775Y Meagher, D. J.
M. 219Y Meddis, C. J.
M. 1455Y Meguire, Chas. A.
M. 463Y Melton, Dr. A. H.
M. 3922A Merchants Dispatch.
M. 3310A Merchants & Mfg. Asso.
S. 1921A Merholls, C. Sons.
M. 1349Y Metzner, Edw. F.
M. 2743A Meyer, Peter J.
M. 1874Y Meyer, Wm. E., & Co.
M. 1422Y Miller, Miss Alice J.
M. 1619A Miller & Lang, Drs.
S. 412Y Miller, Chris & Sons.
M. 1511A Miller, Geo. A.
S. 478A " J. W.
M. 3000M Miller, Will B.
M. 1818Y Mills & Menard.
S. 2076A Milton, Peter Mfg. Co.
M. 2810M Minor, J. S. & Son.
M. 2341Y Missouri Pacific Ry. Co.
M. 3162Y Mitchell, John & Co.
W. 735A Monarch Tob. Works.
M. 461A Monroe, Dr. Geo. J.
M. 2317A Montanus, R.
S. 1229A Montz, D.
M. 2390M Moore, Hughes.
S. 1908 McVan, G.

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M. 388Y Moran Flex Steam Jt. Co.
M. 1041A Moran, J. T.
W. 724Z Morgan Abbott Barker Co.
S. 2315Y Mariarity Bros.
E. 544A Morris, Dr. J. M.
E. 867Y Morriss, Mark F.
M. 3945A Moss, John.
M. 3049y Moxley, Dellsler.
M. 867Y Mueller & Martin.
W. 1045A Murphy, T. M.
M. 3399A Myer, I.
S. 2395A Nachand, Henry A.
S. 1999y Nalley, Jos. L. & Co.
M. 374A Nanz & Nanner.
M. 3310M National Advertising Agency.
M. 835Y National Dairy Lunch.
M. 2401Y " " "
M. 681Y " Life Ins. Co. U. S. A.

M. 1469Y " Roofing & Supply Co.
M. 3947A Neurath, Albert.
M. 1373A Nevin, H. L. & Bro.
M. 692A Newman Drug. Co.
M. 441A Newman, G. A. & Co.
M. 80A " H. W.
M. 1974A Nolan Bros.
M. 421A Nordeman, C. B. & Co.
S. 1828A Norman Lumber Co.
M. 853A Norris, Jas. N. Son.
E. 2375A Norton Curd Coffee Co.
M. 1831A Norton, G. W.
E. 157A Nuckols, L. M.
M. 527A Nugent, R. I. & Co.
M. 3999A Nugent Sand Co.
M. 2390Y Nunnelly & Harrison.
M. 2828M Nunnelly, W. G., Jr., & Co.
M. 1223A Nuss, Miss Luida.
M. 363Y Nuxol Suit & Skirt Co.
M. 3162A O'Brien, E. J. & Co.
M. 143A O'Brien, S. M.
W. 711A O'Donnell & Co.
M. 3997A Oertel, John F.
M. 2359Y Office Equipment Co.
M. 126y O. K. Saddle & Harness Co.
S. 597A O. K. Stove & Range Co.
M. 524 " " "
E. 886Y Oldiges, C.
M. 1068A Old Reliable Laundry.
M. 603A Oliver Typewriter Agency.
M. 345A Omaha Packing Co.
M. 723A O'Neill, C. & C. Co.
M. 924A Orendorf & Winter, Drs.
M. 1469A Orborne Livery Stable.
M. 2432A Ott, Geo. J. & Co.
M. 424A Ottenheimer, E. & Son.
M. 594A Ouerbacker Coffee Co.
M. 658A Ox Breeches Mfg. Co.
E. 880Y Ky. Children's Home Society
E. 880M " " " "
M. 2729A Presbyterian Seminary.
E. 1133A St. Marks Episcopal Church.
S. 1496A " Pauls P. E. Church.

2813

M. 129a Pace, W. B.
W. 196a Palmer & Hardin.
M. 654a Palmer, Dr. E. R.
M. 625y Parisian Corset Store.
M. 1149 Parker Paper Co.
S. 1505a " Transfer Line.

E. 752 Parsons, Dr. A. L.
S. 1453y Paterson-Davenport School.
M. 82y Patterson, Wm. J.
W. 105a Paust, Emil.
M. 1287a Payton, S. M.
M. 16a Peerless Laundry Co.
W. 641y Pelle, Dr. H. E.
M. 197a Perfection Vent'l'g Awn'g Co.
S. 1558a Peter & Co., Arthur.
E. 374a " & Melcher Stone Works.
M. 192a Pfingst, Dr. A. O.
W. 311m Phillips, Dr. Harry J.
M. 1077y Pickrell-Craig Co.
S. 128a Pilchers' Sons, Henry.
M. 2340a " Mnfg. Co., J. V.
M. 956a Pirtle, Alfred.
M. 1819a Polk, John R. M.
E. 471a Pope, Dr. Geo. L.
M. 3353a Prather, Dr. Scott.
M. 2972y Progress Dist. Co.
M. 1245a Prudential Life Ins. Co.
W. 427a Purdom, Dr. J. F.
S. 821a Purity Ice Mnfg. Co.
M. 2624a Pusey, Dr. W. B.
M. 3986 Pyne Co., Harry B.
S. 1465a Quinine Whiskey Co.
M. 3041 Rademaker Drug Co.
S. 2754m Raffo, S. M., & Co.
S. 1031a Ramser's Sons Co.
S. 1591y Rapp, Dr. H. L.
M. 987a "Rathskeller."
M. 887a Ratterman & Dean.
M. 1704a " Jno. B.
M. 1023y Revitch, Dr. M. L.
M. 1051a Red River Furnace Co.
M. 408a Reed, J. V. & Co.
M. 3689a Rees, Dr. B. G.
M. 1979y Reh-Beaverson Co.
M. 2309 Rehm-Zieher Co.
M. 1301m Reichman, A.
E. 788a Reimers, E. G.
M. 696a Reiss, J. W.
M. 2406a Reutlinger & Miller.
M. 173a Reynolds, Dr. D. S.
M. 682a Richards, A. E.
M. 538a Richardson, E. A. & Co.
M. 2559y Reiding & Bro.
M. 410y Rieger, Geo.
M. 2934m Ritcher, Wm. Victor.
M. 912a Ritter & Henning.
W. 439 Ritter, Richard.

M. 166a Roche & Roche.
M. 1874a Rogers Book Co., The.
M. 3993a Rogers, Newton G.
M. 11a Rommel Bros.
M. 591a Rosenbaum, Isaac & Son.

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M. 3485a Rosenbaum, Isadore
S. 2176a Rosenberg, G. S.
M. 459a Rosenbaum, C. H. & Co.
M. 2319a Ross Seed Co.
S. 567a Ross Chair Mnfg. Co.
M. 3176y Rothschild & Weinbaum.
M. 2359a Rothenburger & Turner.
M. 620m Roy, W. D. & Son.
M. 1489a Royal Mag. Spring Water Co.
M. 1779y " Photo Co.
M. 1336y Rudolph & Bauer.
S. 679a Runyon, Dr. Sallie K.
S. 219a Russ & Exner.
M. 1432a Russell & Co.
M. 963a Russell, M. D.
S. 866a Ryan-Hampton Co., Tob.
M. 2042a Sachs, M. A., D. A. & J. G.
E. 97a St. Louis Cemetery.
S. 1847a Sanatorium, The
M. 2167y Sanders, Henry G.
M. 971y Savage & Welsh.
S. 405 Scanlon Coal Co.
S. 1670a Schachner, Dr. Aug.
E. 399m Scharfenberger, J. & Son.
S. 1302a Schildt & Buddeke Coal Co.
M. 1302a " " " " "
M. 2308a " C. & Son.
E. 920m Schlegel, Geo.
M. 2876a Schmidt, Geo. W.
E. 948a Schuepbach, F. C.
M. 2391a Schuff, A. C. & Co.
M. 1359a " Wm. & Co.
M. 98a Schulten, John J.
E. 1398a Schultz, L. Fred.
M. 1231a Schupp & Schmidt Mnfg. Co.
M. 1125a Schuster, Chas. F.
M. 3977a Schlinger & Sons Co., Chas.
M. 286y Selligman, Alfred & Jos.
S. 1695a Semple Col & Moore Prim School.
M. 273 Semple, W. A. & C.
E. 341a Seubold, John.
M. 112a Seymour, Geo. W. & Co.
M. 3149y Schacklette, Dr. C. R.
S. 2518a Shapinsky, S. & Co.

M. 2924y Shaunty, Dr. Geo. M.
M. 494y Shehan, M.
M. 1463a Shoemaker, W. M. & Co.
M. 493m Shrader Bros.
M. 904y Shuttleworth J. A. & Co.
M. 647a Sicillia Fruit Co.
S. 866y Seifert Henry.
M. 556a Silverman V. H.
M. 2777a Simon Bros.
W. 104y Simpson Dr. Geo. F.
M. 1936a Singer Sewing Mac. Co.
M. 2312y " " " "
M. 978y Slattery & Finck.
M. 3896a Slaughter S. A. & Co.
M. 1051y Slaughter W. H. Jr. Coal Co.
M. 3047y Smith & Co.
S. 567y " Cooperage Co.
M. 1361a " Guy W. & Sons.
M. 845y Russell, E. H. Dist. Co.
M. 2029a Slaughter, T. Grant.

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M. 241y Smith W.
M. 407a " W. Line.
M. 344a Snow Church & Co.
M. 1209a Sollinger Jacob.
M. 81a Southern Asphalt Road Co.
M. 1014y " Law & Adjustment Co.
W. 158a " Plaining Mill.
M. 1355a " Roofing & Paving Co.
S. 1265y " Wall Plaster Co.
M. 3064a Spidel Dr. Edw.
M. 3524m Spencerian Business Col.
M. 1818a Spary D. B.
M. 1263y Standard Printing Co.
M. 1763y Starr Swartz Co.
M. 1743a " " "
M. 1743y " " "
M. 1763a " " "
E. 264y Steinaker Phil.
M. 904a Sterling Furnishing Co.
W. 479a " Paint & Color Co.
M. 2807y Stern A.
M. 7171a Stevens New Method Shoe Repair.
M. 1919y " R. L. & Sons.
M. 564a Steward Bros.
M. 51a " Sanders Co.
M. 2033z Stockhoff Wm.
M. 14a Stoll Chas. C. Oil Co.
S. 81a Storch J. F.
M. 1147a Strassel-Ganz Paint Co.
M. 2138a " J. L. Paint & Roof Co.

M. 1581y Stratton John A. & Co.
M. 1305a " John Mason.
M. 2519a Stucky Dr. T. Hunt
M. 743a " Quest Co.
M. 2201a Sullivan & Brach.
M. 1339 Summers Wm. T.
M. 2913z Sun Life Ins. Co.
S. 966a Sun Varnish Co.
S. 997a Superior Lumber Co.
M. 2519y Sweeney Dr. Jos. A.
M. 985a Tafel, H. G.
M. 985y " Theo.
M. 2698a Templett H. & Co.
S. 848a Tarbis M.
M. 412 Taylor Chas. F. & Cary B.
S. 2029y Taylor Hancock.
M. 3710m Taylor H. B. & Co.
M. 477a Tarry & Tice.
S. 1883a Texas & Pac. R. R. Co.
M. 3133y Theobald & Reinecke.
M. 570 Thierman H. A. & Co.
S. 464a Thomas & Co.
E. 141y " Mrs.
M. 362a Thornton R. J. & Co.
M. 112y Thum-Clark & Ray.
M. 2806 Tileston Dr. H. B.
M. 824a Timberlake Tom C. & Co.
M. 3241a Tobren E. T.
M. 949a Todd J. M. & Co.

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M. 1054y Trautman Miss Alice.
M. 2742a Trost Bros.
M. 222a Troxell, C. L.
M. 1812a Troxell Saml. F.
M. 2112y Tuck & Co. G. O.
M. 683a Ultra Apparel Press. Club.
M. 1182a Underwood Typewriter Co.
M. 1429y Union Ice Cream Co.
M. 3510a Union Painless Dentist.
M. 1077a U. S. Trust Co.
M. 573a U. S. Army Rec. Sta.
M. 1078a University of Lou.
S. 1792y " School.
M. 3971a Unz John & Son.
M. 96a Uri & Co.
M. 1295y Van Dyke Freight Trans. Line
S. 1631y Veech Dr. L. R.
M. 545y Vetter Geo. N.
M. 398a Viavi Co.
S. 423y Victor M.
M. 2912a Vocke & Hines.

M. 1136a Vogle Bros. & Co.
M. 689a Volkman M. D.
M. 3095a VonBorries Grau Co.
S. 2403y Wagner & Son J. F.
M. 1388a Walker & Co. F.
M. 546a Walker, S. G.
M. 3938y Wall St. Cafe.
M. 2029y Wallace & Miller.
M. 144a Walsh, P. J.
M. 2820m Wanner, Julius & Co.
M. 296a **Ward, O. P.**
M. 1419y Warner, Roy E. & Co.
M. 842a Warrisse Bakery Nick.
M. 2233a Washer, B. F. & N. L. Goldsmith.
M. 107a Wathen, Drs. W. H. & J. R.
M. 3938a Watts, Ben B.
M. 118a Watts, John R.
M. 1945y Waymon Beauty Parlors.
M. 596a Weaver, Dr. A. B.
M. 983a Weaver & Bensinger.
M. 3925y Weaver & Sons, Ben C.
M. 3073a Weber, N. E.
W. 598y Wedekind Hallenberg Tanning Co.
S. 1049a Weller, C. B.
M. 521a Weller & Co., Jno. C.
M. 486a Wellington, V.
M. 363a Wellman Bros. & Co.
S. 683a Wells Co., Prince.
M. 2034a Welsh, David.
M. 2292y Werst & Griffin.
M. 2633y Wheat & Laufer.
M. 1287a Wheeler Carriage Co.
W. 598a White Mills Distilling Co.
M. 2964y Wigginton & Co., Chas.
M. 1024y Wilder, Dr. Fred R.
M. 1234a Wile & Co., N.
M. 2465a " " " "
E. 491a Wilhoyte, Dr. R. E.
S. 691y Wilken & Son, R.
W. 494a Will & Co., J. P.
M. 244a Willard, The.
5 Private Lines Union Cast Iron & Pipe Co.
2817
S. 745a Wilson Dr. Dunning S.
M. 445a Winkler's Sons P.
M. 2158y Wischmeyer Herman
M. 612a Wolf & Co. Geo.
S. 2007y Wolf M.
M. 599y " Wm.
S. 632a Wolff Edw. W.
M. 1756y " & Sons M.

M. 1032a Wood & Bowen.
E. 983y Woodward Dr. H. C.
M. 1985y Woodson Sr. Isaac T.
S. 977a Woody Dr. S. E.
M. 115a Wright Baking Powder Co.
M. 1317y Yager O. J.
M. 3400a Yates Bros.
M. 1744a " Smith Co.
M. 642a Yontz Morton K.
E. 434a Young Geo. H.
M. 374y Young Dr. W. J.

2818 *Residence Direct.*

E. **143** Abrahams, E. W.
S. 2846 Abell, Dr. Irvin
S. 330 Abbett, E. E.
S. 245 Adams, Gilmer S.
S. **440** Adath Israel Temple.
E. 175 Adler, C. L.
S. 1443 Ainslie, Jas. W.
S. 118 Akers, M. L.
S. **711** Aldermen, Rev. E. S.
S. **655** Alexander, Jno.
E. 871 Allen, Mrs. C.
M. 808 Allen, Dr. E. S.
S. 1744 Allis, Mrs. Ernest
S. 2011 Altsheler, Ed
S. 1060 Ambrose, W. E.
S. 794 Anderson, Miss Fannie C.
S. 1721 Anderson, H. C.
S. 445 Anderson, J. J.
S. 448 Anderson, Henry
E. 53 Andy, Geo.
S. 1609 Applegate, W. E.
S. 1122 Arbegust, J. B.
S. 140 Armstrong, Jno. A.
S. 1094 Ashley, Allen
M. 882 Associated Charities of Louisville.
M. 1275 Atherton, P. L.
S. 377 Atkinson, W. M.
S. 30 Avery, Geo. C.
E. 243 Bacon, E. J.
S. 391 Bacon, Geo. L.
S. 2390 Bacon, Ike
E. **427** Baird, David W.
M. 3370 Baird, W. J.
S. 857 Ballard, Chas. T.
S. 1690 Barbour, Dr. Phil. F.
S. 1563 Barker, Thos. A.
S. 1963 Barnes, Claud R.

S. 1540 Barnes, Miss Maud C.
E. 200 Barnett, Mrs. A.
E. 222 Barr, Jno. W., Jr.
S. 337 Barrett, Alex. G.
M. 1558 Barrett, J. S.
S. 1590 Bartlett, Mrs. E. G.
S. 1391 Barton, Chas. P.
S. 2907 Bayse, Elijah
S. 736 Bate, Mrs. Jno. P.
S. 33 Bate, Dr. R. A.
S. 641 Backman, L. D.
S. 538 Bayley, J. W. E. & Co.
S. 968 Beard, Miss Julia
S. 809 Beauchamp, Rev. W. P.
S. 1841 " " "
S. 96 Beckley, Miss Florence
E. 1080 Beckman, O. A.
S. 852 Belknap, Morris B.
S. 985 Belknap, W. B.
S. 1400 Belknap, Wm. R.
M. 1399 Bell, Miss Allie G.
M. 3638 Bell, Miss Anne
S. 483 Bell, Mrs. Jno.

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M. 2133 Bellows, Howard M.
S. 740 Bentley, E. W.
S. 950 Bernheim, B.
E. 274 Bernheim, Morris U.
M. 714 Bertelle, Miss Flora M.
S. 1508 Best, Mrs. W. H.
M. 565 Beverly, Mrs. Mary
E. 891 Bickel, Henry
S. 117 Bickel, Virgil R.
S. 236 Biles, J. W.
S. 385 Bingham, H. H.
S. 962 Birch, E. A.
S. 970 Bishop, T.
S. 1340 Blakemore, M.
S. 865 Blank, Mrs. M. M.
E. 310 Bloch, Dr. Oscar E.
S. 304 Bloom, Dr. I. N.
S. 549 Bloom, Mrs. M.
S. 1054 Blue, Mrs. Elizabeth Weller
S. 1001 Boardman, Geo. T.
S. 5 Boardman, W. K.
S. 2330 Bodley, Miss M. S.
S. 2078 Dr. Boggess, C. F. & Marvin L. Thomas.
E. 893 Bohmer, Chas. H.
S. 2079 Boldt, A., Jr.
S. 445 Bolling, Dr. W. F.

S. 1593 Bond, Mrs. L. H.
S. 89 Bonnie, Mrs. Robt. P.
S. 80 Bonnie, Shelby W.
E. 740 Bonnie, W. O.
S. 207 Bonnie, W. O. Jr.
S. 642 Booker, Mrs. W. F.
S. 890 Bose, C. A.
S. 1910 Bowie, N. N.
S. 846 Bowman, Hite D.
S. 671 Boyd, B. H.
E. 34 Boyd J. G. A.
S. 114 Boyle, G. Boyle
S. 371 Boyle, Saml. G.
S. 275 Brand, Jno. H.
S. 1842 Brandeis, Alfred
S. 830 Breed, Mrs. Joshua
S. 383 Bremaker, C.
S. 620 Brewster, Ed S.
S. 1385 Bridges, C. A. & Co.
S. 2010 Bridges, Isham
S. 1110 Bridges, W. C.
S. 1201 Brier, R. G.
S. 454 Bronner, Dr. Herbert
S. 2 Bronner, Seigel
S. 2050 Brown, Creel
S. 435 Brown, Geo. G.
E. 302 Brown, Harry E.
M. 1492 Brown, Mrs. Jas. B.
S. 739 Brown, J. T. S.
S. 2157 Brown, J. T. S., Jr.
S. 19 Brown, Jno. W.
M. 460 Brown, Robt. W.
S. 536 Brown, Rev. W. R.
S. 1435 Bruce, Mrs. Helm
S. 1495 Bryan, Mrs. Jas. W.
M. 156 Bryan, W. B.
S. 788 Bull, Mrs. E. A.
S. 64 Bullitt, Thos. W.

2820

E. 60 Church Home & Inf.
S. 1729 Bush, Chas. P.
E. 868 Burd, M. W.
W. 174 Burford, C. R.
M. 639 Burke, E. J.
S. 542 Burlingame, Paul
S. 2006 Burnett, Henry
S. 424 Burnett, J. C.
S. 392 Burnett, Louis J.
S. 309 Burton, Hardy
S. 1585 Byrne, Chas.

S. 2620 Cahill, J. H.
S. 1186 Cahill, M.
S. 1642 Caldwell, H. M.
S. 1372 Caldwell, J. W.
S. 640 Caldwell, James G.
S. 211 Caldwell, Junius
S. 1207 Caldwell, W. E.
S. 1070 Calhoon, Miss L.
E. 184 Callahan, R. L.
E. 166 Callaway, Sam W.
S. 184 Campbell, C. D.
M. 442 Campbell, Pike
M. 1701 Cannon, C. J.
S. 187 Caperton, J. H.
E. 1083 Carnigham, R.
W. 740 Carney, W. A.
E. 800 Carroll, A. J.
W. 360 Carroll, G.
S. 268 Carter, Mrs. James D.
S. 765 Carter, Mrs. John A.
S. 548 Carter, Walter B.
E. 1056 Carothers, W. B.
S. 147 Cary, Mrs. E. Seldon
E. 241 Cary, F. Grady
S. 1130 Castner, Chas. B.
E. 389 Castleman, J. B.
S. 1655 Cawein, Madison
S. 1846 Cayce, Ridgley
S. 1241 Cecil, Dr. J. G.
S. 191 Chambers, Sam R.
E. 598 Chandler, Rev. James A.
S. 522 Chase, E. H., Jr.
E. 879 Chenoweth, Miss
E. 90 Chenoweth, Dr. James S.
S. 1008 Christian, John M.
S. 1344 Christopher, R.
S. 1490 Clarke, Geo. M.
E. 164 Clarke, James T.
S. 323 Clarke, C. S.
S. 461 Clarke, P. M.
W. 685 Clayton, J. S.
W. 534 Clegg, Fred A.
S. 161 Clifford, J. G.
S. 292 Cochran, G. H.
E. 820 Cocke, Jas. H.
M. 1975 Coker, P. G.
S. 1047 Coleman, Mrs. Bannon
S. 608 Coleman, Jno.
S. 484 Collier, L. S.
S. 395 Collins, J. B.
S. 1190 Collins, Mrs. R. S.

S. 235 Castleman, Sam, Sr.
S. 288 Claggett, C. E.

2821

S. 2185 Compton, C. B.
S. 949 Conkling, Jos. E.
S. 1499 Conway, Mrs. M. B.
S. 936 Cook, Frank S.
S. 986 Cooper, Miss Emma
E. 860 Cornwall, A. W., Jr.
S. 825 Cornwall, Mrs. Mary D
S. 1267 Coggell, Dr. H. A.
S. 1026 Courtenay, T. A.
S. 1765 Courtenay, W. H.
S. 133 Courtney, R. J., Jr.
S. 545 Cox, Attilla, Jr.
S. 28 Cox, Florian
S. 17 Cox, L. O.
S. 1370 Craik, Rev. Chas. Ewell
S. 339 Crawford, Newton G.
E. 253 Crawford, Robt.
S. 4 Creel, P. M.
M. 76 Cronin, Rev. Jas. T.
E. 270 Cronin, Rev. Jas. T.
S. 881 Cross, Miss Laura
S. 2290 Crutcher, Thos. B.
S. 649 Culbertson, Mrs. Wm. S.
S. 650 Current, W. D.
E. 786 Currie, Chas. Earl
S. 638 Curry, D. P.
S. 308 Curtis, Thos. H.
S. 1123 Dallam, Clarence
S. 1030 Danforth, Geo. L.
S. 1214 Danforth, Miss Jos. L.
S. 189 Dant, J. P.
S. 550 Darby, T. H.
E. 208 Davidson, Dr. H. A.
S. 904 Davidson, Maj. Jos. T.
S. 257 Davidson, Jno. C.
S. 3130 Davie, Mrs. H. A.
S. 1493 Davies, C. A.
S. 209 Davies, Hywell
S. 10 Davies, W. W.
S. 500 Davis, E. & Son
S. 1290 Davis, Edw. L. Lumber Co.
S. 2139 Davis, H. V. & Co.
S. 853 Davis, Lyman
S. 793 Davison, Mrs. Emily
S. 1697 Dawley, H. A.
S. 2911 Defebaugh, E. H.
S. 1819 Dick, L. T.

E. 1142 Dickey, J. H.
S. 2531 Dikeman, Wm.
S. 91 Dinkelspeil, L. S.
M. 819 Dock, Miss Sarah
S. 1196 Dodd, J. C.
S. 241 Dodd, Jno. L.
S. 1481 Dodd, W. J.
W. 135 Doerhoefer, Basil
W. 139 Doerhoefer, Peter C.
S. 291 Dorland, J. E.
S. 994 Dorr, Mrs. Sam'l
E. 941 Dorsey, C. W.
M. 1117 Dorsey, Mrs. Kate
S. 1050 Dosker, Rev. Henry
S. 532 Doyle, B. O., O. W. & H. S.

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W. 534 Duncan, Miss E. L.
E. 505 Drake, E. R.
S. 1347 Drummond, W. T.
S. 460 Dudley, Mrs. M. E. A.
S. 851 Duffy, Jno. A.
W. 434 Duffy, M. J.
E. 743 Duffy, M. J.
S. 588 Dugan, Mrs. A.
S. 780 Dugan, Thos. S. & Co.
S. 1935 Dugan, Basil W.
S. 816 Duncan, Mrs. A.
S. 510 Duncan, Dr. Ellis
S. 645 Duncan, Mrs. Henry F.
S. 1934 Dunlap, Jno. L.
S. 224 Edelen, R. H.
S. 1533 Edwards, C. G.
S. 2150 Egan, A. H.
M. 587 Elks Home.
E. 870 Embry, D. W.
S. 1380 Embry, H. F.
E. 717 Enelow, H. G.
S. 607 Englert, Justina
M. 786 English, Dr. Carroll C.
E. 575 English, Sam
W. 650 Escott, Jas. I
E. 205 Eskridge, H. M.
S. 393 Escott, Mrs. Walter N.
S. 1402 Eubanks, L. C.
E. 1095 Evans, C. S.
E. 91 Evering, Wm.
S. 1468 Ewald, L. P.
M. 2534 Ewald, L. P.
S. 2178 Ewald, L. P.
S. 2320 Ewald, L. P.

S. 382 Fairleigh, David W.
S. 580 Fairleigh, Jas. F.
S. 2199 Farmer, Edw. C.
E. 866 Farmers, Oscar, Jr.
E. 466 Feaman, Mrs. Laura
E. 737 Featherstone, J. T.
M. 3137 Fehr, Frank, Mrs. Sr.
S. 540 Fenley, Oscar
S. 960 Ferguson, Edw. H.
S. 1572 Ferguson, J. Arthur
S. 266 Ferguson, Mrs. J. M.
S. 25 Ferguson, Miss Sarah J.
S. 1589 Fetter, Geo. G.
E. 338 Field, Emmett
M. 423 Finck, Dr. T. D.
S. 931 Finnegan, M. J.
S. 3001 Fisher, F. E.
E. 18 Fitch, Harry B.
S. 1082 Flarsheim, A. B.
S. 518 Flarsheim, Morris H.
E. 735 Fleck, Jno. H.
S. 520 Fleischaker, Dr. Frank W.
S. 1103 Flexner, E. M.
S. 1043 Flexner, H. M.
S. 1166 Flexner, Washington
M. 3010 Flynn, Miss Anna E.
S. 1835 Ford, A. Y.
M. 1418 Ford, E. L.

2823

S. 421 Frazee, Mrs. M. R.
E. 974 Fox, E. A.
E. 830 Fox, E. B.
E. 890 Fraley, A. J.
S. 334 Frank, Dr. Louis.
E. 193 Frantz, Mrs. Geo. W.
E. 528 Fraser, Cecil.
S. 470 Frazier, Dr. Ben Carlos.
W. 276 Freeman, Dr. Jno. King.
E. 201 Frey, J. F.
E. 588 Fritz, Mrs. M. R.
S. 661 Fuhrman, Mrs. Lena.
S. 570 Fulton, Frank J.
S. 570 Fulton, Dr. Garbin.
S. 67 Funk, J. T.
S. 1084 Gardner, Clarence R.
E. 865 Garth, Dr. Chas. M.
S. 495 Gast, Jacob.
S. 1104 Gathright, J. B.
M. 1769 Gathright, J. T.
S. 675 Gaulbert, Mrs. Geo.

S. 1282 Gaulbert, Mrs. Geo.
S. 1276 Gerber, W. J.
M. 1725 German, W. W.
E. 711 Gheens, C. W.
S. 1061 Gibson, C. H.
S. 1413 Gifford, H. N.
S. 475 Gilbert, Miss Alice.
S. 1262 Gilmore, Mrs. E. W.
S. 1773 Goodman, Dr. H. M.
S. 2777 Goodridge, F. H.
S. 1602 Goodwin, E. L.
S. 1419 Goodwyn, D. M.
S. 384 Gorin, Lewis J.
S. 1647 Goshorn, A. O.
S. 718 Gould, Jno. E.
S. 1450 Grabfelder, Mrs. E.
S. 1188 Graham, C. A.
S. 875 Graham, E. Palmer.
S. 1140 Graham, Emery S.
E. 378 Graham, S. P.
S. 1898 Grainger, Chas. F.
S. 1461 Grant, H. B.
M. 829 Grant, H. H.
S. 738 Graves, Allison
S. 327 Gray, H. O.
S. 930 Gray, Jno. A.
E. 960 Gray, J. Barbour
S. 325 Gray, R. Norton
S. 1240 Gray, W. B.
S. 177 Graybill, Rev. J. W.
S. 1730 Green, D. S.
E. 92 Green, E. B.
S. 563 Green, O. D.
S. 65 Green, Pickney F.
S. 106 Green, Dr. Winnifred
M. 2780 Greenberg, Jake
E. 111m " "
M. 2087
E. 577 Grieshaber, Miss Josie B.
S. 586 Grinstead, Jas. E.
S. 1358 Griswold, H. M.
S. 1885 Griswold, Mrs. Marybelle.
S. 357 Grubbs, Chas. S.
S. 2560 Guinn, Geo.
S. 577 Gutman, H. J.

2824

S. 54 Haager, J. H.
W. 642 Hatfield, Miss L. V.
S. 575 Hagan, Frank.
S. 1350 Haldeman, Bruce.

S. 720 Haldeman, W. B.
S. 1874 Hale, W. T.
E. 19 Hall, Geo. G.
S. 1234 Halleck, R. P.
S. 120 Hallenberg, H. J.
S. 51 Halsey, W. L.
E. 260 Hanley, J. P.
S. 724 Hardin, Rowan.
S. 2075 Hardy, Mrs. Sallie.
E. 610 Harned, M. R.
S. 2103 Harrig, Fred. Jr.
S. 1295 Harrington, Mrs. G. W.
S. 747 Harris, W. O.
S. 2111 Harrison, J. P.
S. 730 " Mrs. Wm.
E. 878 Hatcher, E. B.
E. 457 Hawes, Rev. T. M.
S. 169 Hawley, R. M.
E. 814 Hays, Mrs. Emelia.
W. 769 Heflin, Dr. E. Lee.
S. 1551 Hegewald, J. F. C.
S. 2501 Heinz, Mrs. Sarah.
E. 930 Heitz, Adam.
S. 338 Helm, Jas. P.
S. 1484 Helm, John L.
S. 1629 Helm, T. K.
S. 1321 Hemphill, Rev. Chas. R.
S. 996 Henning, Mrs. S. K.
W. 930 Harencourt, Oscar.
S. 1601 Herb, Arthur.
M. 1681 Herm, Peter.
S. 1672 Herr, A. U.
S. 578 Hert, A. T.
S. 151 Hess, Mrs. Ed.
S. 603 Hewett, E. A.
S. 1007 Hewett, Leonard A.
S. 404 Heyburn, Wm.
S. 1459 Hibbitt, Chas. W.
S. 358 Hickman, Baylor.
S. 1156 Hidden, Mrs. Otis.
E. 515 Hill, L. M.
W. 542 Hill, R. S.
M. 3948 Hilpp, Meyer H.
S. 98 Hilpp, S. A.
S. 1427 Hines, J. J.
S. 447 Hitchcock, C. L.
S. 2335y Hobday, S. C.
S. 672 Hoffman, Isaac.
E. 660 Hoke, McClure.
E. 450 Hollingshead, Dr. Theo.
M. 302 Hopkins, Robt. M.

E. 671 Hopson, Dr. Jos.
S. 1288 Honton, Joe.
M. 2433 Howe, Benj.
M. 1202 Howe, B. L.
E. 305 Hughes, E. L.
S. 1770 Hughes, John C.
S. 911 " Mrs. W. A.
E. 187 Hays, E. W.
S. 421 Hughes, R. L.

2825

S. 1253 Hughes, W. T.
E. 503 Humphrey, W. O.
S. 1009 Hunt, Mrs. Eliz. K.
S. 945 " G. R. Jr.
S. 754 Hunter, W. A.
S. 1384 Hussey, Miss Emily.
S. 1127 " Mrs. F. D.
S. 812 Igoe, Phil.
S. 1843 Ireland, L. R.
M. 3599 Iring, Sidney.
S. 273 Irwin, Rev. Francis W.
M. 2440 " L. J.
S. 1150 Isaacs, Miss Emma.
S. 1971 Jacobs, J. D.
S. 60 James, Miss Grace C.
E. 2 James, R. I.
E. 120 " Sam'l R.
E. 380 " Thos.
S. 217 Jarvis, Wm.
M. 3281 Jefferson, C. W.
S. 2553 Jefferson, Harrison.
S. 1219 " Henry T.
S. 66 Jeffries, W. H.
W. 149 " P. R.
S. 2223 Jernee, H. R.
S. 41 Johnson, Chas. F.
M. 2214 Johnson, Darwin W.
S. 260 " Dr. E. Y.
S. 2619 " E. P.
S. 179 " Henry.
M. 702 " H. M.
E. 710 " J. M.
S. 1124 " J. Moreland.
M. 304 Johnston, Rev. L. E.
M. 3601 " Miss Mary.
M. 2460 Jones, Annie
S. 2288 Jones, C. W.
S. 287 Jones, G. C.
M. 543 " Mrs. Louisa.
S. 676 " Saunders P.

S. 359 Judge, Miss M.
E. 608 " R. C.
S. 2160 Kahn, E. M.
S. 8 Kaye, Mrs. W. H.
S. 713 Kearns, J. H.
S. 1403 Keeley, T.
S. 233 Kelly, Dr. C. W.
E. 275 " Mrs. R. M. Jr.
S. 434 Kendrick, Geo. P.
E. 470 Kennett, W. L.
W. 223 Kerr, R. N.
W. 166 Kesler, Mrs. Emma.
E. 347 Keyes, Geo. H.
S. 1740 Kinder, B. A.
S. 898 King, J. C.
E. 125 Kirby, Sam'l B.
E. 748 Kirwin, Jas. G.
M. 2487 Klauber, E.
S. 242 Klein, Jon W.
S. 1272 Kline, D. E.
E. 862 Knight, Henry.
S. 988 Knodel, Chas. H.
S. 1041 Knopp, E. Q.
S. 1273 Koehler, Henry L.
S. 2270 Kohler, M. S.
S. 472 Kohn, Aaron.
M. 1803 Kremer, Chas.
M. 2084 " J. Baxter.
M. 1865 Kurfees, Rev. M. C.
S. 1937 Laib, Geo. H.

2826

S. 1850 Landrum, Rev. W. W.
S. 2951 Langham, A. J.
S. 951 Laub, Victor.
M. 830 Lauerdale, Harry.
S. 725 Lee, Mrs. A. H.
S. 365 Leech, Jas. A.
E. 319 Leisen, Theo. A.
S. 401 Lemon, Brainard.
S. 1332 Lemont, Mrs. S. M.
S. 2225 Leslie, Mrs. M. K.
S. 1705 Levy, Fred.
M. 1531 Lewis, Miss Florence.
S. 1774 " F. N.
S. 743 " John C.
S. 201 Lewman, G. W.
S. 2210 Lex, E. A.
M. 1670 Liebert, B.
E. 78 Lindenberger, G. H.
S. 1868 Lindsey, T. N.

E. 704 Lipscomb, Rev. A. B.
S. 494 Lloyd, V. A.
S. 634 Logan, W. S.
S. 984 Long, John R. C.
S. 2540 Loughridge, H.
S. 958 Loveland, C. E.
S. 1244 Loving, Hector V.
S. 790 Lutz, C. R.
S. 1599 Lyons, Rev. J. S.
S. 2285 " Mrs. Van.
S. 469 Maas, Mrs. S.
M. 1980 Maccauley, John T.
S. 186 MacFarlane, Graham.
S. 610 Magness, Mrs. C. J.
S. 980 Magruder, B. F.
E. 705 Malone, John T.
S. 220 Mandeville, E. F.
S. 1570 Manson, L. B.
S. 946 Mapother, W. L.
M. 3972 Marble-tone, Milton M.
S. 1100 Marple, Mrs. S. E.
E. 663 Marquess, Rev. W. H.
S. 492 Marshal, B. K.
S. 804 Martin, Clarence B.
S. 1269 " E. Boyd.
S. 215 Marx, M. F.
S. 517 Mason, Rev. John K.
S. 1101 Mathews, Mrs. Virginia.
S. 2004 Matier, Miss Alice.
E. 41 Mattingly, B. S.
S. 899 Mayer, Dr. Chester.
S. 1652 Mayer, Mrs. M.
S. 1316 " W. F.
S. 250 McAtee, J. H.
S. 2045 McCarthy, P. F.
S. 727 McCelland, Thos.
S. 1554 McCracken, A. M.
S. 148 McCready, Rev. R. L.
E. 584 McCuiston, Mrs. W. W.
S. 908 McCulloch, Jos. G.
S. 3 McCutchen, H. J.
S. 786 McDermott, Dr. Thos. I.
S. 947 McDonald, Donald.
S. 490 McDonald, Kenneth.
S. 2414 Mason, A. H.

2827

M. 3006 McKnight, W. H.
S. 1958 McDowell, Wallace W.
E. 24 McFerran, C. W.
E. 749 McGinn, J. W.

S. 1760 McHenry, John J.
S. 630 " L. H.
S. 2490 McKee, F. W.
S. 92 McKernan, F. L.
S. 969 McLennan, Mrs. Alex.
S. 995 McMurchy, G. F.
S. 1700 McMurtry, Dr. L. S.
S. 589 McNair, W. I.
M. 3980 McPherson, Miss L.
S. 2120 " " Pattie.
S. 2114 Mendel, Chas.
S. 246 " L.
S. 2000 Mengel, C. C.
S. 669 " C. R.
S. 1702 " H. W.
S. 1578 Menk, Theo.
E. 928 Mercke, Mrs. M. M.
W. 451 Messick, R. C.
S. 100 Metzger, A. W.
S. 258 Meyers, Dr. S. J.
S. 693 Middleton, Mrs. John.
E. 61 " Mrs. L. L.
W. 277 Miley, Rev. W. H.
S. 44 Miller, F. H.
E. 440 " Frank.
S. 295 " S. A.
S. 868 Milner, B. C.
S. 1666 Milton, Mrs. Ella C.
S. 1348 Minary, T. J.
S. 1284 Minnederode, Rev. J. E.
S. 213 Minton, Miss Carrie.
S. 1045 Mitchell, J. D. H.
S. 1208 Mockridge, Rev. John.
W. 659 Monohan, Louise.
M. 1045 Monjar, H. B.
S. 2240 Monk, Rev. Alonzo.
S. 170 Moody, G. E.
S. 1688 Mooney, Thos.
S. 333 Moore, Geo. H.
E. 228 Morrill, W. N.
S. 1105 Morris, Herman.
S. 652 " J. H. M.
E. 659 " Dr. J. M.
S. 1289 Morrow, T. J.
S. 1667 Morsey, Mrs. C. B.
S. 592 Morton, R. G.
S. 507 Moses, M. S.
S. 1780 Mottler, Owens.
E. 160 Muldoon, M.
S. 1696 Mullen, Willis S.
E. 720 Munn, W. G.

W. 125 Murphy, D. X.
E. 270 " J. C.
S. 253 " Mrs. Lottie.
S. 61 Musselen, A. L.
S. 271 " B. B.
E. 105 Musson, Rev. H. S.
S. 280 Nelson, C. L.
W. 108 Newenschwender, Arnold.
S. 2498 Moore, Mrs. Anna E.
M. 3170 Moorman, C. P.
S. 305 Mourning, G. H.

2828

W. 640 Newman, Scott, Jr.
E. 496 Nones, S. M.
E. 924 " W. C.
E. 587 Mooe, Rev. Roger T.
S. 43 Norman, A. E. & E. B.
S. 210 Norman, J. B.
E. 330 Norris, Arthur R.
S. 1211 Northcutt, Wm. A.
S. 2040 Norton, Caldwell.
S. 139 " Geo. C.
S. 335 Nutter, Rev. G.
W. 327 O'Brien, E. J.
S. 400 " John F.
E. 99 Ormsby, H. G.
S. 626 Orborne, Mrs. L. B.
S. 703 O'Sullivan, Dan'l E.
S. 1136 Otter, John D.
S. 1027 " R. H.
S. 1202 " W. P.
S. 375 Ouerbacker, Frank.
S. 55 Ouerbacker, J. F.
W. 154 " Samuel.
S. 874 Owens, Geo. W.
M. 2717 Owens, Miss S. T.
S. 142 Ouerbacker, Geo. A.

2829

S. 1200 Paine, Mrs. M. H.
S. 1487 Park, G. A.
S. 1177 Parler, Mrs. A. M.
S. 875 Parker, J. C.
S. 696 Parker, W. S.
M. 738 Parrent, Mrs. Anna
S. 131 Pate, C. M.
S. 1395 Patterson, Wm. J., Jr.
S. 1226 Pearce, Dr. E. L.
S. 2200 Pearce, F. J.
S. 2020 Peaslee, Chas. R.

S. 1967 Pecar, Miss Mollie
S. 303 Peixotto, The Misses
S. 1142 Perkins, Harry S.
S. 166 Peter, M. C.
S. 2230 Peter, R. A.
S. 1439 Pettet, Chas. H.
M. 2232 Pfingst, Mrs. F. J.
E. 1009 Phelps, J. S. & Jno. H.
S. 1239 Phillips, W. B.
S. 145 Piatt, R. F.
S. 653 Pickrell, O. S.
S. 300 Pirtle, Alfred
E. 570 Pomeroy, Mrs. M. B.
M. 2366 Pope, Pendleton
S. 1199 Porter, Rev. H. A.
S. 694 Powell, Henry J.
W. 732 Prather, Dr. Hugh E. S.
W. 372 Prettyman, Miss Mabel
S. 442 Price, Jno. W.
S. 368 Price, W. B.
S. 1005 Price, W. H.
E. 154 Priest, W. C.
S. 79 Pusey, Dr. H. M.
S. 349 Quarrier, Cushman
S. 53 Quigley, Misses Belle & Hallie
S. 870 Rae, C. H.
W. 565 Raffo, Rev. Chas. P.
S. 2360 Ramsey, Wm. H.
S. 651 Rankin, R. B.
E. 413 Ranlett, Mrs. J. H.
S. 826 Read, Harry H.
S. 1175 Reamer, Mrs. W. C.
M. 1740 Redford, Mrs. J. F.
S. 817 Redmon, Geo. Lee
M. 1170 Rice, W. R.
S. 138 Richards, A. E.
E. 49 Richards, N. A.
S. 1270 Richardson, Mrs. Alice M.
S. 347 Richardson, Dr. John B.
M. 3950 Richardson, Mrs. Sam'l
M. 2555 Riddell, Miss Alice
S. 284 Ring, Rich. F.
E. 119 Ritter, Dr. H. B.
S. 659 Roach, Neill
S. 298 Roberts, H. P.

2830

S. 1065 Roberts, W. O. & D. Y.
S. 1250 Robertson, Miss E. S.
S. 913 Robertson, Harrison
S. 456 Robinson, A. Lee

S. 846 Robinson, C. B.
S. 2030 Robinson, C. L.
S. 83 Robinson, Chas. P.
S. 240 Robinson, Geo. A.
S. 348 Robinson, R. A.
S. 2028 Robinson, Wm. A.
S. 704 Robinson, Worthington
E. 806 Rogers, Miss Eva J.
S. 673 Rogers, W. F., Rev.
E. 790 Romminger, Dr. Louis
M. 1269 Rosenham, C. H.
S. 316 Ross, A. J.
E. 555 Rowland, Edw.
E. 672 Roy, W. D.
M. 375 Rufer's Residence
E. 142 Russell, W. A.
S. 2576 Sabel, Dan
S. 2095 Sabel, Jos.
S. 1155 Sackett, F. M.
E. 390 Schack, Miss Carrie
S. 222 Scholl, C. L.
S. 2303 Scholtz, Annie M.
W. 200 Schuhmann, Henry
M. 1759 Sea, Andrew M.
S. 1894 Seeboldt, Capt. Max
S. 518 Sellingman, Alfred
S. 701 Sellingman, Jos.
S. 1193 Semple, W. P.
S. 1580 Settle, Jos. H.
E. 191 Seubold, Frank H.
S. 188 Seymour, C. B.
E. 278 Sharp, F. H.
W. 60 Shaughnessy, Mrs. E.
S. 1440 Shaw, Jos.
S. 1081 Shepherd, B. M.
S. 1394 Sherley, Mrs. T. H.
S. 974 Sherman, P. M.
S. 2380 Short, Alice
S. 1119 Shuter, Mrs. J. L.
S. 1257 Simpson, Dr. Frank
S. 1620 Skinner, Dr. C.
S. 1053 Slaughter, John E.
S. 2510 Smith, A. R.
S. 1793 Smith, Chas.
S. 121 Smith, Rev. E. W.
S. 1897 Smith, Geo. Weissinger
E. 461 Smith, H. C.
S. 1621 Smith, Mrs. K. W.
E. 40 Smith, Letchworth
S. 1574 Smith Milton H.
S. 1404 Smith, S. S.
S. 144 Smith, W. M.

2831

E. 916 Smyser, H. L.
E. 914 Smyser, J. L.
S. 2492 Smythe, J. H.
S. 1222 Snyder, E. E.
S. 882 Sollinger, Jacob
E. 730 Sommer, A. C.
S. 709 Southwick, Mollie B.
E. 171 Spears, Dr. L. P.
S. 135 Speed, J. B.
S. 1679 Speed, W. S.
S. 1663 Spencer, Enos
S. 782 Spary, B. B.
S. 1932 Spicker, Julius
S. 797 Spindle, T. W.
S. 1141 Stallings, Mrs. R. K.
S. 1280 Starks, B. M.
S. 1016 Starks, W. H.
W. 80 Steedman, Dr. James
S. 915 Steward, H. P. S.
E. 173 Steward, J. K.
E. 100 Stites, John
M. 1156 Stith, Mary
E. 712 Stitzel, Fred.
E. 568 Stoepler, H. J.
S. 467 Stoll, Albert A.
E. 126 Stoll, Chas. S.
S. 18 Stone, Henry L.
E. 379 Stone, J. E.
S. 1305 Stouffer, F. B.
S. 1017 Strassel, J. L.
S. 657 Straker, Chas. B.
S. 184 Straker, Henry
S. 1215 Straker, Mrs. Wm. E.
S. 261 Straus, Ben
S. 2144 Straus, Eugene
S. 872 Straus, Frank P.
S. 1235 Straus, Mrs. Herman
S. 324 Streng, M. J.
W. 214 Strohmenger, G. J.
S. 42 Strother, Sanford
M. 750 Stucky, Mrs. Homer M.
S. 1708 Summers, Louis
S. 1478 Swearingen, Mrs. Geo. W.
M. 346 Sweets, Rev. Henry H.
S. 156 Tabb, C. S.
E. 824 Talcott, C. M.
S. 1535 Tamplett, H.
S. 1662 Tapp, Presley H.
S. 429 Tapp, Wm. W.
S. 1382 Taylor, B. W.

S. 1445 Taylor, Geo. A.
S. 1258 Taylor, Geo. H.
S. 892 Taylor, Marion E.
S. 2387 Terry, G. C.
S. 2527 Tevis, John
S. 1907 Thalheimer, William
S. 88 Tharp, W. H.
S. 432 Thixton, Chas. G.
S. 482 Thomas, C. F.
M. 3859 Thomas, Mrs. E. L.
S. 466 Thompson, Wm. W.
M. 1163 Thurston, Mrs. C. M.
W. 340 Tichenor, Jessie W.
W. 391 Tierney, Ed. T.

2832

E. 850 Tiller, T. Carter
S. 329 Timberlake, Tom. C. & Co.
S. 107 Todd, James Ross
E. 895 Todd, R. C.
M. 111 Todd, Tom R.
S. 444 Trabue, Edmund F.
W. 363a Tracy, Theo. F.
S. 50 Trawick, Dr. John D.
S. 1047 Tucker, R.
E. 629 Tuley, Philip S.
S. 1623 Turner, Richard
M. 3657 Turner, Mrs. R. S.
S. 1209 Tyler, Owen
S. 760 Tyler, Miss Roberta
M. 1900 Union Gospel Mission.
S. 164 Uri, Nathan M.
E. 123 Urwick, Christopher
E. 6 VanCleve, Giles B.
S. 910 Verhoff, Mrs. M. J.
M. 3930 Veteran Vol. Fireman's Asso.
E. 75 Viglini, H. V. P.
S. 1983 Voris, Mrs. S. B.
S. 1905 Vreeland, Graham
S. 1547 Vreeland, Jno. W.
S. 999 Wake, Frank G.
S. 152 Wakefield, Jno. D.
S. 1203 Waldron, Mrs. Emmaline
W. 714 Walker, C. G.
W. 283 Walker, F. J.
E. 540 Waller, Rev. G. C.
S. 2018 Walsh, P. J.
S. 310 Walter, Wm. Roderick
M. 766 Waltz, Rev. S. S.
E. 153 Walz, F. J.
W. 825 Warden, J. M.

S. 590 Warren, H. C.
E. 46 Wartman, Harry A.
S. 1875 Washburne, G. R.
S. 204 Waters, L. B. & F. D.
E. 245 Wathen, J. A.
S. 403 Wathen, M. A.
S. 560 Wathen, Dr. W. H.
S. 2084 Watkins, Rush C.
S. 47 Watson, R. A.
E. 14 Weaver, Dr. A. B.
S. 29 Weaver, Chas. P.
S. 712 Webb, Rev. Aquilla
M. 3644 Webster, Bradford
S. 1311 Wehmhoff, Mrs. Henry
S. 1986 Weissinger, Harry
S. 2514 Weller, Geo. L.
S. 1152 Weller, J. H.
S. 248 Wells, Prince
M. 100 Werne, Joe A.
S. 1401 Werne, Mrs. Rosa
M. 919 Whallen, Jas. P.
M. 2107 Whallen, J. H.
M. 1944 White, Jno.
E. 354 White, Jno. S.
E. 393 White, Jno. D.
W. 753 White, Wm.
E. 77 Whitesides, H. R.

2833

E. 150 Whitesides, W. S.
S. 272 Whitney, R. L.
S. 1653 Whitney, Mrs. R.
S. 1924 Wilder, Oscar
E. 350 Wilhite, S. M.
M. 2020 Williams, Genevieve Miss
S. 1147 Williams, T. G.
S. 1987 Willoughby, J. E.
E. 345 Wilson, Rev. Emmett L.
E. 825 Wilson, Rev. Emmett L.
E. 26 Wilson, Dr. Frank C.
M. 3247 Wilson, Gazaway
W. 187 Wilson, Geo. H.
S. 692 Wilson, Geo. H.
S. 2404 Wilson, Hardin
M. 970 Wilson, Rose
M. 1983 Wimberly, Rev. C. F.
S. 796 Winston, Mrs. G. A.
S. 2345 Witherspoon, P. F.
S. 450 Wolfe, Vernon
E. 80 Womack, E. M.
S. 1118 Wood, D. M.

S. 2969 Wood, Harry I.
S. 702 Wood, Thos. J.
S. 742 Wood, Robt. E.
S. 2370 Woodcock, Chas. E.
S. 443 Woodward, J. K.
S. 2140 Woolen, W. E.
S. 123 Worthington, A. M.
M. 1832 Wright, Miss Sue
M. 3200 Wulkop, C. H.
S. 436 Wymond, C. S.
S. 614 Wymond, Mrs. W. S.
M. 439 Young Women's Boarding Home.
W. 47 Zahner, Dr. Chas. O.
S. 1115 Zahn, Mrs. H.
E. 430 Zimlick, A. J.
S. 1692 Zorn, S.

Residence Two-Party.

2834

S. 688A Abell, Mrs. H.
M. 1702y Abraham, Leon,
E. 842A Acuff, W. M.
E. 1146y Adams, Chester W.
S. 2858a Adam, C. W.
E. 889a Adams, Robt. E.
S. 163y Addison, E. B.
S. 1287a Ades, Mrs. Simon,
M. 1426a Adler, Mrs. C.
E. 773y Ainsley, H. H.
E. 816a Aiken, Mrs. J. W.
W. 383z Albrecht, Gus
E. 138y Albright, Mrs. F.
S. 128y Alcock, J. C.
E. 927a Alexander, Mrs. Geo. H
W. 656a Alexander, Hugh
S. 1707y Alexander, R. H.
E. 471y Alexander, Sam
S. 1466y Allen, Mrs. A. B. W.
W. 315y Allen, Bertie P.
S. 1158a Allen, Bryan H.
S. 314a Allen, Claude S.
S. 922a Allen, Geo.
E. 1145y Allen, R. E.
M. 1995a Allen, Mrs. S. J.
M. 3667a Almstead, F. H.
S. 2381y Almstedt, John H.
S. 439m Altsheler, Dan'l
W. 925y Alvery, A. G.
E. 679a Anderson, C. C.
S. 1832y Anderson, Fred
S. 1671a Anderson, L. L.

S. 1470y Anderson, Miss Mollie
M. 1039a Anderson, Rose
S. 422y Anderson, R. L.
S. 568z Anderson, Mrs. S. H.
S. 839a Anderson, Wilkins G.
S. 1756y Apple, Louis.
S. 748a Appel, Joe
E. 485z Armstrong, G. G.
S. 822a Armstrong, Mrs. Hallie,
E. 16y Arnold, H. G.
E. 949y Arnold, Mrs. Lola.
S. 2261z Askens, John G.
E. 576y Asman, Dr. Bernard,
W. 373y Auerbach, Wm.
S. 1411a Austin, J. R.
M. 3467y Axton, I. T.
S. 1018a Babbitt, E. M.
M. 1439a Babey, Scott C.
S. 471M Baer, Mrs. H.
S. 247a Bagby, E. A.
S. 1779a Bailey, Smith T.
W. 1413a Baird, Mrs. Anna
S. 373A Baker, Jas. T. A.
S. 1051y Baker, Wm. A.
S. 599a Bakwell, F. S.
S. 162a Bakrow, Chas.
S. 347m Bakrow, Moses,
S. 805y Bakrow, R. D.
E. 760a Bald, John
S. 1588a Bald, P. H.
E. 235z Baldridge, J. B.
S. 832y Bacon, E. H.

2835

S. 926a Bales, B. D.
E. 508a Ballard, Austin.
S. 1398a Ballard, Mrs. Bettie.
S. 2411a Ballard, Mrs. Blanche.
S. 1565y Ballard, Chas. P. Jr.
S. 1317m Ballard, Misses.
S. 2410a Bangs, Mrs. J. B.
S. 2241a Barbaroux, Louis.
W. 777a Barbee, B. B.
E. 592z Barbour, F. S.
S. 876y Barbour, Mrs. Rebecca T.
E. 342a Barker, M. B.
E. 301a Barker, Richard H.
S. 1153a Barkhouse, Louis.
S. 485y Barkhouse, M. W.
W. 692y Barnes, C. T.
M. 1294y Barnett, Fred A.

S. 2105y Barnhill, Mrs. M. F.
E. 366a Barrett, Mrs. Thos.
E. 516y Barth, W. F.
W. 215y Bartlet, H. R.
E. 603a Bascom, L. B.
E. 965y Basham, Thos. E.
E. 1072y Bass, Miss Emily F.
S. 1809y Bate, Mrs. E. R.
S. 2418y Batman, T. J.
S. 1038y Bauer, Fred J.
E. 843y Bauer, Mrs. Wm.
E. 108a Baumeister, Wm.
E. 406y Baumer, Aug. R.
E. 463A Baumer, Miss Emma.
E. 899y Baumer, H. J.
S. 1865y Beaman, J. R.
S. 944y Beard, C. T.
S. 26y Beattie, J. W.
E. 549a Beck, Jacob J.
E / 631a Becker, Miss Amelia.
E. 903y Becker, Emil.
S. 869y Bettinger, E. W. Jr.
S. 1869a Behre, Mrs. S. W.
S. 1656y Beilstein, J. W.
S. 1837y Bell, David.
S. 1473a Bell, J. A.
S. 1116a Bell, Mrs. L. H.
S. 1126a Bell, Mrs. Margaret.
M. 2462a Bell, Thos. J.
E. 561a Bellican, C. F.
S. 1055y Benas, Henry M.
E. 397a Benners, Dr. J. W.
S. 2547a Bennett, D. P.
W. 707a Bennett, Glover.
E. 445a Bennett, Jas. D.
S. 639a Bennett, Mrs. John
E. 447z Bennett, W. T.
S. 1194a Bensinger, Arthur B.
S. 827y Bensinger, Chas.
S. 833a Bensinger, Ed.
S. 2617y Bensinger, Miss Milton.
S. 297a Bensinger, Nathan.
S. 1197y Bergman, Mrs. Alma E.
S. 2042a Bertlekamp, Mrs. J.
S. 2323a Bertleson, A.
E. 337a Baldwin, J. R.

2836

S. 601y Bethel, J. C.
S. 2152y Best, Miss Alice.
S. 1631a Best, C. L.

W. 252a Bickel, J. H., Jr.
S. 1675y Bierach, Carl F.
S. 728y Bierbaum, H. L. & A. T.
M. 1407y Bijur, Mrs. H.
E. 1143a Bird, Miss Elizabeth,
E. 1008y Birnsteel, Miss C. W.
W. 361a Bivens, Mrs. Chas. E.
W. 409a Bizot, Ray
M. 2842a Black, Miss Alice.
E. 489a Blackerby, R. M.
S. 1078A Blackman, G. C.
W. 243y Blaes, John.
M. 947a Blain, Randolph H.
E. 267y Blain, Randolph, Jr.
E. 697a Blake, Chas.
E. 98y Blakemore, Mrs. A. M.
S. 529a Blanchard, D. D.
S. 1231a Blanford, Mary.
W. 492a Blankenbaker, L. W.
M. 3888y Blasi, Joe.
S. 2401a Bledsoe, Robt. E.
S. 1505y Bligh, Miss Kate.
W. 401y Blincoe, H. G.
S. 1351y Block, Henry.
S. 1167y Block, Jos. C.
S. 1216a Block, Nathan F.
E. 436a Bloodworth, Emmet.
S. 1206y Bloomfield, Edw. & Theo.
S. 896y Bloomingston, H. W.
S. 1902y Blum, S.
E. 207y Bohannon, Robt. T.
S. 912y Bohannon, Thos., Jr.
E. 327a Bohnne, Judge Phil.
S. 1521y Bohon, Miss Eliza.
S. 2049a Bohon, Thos. A.
S. 1785a Boldrick, S. J.
W. 616a Boll, Robt. H.
S. 1409a Bolling, Alfred F.
W. 882a Bond, J. C.
S. 509a Bonniface, Geo. D.
S. 1266a Bonnie, Herbet P.
E. 962y Boone, Geo. H.
E. 651a Boone, J. I.
E. 437a Booth, Percy N.
S. 1145y Booth, W. D.
W. 433m Boswell, Miss M.
S. 128y Botsworth, S. W.
S. 1039a Bottomley, Mrs. E. W.
E. 165a Bouregard, Mrs. Caroline B.
S. 2486a Boden, R. C.
S. 351a Bowen, E. H.

S. 1901a Bowman, Howard M.
M. 444y Bradas, Jas.
S. 2811y Bradbury, H. R.
S. 1145a Bradbury, W. F.
S. 1948a Bradbury, W. H.
M. 1354y Bradley, Mrs. C. B.
S. 1648a Brand, A. O.
S. 2105a Brashear, Mac.
E. 344y Braun, J. G.
E. 849y Breaux, Geo., Jr.
S. 1460m Breed, Mrs. Jas. E., Jr.
M. 116a Breed, Mrs. Jas. E., Sr.

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S. 1616a Burford, L. M.
S. 2048a Brucker, R. S.
E. 742y Brenner, D. C.
M. 3696a Brenner, Mrs. Jas.
W. 215a Brent, Mrs. C. R.
M. 2114a Brewer, F. L.
E. 775y Brewer, G. C.
S. 1331a Brewer, Mrs. S. H.
E. 343 Bridges, E. M.
S. 1573a Bridges, G. S.
S. 417a Bridges, H.
W. 568a Briggs, Lee.
W. 396a Bright, Geo. G.
S. 1918a Bristol, Ralph.
E. 857y Broaddus, Russell.
S. 2333a Body, F. G.
S. 177a Bronner, Mrs. G.
E. 283a Brook, John W.
S. 771a Brooks, H. T.
E. 689y Brough, E. M.
E. 627y Brown, Mrs. Annie S.
S. 2496y Brown, Miss Elizabeth.
S. 2134a Brown, Geo. W.
S. 1658 Brown, H.
S. 884y Brown, Mrs. J. K.
E. 1072a Brown, Jas. L.
M. 1692a Brown, Mrs. J. Dixon.
E. 398y Brown, R. B.
S. 1367a Brown, Mrs. T. W.
S. 1242a Brown, Wm. Galt.
E. 495y Brown, Mrs. Wm. H.
S. 85y Brownell, H. G.
M. 2611a Browning, Mrs. J. B.
S. 617y Bruce, Dr. Edw. L.
M. 1933a Bryant, Mark.
S. 867a Buchanan, Jas.
S. 884a Buck, Chas. W.

M. 3727a Buckner, Sam.
S. 427a Buford, Sam.
M. 1047a Bullitt, Malcolm.
S. 756a Bullitt, Neville.
E. 793M Bullitt, W. W.
W. 729a Bullock, J. L.
E. 134a Burch, O. S.
E. 751y Burdine, R. B.
E. 881a Burdue, Walter D.
S. 1475a Burge, Joe.
S. 716y Burger, Mrs. Elizabeth L.
M. 1073a Burgess, Mrs. F. A.
E. 526y Burkhardt, E. R.
S. 254y-a Burkhardt, J. T.
S. 674z Burtman, J. A.
S. 369a Burkes, John.
S. 2064a Burnett, E. G.
S. 1096a Burnerr, Wm. A.
W. 499y Burke, Mr. R. M.
S. 844m Burke, Mrs. Joe T.
E. 706a Buscher, J. D.
E. 462y Buschmeyer, W. G.
E. 1025a Busar, Mrs. Julia.
#56z Bush, W. J.
E. 864a Butler, Mrs. Alice.
S. 663A Butler, Pierce.
S. 2057a Butterwick, Louis.
M. 281a Button, E. N.
S. 2569a Button, P. F.
S. 1249y Byck, L. S.

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S. 1717y Byrne, Jos.
E. 57y Boyd, A. A.
W. 189a Bryns, Mrs. Mary.
S. 2519a Bright, Sallie.
M. 967y Byrum, Mrs. Lena.
S. 1067a Carpenter, J. S.
S. 263a Cade, J. M.
E. 107a Caldwell, Mrs. David.
S. 1768a Caldwell, Morton.
S. 503m Callahan, C. H.
M. 3378a Callaham, Jas.
S. 698a Callahan, J. E.
S. 859m Callahan, Peter.
M. 1342y Calloway, Jas. F.
E. 633a Calloway, W. A.
E. 166y Cambron, W. H.
E. 1023a Campbell, Baylor.
E. 1833a Campbell, Wheeler.
S. 2537y Campbell, S. A.

S. 871y Campbell, T. H.
W. 584y Canary, Mrs. M. & T. C. Shircliffe.
S. 1775y Cane, R. P.
S. 1492y Cann, C.
E. 53y Caplinger, Mrs. L. G.
E. 796y Cappa, F. H.
E. 974y Carwell, W. W.
E. 564y Caron, Chas. L.
E. 356y Carothers, W. M.
S. 776y Carpenter, Frank C.
E. 472y Carrarro, Mrs. John.
S. 1277a Carruthers, A. L.
E. 687a Carruthers, W. B.
S. 1345y Carrol, Chas.
E. 163y Carroll, G. E.
E. 504a Carsey, E. A.
S. 1491 Carsob, Z. T.
S. 785m Carter, C. C.
S. 993y Carter, J. Slaughter.
S. 2263y Cary, E. H.
W. 401a Cary, Emmett.
S. 1657a Casanges, Mrs. C. P.
S. 425a Cassilly, C. J.
S. 228y Cassilly, John P.
S. 1844a Cassilly, L. V.
S. 1720z Cassin, Henry.
S. 1093a Castell, Wm. E.
S. 1149a Castleman, Dayton.
E. 593y Castleman, Sam.
E. 888y Catlett, B. R.
M. 2574a Cave, O. U.
S. 1452a Cavender, Mrs. M. L.
S. 1778y Caye, B. S.
S. 420z Chambers, Mrs. Henry.
W. 894a Chambers, Mason A.
E. 101a Chandler, John H.
S. 1981y Chase, F. H.
S. 381a Chatterson, J. M.
E. 1181y Cheney, D. H.
S. 1279a Cheschair, Russell.
S. 755a Chick, Walter.
S. 2092a Childers, C. C.
E. 952y Christman, Henry.
S. 1706a Churchill, Mrs. E. F.
S. 864y Cinnamon, H. K.
S. 1837a Clancy, J. T.
M. 1217a Clark, C. F.

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S. 2029a Clark, E. B.
S. 297y Carter, A. P.

E. 186y Chapin, E. P.
M. 1812y Cole, Mrs. W. P.
S. 1337y Coady, J. S.
S. 1260 Crawford, C. K.
S. 2377a Clarke, J. H.
S. 1548a Clark, J. S.
S. 1902 Clark, Dr. J. W.
S. 1936a Clark, Mrs. W. F.
S. 919a Clark, Mrs. Jennie.
S. 835y Clark, Jas. D.
S. 1424a Clark, Newman.
S. 1976a Claxon, W. G.
M. 3804a Cleaver, Mrs. Bennie and Mrs. Ruth.
E. 216y Clergett, F. C.
S. 2268m Cochran, Haywood.
S. 1238y Cocke, Jas. G.
S. 1579a Cohn, Geo.
E. 433y Cohn, Herman V.
M. 3802a Cohn, Lee.
S. 679y Coleman, J. E.
S. 1184y Coleman, Mrs. J. L.
S. 1866y Coleman, V. A.
S. 856y Collier, P. M.
S. 1545a Collins, I. L.
S. 1393y Collins, Miss Mollie.
S. 1117a Collins, Val P.
S. 876a Collins, W. G.
E. 623a Combs, Miss Ruby.
E. 474a Comingor, L.
E. 301y Comely, John.
S. 2367y Cone, Mrs. T. B.
E. 258y Conkling, Wm. C.
S. 922y Conkling, J. W.
S. 1135m Converse, Mrs. F. B.
S. 698y Cood, Miss Virginia.
S. 2492a Cook, Mrs. J. Eston.
S. 2398a Cook, Mrs. Mary C. & Ellen C.
S. 1064a Coons, S. W.
E. 912y Corl, F. C.
S. 2786a Cornall, Wm.
S. 1747y Coryell, H.
E. 349a Coty, Wm. J.
S. 1994a Couper, Mrs. Julia
E. 494y Cowherd, Theo.
E. 892a Cox, Vincent.
W. 567y Crabb, L. T.
S. 254y Craft, J. A.
E. 576y Craft, Wm. L.
S. 2082a Craig, Henry J.
E. 792y Craig, J. L.
M. 1896a Crain, Mrs. G. D.

E. 266y Crane, A. G.
E. 994a Crane, W. F.
S. 3045y Craveson, Mrs. L. S.
S. 206y Crawford, Brown C.
E. 1019a Crecelius, S. F.
S. 1452a Crist, C. M.
W. 489a Crites, Miss W.
S. 887a Crosby, M. J.
S. 1937 Crossland, J. E.
S. 1639y Cross, H. G.
M. 3421y Crowe, Miss Rosa B.
E. 607y Crush, Mrs. Chas. L.
S. 2081y Crutcher, Wm. H.
S. 862a Culp, Mrs. W. M.

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E. 554a Cummins, E. F.
S. 892y Cummock, Mrs. W. W.
S. 1746y Cundiff, T. J.
S. 136y Cunningham, E. A.
S. 1297a Cunningham, Miss Edith
E. 641a Cunningham, R. M.
S. 437a Cureton, N. C.
S. 2363a Curren, R. J.
S. 512y Davis, R. Hays
S. 1159y Dabnet, J. M.
S. 2141y Curd, M. O.
S. 593m Dabney, Dr. S. G.
W. 345a Dalyrmple, S. C.
W. 116y Dalton, Mrs. Ella
W. 259m Daniell, E. Turner
W. 972y Daniell, T.
S. 1426y Daugherty, Leonard L.
E. 522y Davidson, J. K.
S. 458a Davidson, L. T.
S. 1032y Davis, Mrs. Geo. M.
E. 482a Davis, Rueling,
S. 2130z Davis, J. W.
S. 1720m Davis, R. C.
M. 2153a Davis, Vincent
S. 2145y Davis, W. H., Jr.
S. 1318a Dawes, R.
S. 1552a Dean, Miss Mary A.
S. 2083a Deering, Mrs. W. B.
S. 1341y DeGaris, Miss Vernona German
M. 1791a Degraffenrich, T.
S. 541y Delph, Miss L. & A.
S. 2322y Dembitz, Mrs. L. M.
S. 2392a Demph, H. G.
E. 653a Dennis, J. N.
S. 1486y Dennis, W. W.

E. 728a Densod, R. A.
S. 1426a Dettelbach, A.
E. 947a Devol, G. G.
S. 1079a Dick, Al. M.
E. 295a Dick, E. R.
S. 422a Dickey, Mrs. Clara B.
S. 2051a Dickson, F. C.
W. 284a Diller, Mrs. L. M.
E. 454y Dillon, Miss Mamie
S. 763y Dills, Miss Babel, E.
S. 1619a Dinkelspiel, Mrs. F.
S. 2242m Dinkelspiel, Louis
S. 1454a Dinkelspiel, Simon
E. 1012a Dinwiddie, C. R.
W. 102a Dinwiddie, R.
E. 726y Ditzler, Mrs. Chas.
M. 894a Ditto, Wm.
E. 961a Ditto, I. A.
S. 1607y Dix, Phil, O. C.
E. 538m Dixon, W. B.
S. 1543a Dobbs, Mrs. Catherine W.
W. 431y Doherty, Dr. E.
E. 464y Dolfinger, Edw.
E. 331a Doll, Jacob
S. 174a Donnigan, H. F.
S. 2034a Donnigan, R. W.
S. 173a Doolan, John C.
E. 493y Doolan, Leonard,
M. 2244a Dooley, Robt. L.
S. 708a Dorsey, E. L.

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S. 2054a Doherty, Mrs. E. E.
S. 1596a Downer, J. H.
E. 199a Downing, J. F.
M. 2682a Downs, J. P.
M. 1881a Davis, Miss Sue M.
S. 699a Downs, Mrs. J. W.
E. 287a Drabell, S.
S. 2097z Drake, W. R.
S. 919y Dreider, H. E.
S. 2567y Dreifys, L. A.
E. 648a Drescher, John
E. 1156a Drew, Aug.
W. 282a Drexler, Fred J.
S. 948a Dreyfus, Isadore
M. 1938a Dreyfus, Miss Sarah
M. 1233a Dugan, Katie
S. 565z Dugan, Jas. G.
E. 76y Dugan, C. M.
E. 723y Duncan, Mrs. Mattie J.
E. 266a Duncan, Scott M.

E. 525y Duncan, Thos. B., Jr.
M. 816a Duncan, W. H.
S. 699y Duncan, Clarke
S. 912 Dunlap, T. G. & Frazier
S. 1745a Dunn, Dr. J. T.
S. 601a Durelle, Geo.
M. 1727y Durret, Mrs. W. T.
S. 252a Duvall, Claudine
W. 403y Dwyer, Miss Margaret
S. 332a Eady, Geo. M.
E. 805a Eagles, Wm. J.
W. 949a Early, J. L.
M. 3108y Easter, J. R.
S. 293y Eastland, A. G.
E. 506m Essum, Isabella F.
E. 647y Eckenroth, Pauline
M. 539a Eddy, J. Marvin
S. 1319a Edminston, D. B.
E. 1113a Egly, E. D.
M. 1221a Edrlich, N.
E. 666y Eisenmann, F. T.
E. 373a Elkin, A. B.
E. 94a Ellingsworth, C. W.
S. 1691a Ellis, J. H.
M. 29m Ellmore, Dr. R. R.
E. 937a Ellwanger, J. J.
E. 435a Ellwanger, Victor
S. 1557y Ellwanger, Arthur J.
E. 803y Embry, W. Reed
E. 851y Englehard, Albert
E. 681a Englehard, Mrs. Augusta
S. 386a Epstein, Miss Bertha
S. 1947a Erskine, F. G.
S. 111a Eubank, Wm. A.
M. 1586y Evans, Dr. T. C.
E. 351z Evans,, W. A.
E. 775y Everbach, Geo. L.
S. 414y Fairleigh, Miss Nell
E. 772 Fahey, Miss J. J.
S. 1294a Farman, W. O.
E. 309a Fedler, J. C.
S. 953y Fellheimer, Nathan
S. 1383a Felsenthal, Gabe J.
S. 1354a Felsnthal, I.
W. 347y Feldman, Geo.
W. 914y Feltman, W. A.
W. 942a Feltman, Mrs. W. H.

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S. 1329y Ferguson, L. K.
E. 899a Fox, Henry
S. 1752a Forman, Geo. L.

M. 1139a Fox, Fountain F.
W. 204y Fertig, Miss Jennie
M. 1875y Fay, John
E. 864y Field, W. H.
S. 1616y Filson, R. E.
S. 2393y Fink, Chas. P.
E. 375a Finley, W. H.
M. 1764a Finzer, Frederick W.
E. 670y Fishback, F. J.
S. 1912y Fishback, Jacob
S. 1491y Fitzhugh, O. M.
E. 732a Fleming, W. B.
M. 1419a Fletcher, Mrs. Bettie F.
S. 2015y Fletcher, Mrs. Emma
S. 656y Flexner, H.
W. 833a Floyd, E. W.
M. 979a Floyd, Stella M.
E. 994z Flotz, Edwin C.
M. 2083a Forgey, Mrs. E.
S. 2473y Forman, Mrs. Geo.
E. 447a Forster, J. A.
W. 251a Fort, Dr. F. T.
S. 2113y Fowler, R. H.
W. 543a Fowler, T. M.
E. 376a Fowlkes, T. A.
E. 240y Fox, A. D.
S. 1447a Fox, Fountain F.
E. 185y Frank, Charles V.
E. 918a Frank, Sam
S. 1795z Frankel, Dr. S. C.
E. 1093a Frankling, Walter M.
M. 2681a Frantz, Mrs. Geo. M.
S. 122a Frayser, Mrs. W. H.
S. 1460y Frazee, G. B.
E. 525M Frazier, Priest
E. 576a Frederick, Charles
S. 1337m Frederick, Samuel
S. 1756y Freeman, R. C.
E. 807a Frehese, Chas. F.
E. 194a French, Mrs. Edw.
M. 456y French, Mrs. M.
E. 774a French, Mrs. Robt. L.
S. 1216y Frenkel, S. M.
S. 1031y Freker, Mrs. M. H.
E. 272a Friddle, Mrs. J. W.
E. 845y Fritxhner, Geo.
E. 102y Fritton, Mrs. Kate
E. 816y Fritzson, Mrs. Mary D.
S. 1463m Frost, Mrs. Homer F.
S. 1592y Frost, H. R.
S. 1877y Fullerton, Mrs. J. Q.
E. 422y Furlong, Mrs. M. J.

E. 1148a Furlong, Wm.
E. 628a Furster, S. H.
W. 164y Gable, Martin
E. 1157a Gaertner, P. A.
W. 112a Galvin, J. A.
M. 3858a Gamble, J. E.
S. 1972a Gamble, T. Hoyt
W. 240a Gamboe, Rev. W. S.
S. 1023 Gardner, Ben. F.
E. 1041a Gardner, C. S.
S. 2167a Gardner, Jas. L.
W. 208a Gardner, Mrs. M.

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E. 391y Grasser, Dr. E. P.
E. 980m Ghesilin, Miss Hope.
S. 1635a Garland, C.
M. 1057a Garr, Mrs. Bettie J.
W. 499m Garr, J. J. H.
E. 161y Garrett, J. W.
S. 1076a Harritt, W. E.
E. 499a Gatchell, A. D.
S. 1088y Gathright, J. M.
S. 1489y Gathright, Owen
S. 715y Gathright, R. O.
S. 1756a Gaunt, Mrs. John S.
S. 1067y Gazley, Webster.
E. 512y Gebhard, R. L.
S. 1494y Gensberger, Mrs. Julia S.
E. 896y German, E. C.
W. 265y Gerst, Mrs. B.
S. 617a Gettys, F. M.
W. 369y Gibbs, J. D.
E. 1078y Gibson, Emmett.
M. 1459a Giblert, J. T.
S. 408a Giles, C. F.
S. 2877a Gilligan, Miss M. S.
E. 583y Gilliland, C. R.
E. 667a Gilmore, Mrs. L. H.
E. 648y Gilmore, T. M.
S. 1281a Gilmour, Alex.
S. 2858y Girdler, John B.
E. 722y Gleason, Edw. H.
M. 3778z Gnau, Miss Nettie.
S. 1099a Godfrey, W. T.
E. 308a Goddard, E. A.
E. 398a Godshaw, Dr. C. C.
E. 632y Golden, J. N.
S. 546a Goldsmith, Harry.
E. 913a Goldsmith, Norton L.
S. 1964y Goldstein, Mrs. A.
S. 321a Gollar, John R.

S. 2549a Goodwin, Leon.
S. 1322a Goodwin, Mrs. S.
S. 1871a Goodwin, Mrs. Bell.
S. 425y Gordon, A. W.
S. 758y Gordon, Thos. R.
S. 2375 Gorin, H. D.
S. 1494a Gould, Mrs. Ella.
S. 1861a Grab, Issac.
S. 2097a Gracy, F. P.
E. 1046a Graf, Theo. H.
S. 1486m Graff, E. D.
S. 1726a Graff, F. C.
S. 1992y Graham, Mrs. H. W.
S. 1810z Graham, J. C.
E. 541y Graham, R. M.
S. 867y Grahn, K. D.
S. 3045a Grant, Dr. W. Carl.
S. 1903a Grant, W. Ed.
S. 104a Grant, Dr. W. E.
S. 104y Grant, Dr. W. E.
E. 995m Gratz, Mrs. L. A.
S. 779a Grauman, D. E.
S. 141y Grauman, Ed.
S. 1858a Grauman, J. H.
S. 1134a Grauman, Phil. J.
S. 1544y Graves, Mrs. E. T.
W. 240y Graves, John B.
S. 1713a Graves, Mrs. Otho.
S. 1844y Gray, D. W.
E. 487y Gray, Henry S.

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S. 1671z Gray, Mrs. W. G.
M. 1702a Green, Mrs. Blanche.
S. 831a Green, Geo. I.
S. 91088a Green, Grant.
W. 165a Green, Mrs. Henry.
S. 1768y Green, J. B., Jr.
S. 2411y Green, Mrs. J. R.
E. 796a Green, John S.
S. 612y Green, John W.
E. 952a Green, L. W.
S. 1853y Green, Mrs. Margaret.
S. 2523y Green, Norvin E.
S. 766a Green, Sam'l W.
E. 297a Greenbaum, S. L.
S. 1581a Greenup, G. W.
S. 541 Greer, F. T.
E. 259a Gregory, B. E.
S. 850y Gregory, J. D.
S. 1428a Greogory, J. P.

E. 1008a Gresham, S. P.
S. 565a Greusling, W. P.
S. 2659y Grevemeyer, Geo. A.
W. 133a Greisbaum, H.
S. 124a Griffith, Mrs. Geo.
E. 669y Griffith, J. F.
S. 1754y Griffiths, Mrs. Wm. M.
S. 759a Grigsby, E. A.
S. 1597y Grigsby, W. C.
S. 279m Grinstead, H. C.
S. 2135y Grose, J. W.
E. 162a Grosvenor, B. W.
S. 63 Groves, W. A.
M. 3992y Grubbs, W. H.
W. 142a Grubbs, W. B.
E. 959a Guetig, P. H.
E. 839y Gunn, Mrs. C. C.
S. 2331y Gunther, Mrs. S. M.
E. 56y Guthrie, Herbet.
E. 823a Guthrie, T. J.
S. 1092a Grenaugh, H. Al.
S. 1557a Haden, Mrs. Kate.
S. 194a Hartman, Geo.
S. 1378y Haas, Sam.
S. 1052a Haas, W. A.
W. 668y Hackett, Jas. L.
E. 373y Haeberle, Mrs. C. A.
S. 2434y Hageman, O. E.
S. 1117a Hahn, F. Wm. H.
E. 822a Hail, E. A.
E. 998a Hair, Mrs. Mary E.
E. 701y Hall, C. S.
E. 1055a Hall, Edw. M.
S. 2051y Hall, Miss Florence.
M. 1342a Hall, Miss M. Florine.
E. 375y Hall, H. Hooper.
S. 1834y Hall, Miss Jennie.
W. 199y Hall, Robt. J.
S. 1873a Hallenberg, Adolph.
S. 569a Hall, W. C.
S. 1638y Hall, W. H.
S. 632y Hamilton, W. G.
S. 1428y Hallenberg, Mrs. Alwine.
E. 809y Hallihan, Robt. A.
E. 306y Hamill, W. R.
E. 392z Hamilton, Chas. L.
E. 915y Hamilton, D. R.

2845

E. 368y Hampton, John B.
S. 1335y Hampton, K. J.

S. 182y Hancock, John H.
E. 1046y Hannan, Miss Bessie.
S. 2446a Hannan, Mrs. J. P.
E. 426a Hannan, Thos.
S. 1275y Hansborough, W. Y.
S. 827a Harcourt, Ashton P.
E. 1059y*b* Harcourt, I. M.
S. 1433a Harcourt, Mrs. J. F.
W. 272y Hardaway, Mrs. E. E.
S. 1861a Hardin, Wm. H.
S.. 2054y Hardwick, J. F.
S. 501y Hardy, Jas. E.
W. 341y Harlan, Louis H.
S. 943y Harlow, Mrs. E. M.
S. 1706y Harlow, F. W.
S. 2483y Harris, Abner.
S. 1626a Harris, Mrs. C. D.
S. 734m Harris, H. E.
E. 66a Harris, L. R.
W. 297a Harris, Miss Minnie.
S. 1183y Harris, Mrs. S. W.
M. 2188y Harris, W. R.
S. 521a Harrison, O. H.
E. 384a Harritt, Mrs. John.
S. 643y Harryman, R. E.
S. 499y Hart, L. W. F.
S. 997y Hart, W. H.
E. 261y Hartenstein, Dr. A. L.
E. 37m Hartwell, R. M.
S. 2073y Haynes, H. T.
S. 1015y Harrison, Wm. H.
S. 1791a Harvey, W. P.
S. 537y Hassenohr, C.
S. 194a Hartman, Geo.
E. 591a Haupt, F. C.
E. 836y Hartman, John.
E. 652y Haury, Mrs. J. E.
S. 1981a Hawkins, W. H.
S. 1613a Hayden, Chas.
E. 649y Hayden, J. T.
E. 204a Hayden, Mrs. Thos. L.
E. 325a Hayes, Mrs. A. C.
S. 2469a Hayes, F. E.
S. 2148y Haynes, E. M.
S. 2554a Hays, Adolph.
S. 2316a Hays, G. M.
S. 731y Hays, Jos. E.
E. 1003a Hays, Dr. Samuel Brown.
S. 1838y Hays, Major Thos. H.
S. 1594z Hays, Mrs. Willis S.
W. 696a Hammonds, R. L.

W. 655a Harrison, H. C.
M. 2524y Hazzard, O. P.
W. 786M Head, Mrs. Mollie.
S. 573a Head, W. O.
S. 2141a Headley, John W.
W. 973a Heben, Jas. B.
S. 828y Hecker, W. F.
E. 357y Hedgecock, E. S.
S. 177y Hellman, Clarence J.
S. 1864y Hedges, Miss Martha F.
S. 131a Helm, B. H.

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S. 1708y Helm, W. S.
S. 916y Henchey, P. E.
S. 230a Henoch, M. J.
E. 423y Henry, Mrs. J. G.
S. 2565a Henry, Percy.
E. 1059a Henry, W. H.
W. 136a Hensley, W. R.
S. 1833y Hermany, Chas.
E. 1014y Herms, Mrs. G. A.
S. 2124a Herndon, Lynna.
S. 163a Herr, Mattie Guthrie.
S. 1903y Hertzsech, Dr. Della
M. 1374a Hassfield, Mrs. John.
S. 841y Hayman, Geo. D.
S. 1336y Hibbitt, R. F.
E. 1159y Hieatt, C. C.
E. 240m Hicks, Miss Ella I.
S. 293a Hill, J. L.
S. 1159a Hill, Mary E.
S. 1965a Hiner, J. A.
S. 555z Hillert, Theo.
E. 189z Hilliard, Isaac.
S. 2524a Hillman, S. J.
E. 387a Hilton, J. S.
S. 1831a Hirsch, Benn.
M. 1391a Hines, Frank R.
S. 863y Hinton, C. C.
S. 1463y Hirsch, David.
S. 1383y Hirsch, Leon E.
S. 1195y Hirsch, Louis H.
W. 123a Hirsch, Mrs. M. H.
S. 1398y Hirst, J. J.
S. 1349y Hodges, J. A.
S. 299y Hoertz, Geo. Jr.
S. 1918y Hoffman, Dr. Claude G.
W. 221z Holland, Mrs. M. A.
S. 2424y Hollingsworth, Mrs. M. D.
S. 380m Holmes, Mrs. A.

S. 1287y Kahn, Mrs. D. R.
S. 2473a Kahn I. J.
S. 1866m Kahn, M.
S. 1329m Kahn, Mrs. L.
M. 1241y Kahn, R.
S. 569y Kahn, Sylvan W.
S. 2811a Kaiser, Mrs. Adolph, Sr.
W. 611a Kaiser, Miss Ella.
S. 894y Kaufman, Benj.
E. 255a Kaufman, E. H.
S. 1821z Kaufman, Richard L.
S. 1939 Kaufman, Sidney.
E. 677a Kavanaugh, Miss Kate.
E. 421 Kavanaugh, L. S.
M. 1874y Kaye, Arthur.
E. 252a Kaye, Wm.
S. 1285y Keeler, Geo. G.
M. 365m Keenan, Thos.
S. 1864a Keene, R. W.
S. 844y Keisker, Mrs. Fred. W.
S. 1278y Keller, Fred J.
E. 769y Keller, Edwin S.
S. 734y Kellar, Louis.
W. 667 Keller, Martin.
S. 171a Keller, Mrs. W. E.
E. 68m Kelley, C. R.
S. 1509a Kelly, Mrs. M. A.
E. 595a Kelley, Mrs. R. N.
E. 517y Kelty, J. W.
S. 1438a Kennedy, Mrs. J. M.
S. 2183y Kendall, Mrs. Ida.
E. 521a Kennedy, Thos. W.
W. 916a Kennedy, W. R.
E. 326a Kern, P. G.
S. 833y Kiefer, I.
S. 942y Kilvington, Geo.
S. 1719y King, C. C.
M. 1853 King, C. D.
E. 439a Kinkead, Mrs. S. J.
S. 821y Kirch, Louis.
E. 422a Klemm, Carl A.
W. 197y Kline, N. J.
S. 2188y Kling, Morris M.
E. 697y Knadler, J. D.
S. 2315a Knoble, Frank.
E. 792y Knopf, Peter.
M. 1323 Knox, Mrs. A. D.
M. 1368a Kochenroth, Clarence.
E. 1158a Koellner, L.
E. 239a Koerner, C. A.
W. 949a Knoegel, V. G.
E. 183a Kohler, Miss E.

M. 3265y Kohlmann, S.
E. 464a Koontz, Dr. Fred L.
E. 758a Koop, W. E.
S. 1575a Korb, Henry C.
E. 902y Kraft, E. A.
E. 987y Krakauer, Meyer.
W. 871y Kramer, Mrs. L. F.
M. 30a Krebs, S. F. Jr.
E. 195y Kreischer, J. H.
W. 484y Kreiger, Alfred C.
E. 724 Kreiger, Mrs. C. C.
S. 1423y Kreiger, Henry F.
S. 917a Kreiger, Wm.
M. 2691y Krippenstaple, Mrs. W.
S. 2258a Kuersteiner, Mrs. E. E.
E. 444a Lachat, Mrs. Louis.

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E. 923a Lafayette, Mrs. Lucy,
E. 846a Laub, Geo. W.
S. 2344y Laib, Phil F.
S. 1243a Lambert, W. B.
S. 1543y Lancaster, Matt.
S. 2339a Landolt, Julia B.
E. 372y Landrum, J. T.
S. 2265y Landrum, L. P. N.
S. 1979y Lang, Mrs. J.
S. 1003y Langsdale, W. H.
S. 1446y Landsdon, G. D.
S. 769a Lanhan, P. B.
M. 947y Lapp, A.
W. 773a Larkin, J. L.
S. 1248a Laesh, C. F. W.
S. 927a Lathlean, Lucy E.
S. 1544a Laub, A.
S. 44y Laub, S.
M. 3039a Layer, Gottleib.
S. 281y Lazarus, Mrs. J.
S. 1502y Lazarus, Mrs. M.
S. 2567a Lazarus, Mrs. S.
S. 1082a Leadford, Isaac.
S. 501a Leaf, Mrs. E.
E. 521m Leahy, Mrs. J. K.
E. 341y Leanhart, J. F.
S. 1121y Leathers, Chas. F.
S. 1792a J. A.
S. 1754a Leathers, John H.
E. 159y Leber, Constantine.
E. 1156z Ledman, S. E.
E. 254z Lee, Addison W.
S. 1746a Lee, Joseph M.

E. 416a Lee, W. W.
S. 1069y Lehman, Miss Blanche.
S. 2262a Lehman, Chas.
M. 3611 Lehman, Clarence M.
S. 748y Lehman, Jacob.
S. 1075y Lezinsky, H. J.
S. 1772y Levi, Abe C.
M. 1462y Leonard, Vennie.
M. 2065a Levi, Fannie.
E. 353a Levi, Henry.
S. 1344 Levy, Arnold H.
S. 769y Levy, Henry.
S. 1167a Levy, A. M.
S. 2773y Lewis, A. C.
S. 732y Lewis, Mrs. F. J.
S. 438a Lewis, J. B.
S. 1351a Lewis, Mrs. John B.
S. 2112a Lewis, J. P.
E. 524y Lewman, H. L.
E. 264a Lewman, J. H.
E. 692m Lichty, C. P.
W. 347a Lichteig, Jos.
S. 1323y Lieber, Philip.
S. 2572a Lily, Lizzie.
S. 2446y Lincoln, W. P.
E. 343z Lindenberger, Geo.
E. 803a Lindenberger, A. H.
S. 437y Lindsay, Chas. M.
S. 389a Lindsay, Jos. W.
S. 636a Lindsay, T. R.
S. 2476a Link, Mrs. L.
M. 1127y Lippold, Nathan.
E. 702y Livingston, Arthur E.

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S. 1003a Lloyd, Mrs. Isabella.
S. 1014y Locke, R. A.
S. 1168 Locke, Robt. A., Jr.
S. 1950z Loeb, Isaac E.
S. 1964a Loeb, Jos.
S. 1592a Loevenhart, L.
S. 1694a Lowenstein, Helen.
S. 1735y Leigh, Jas.
E 449y Logan, Mrs. Mary.
S. 505y Logan, W. Hume.
M. 1294a Long, John S.
M. 2579y Long, L. H.
E. 773a Longest, C. S.
S. 1228a Lord, R. C.
M. 768a Long, Miss M.
S. 775a Lorenz, Mrs. C. L.

E. 911y Love, J. P.
S. 1549y Love, R. H.
W. 235y Lovell, Miss E. A.
S. 878y Luckett, Gracey H.
E. 527a Lund, S. B.
W. 384a Lusby, T. S.
S. 729a Luttrell, Mrs. Sue.
E. 192a Luvisa, Mrs. Frank.
S. 1851y Lyons, Fred W.
S. 758a Lyons, H. J.
S. 1717m MacDonald, A. T.
S. 1264y Mackin, W. J.
S. 1791y MacPherson, Donald.
E. 507y MacPherson, Mrs. W. Y.
M. 3608a Maddox, Mrs. E.
S. 637 Mahon, J. C.
S. 1950a Magness J. A.
E. 163m Malone, Thos.
S. 2331a Mandel, E. V.
E. 673y Major, H. J.
S. 1810m Major, W. D.
S. 2474a Mandel, Mrs. R.
S. 774y Manfull, Mrs. Carrie D.
M. 2888a Mann, David.
S. 2311a Mann, Wm.
S. 2127a Mannheimer, L.
E. 582a Mansfield, J. L.
E. 867a Mansfield, S. L.
S. 929y Marcum, Mrs. C. H.
S. 52a Marcus Sam.
S. 1174y Mark, E. H.
S. 1591y Marshutz, Oscar.
S. 586a Marshal, Mrs Judith L.
S. 1271a Marshall, Humphrey.
M. 1112y Marshall, Mrs. Kathryn.
E. 766m Martin, C. E.
E. 106a Martin, I. J.
S. 1206a Martin, H. W.
M. 3851a Martin, Jas.
S. 700 Martin, John M.
M. 1586a Martin, Mrs. M. B.
E. 348a Martin, W. L.
S. 854a Marx, Jack F.
S. 281a Marx, Jos.
S. 1497y Marx, Nathan.
M. 3693a Marx, Sigmund.
E. 978a Mason, E. D.
S. 1114a Mason, J. W.
S. 1617y Mason, W. S.

2851

S. 32y Masonic Home Printing Co.

S. 32a Masonic Widows & Orphans Home.
S. 764a Maury, Miss Sallie S.
S. 1527y Mayer, Eli.
E. 485a McBride, J. G.
E. 265z Mathews, C. N.
E. 261a Mathews, B.
S. 512a Mathews, W. S.
S. 2112y Mathey, Edw. A.
S. 357a Mathis, Henry H.
S. 1393a Mattingly, Mrs. Emma.
S. 1661y Mattingly, P. J.
S. 1539y May, Walter.
S. 1217a May, H. C.
S. 203a May, W. H.
E. 831y Mayer, Max
W. 466y Mayes, E. C.
S. 1033y McAllister, C. V.
S. 964y McAtee, W. T.
M. 2691a McAteer, John.
E. 326y McBridge, S. J.
E. 293y McBride, Mrs.
E. 795a McCabe, T. B.

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S. 380y McCabe, H. C.
E. 794a McCabe, Leonard.
E. 489y McCall, W. W.
E. 631y McCampbell, J. W.
S. 1099y McCampbell, Leavelle.
M. 1526a McCampbell, Miss Roberta.
E. 396z McCandless, Clay.
E. 633y McCarty, J. Wilder.
S. 768y McCarty, W. O. B.
S. 2581y McCawley, Mrs. Theresa R.
W. 925y McClellan, L. H.
E. 1012y McClellan, J. A.
S. 2515a McCollum, C. L.
M. 967a McComb, Anna D.
W. 584a McComb, Mrs. A. E.
S. 1623y McCracken, H. M.
S. 1274a McCraw, Chas. L.
E. 1146a McCready, Rev. R. L.
S. 1723m McCulloch, Thos.
W. 204a McCulloch, W. H.
S. 420 McDermott, E. J.
W. 782a McDermott, Mrs. K.
S. 1337a McDonald, Miss Agnes.
S. 2418a McDonald, Miss G. A.
E. 524 McDonald, G. L.
S. 878a McDonald, Mrs. S. C.
S 894m McDonald, Martha.

S. 933y McDonald, Samuel.
M. 3481 McDougall, Misses.
S. 1328 McDowell, R. A.
E. 622y McFerran, Mrs. J. B. Jr.
E. 645 McFerran, Mrs. J. C.
S. 1689a McGill, Mrs. B. C.
S. 1474z McGill, Maria.
E. 831a McGinnis, Mrs. G. A.
S. 505a McGonigale, W. J.
E. 509a McGowan, Graeme.
E. 543y McGowan, Mrs. L. C.
S. 1974a McGlassen, Mrs. E. M.
S. 1246a McGraw, Mrs. Nora.
S. 1239a McIntosh, D. C.
S. 2221a McIntyre, Misses.
E. 689a McKay, Wallace.
S. 1251z McKee, Mrs. Sophia.
W. 325y McKelden, Otis H.
M. 1955z McKenna, Jas. P.
S. 547y McKenney, K. J.
M. 3723y McKenzie, Mrs. Martin.
E. 655y McKinney, Dr. W. T.
W. 436y McLaughlin, D. M.
S. 1086a McLaughlin, Rev. H. W.
S. 2017a McMakin, H. O.
S. 1776y McQuady, J. E.
S. 1581y McQuay, Chas. A.
E. 698y McWilliams, Jos.
S. 813a Mead, Albert.
S. 544y Mead, Omar C.
S. 262a Meffert, J.
E. 675a Meddis, C. J.
S. 171y Mequire, Chas. A.
S. 914m Meldrum, Overton S.
M. 1873y Menifee, Richard H.
W. 396y Menah, Robt.
S. 2342y Mendel, Mrs. I.

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E. 130y Mercke, Frank.
S. 1064 Meriwether, David.
S. 124y Merrifield, Mrs. Sue A.
E. 87a Mervin, Mrs. Mary I.
E. 979y Metcalfe, Ben J.
S. 1767 Meyers, Jos. E.
S. 707m Meyer, Herman.
E. 979a Meyer, J. H.
S. 2016y Middleton, J. F.
S. 2435a Middleton, J. A.
S. 1713y Milburn, H. T.
E. 931a Miles, T. J.

S. 1737a Miller, E. K.
W. 394a McCue, Mrs. H. M.
M. 1178a Miller, Shackelford.
S. 1121a Miller, Everett S.
E. 484a Miller, F. G.
S. 1728m Miller, Fred.
W. 188y Miller, Henry B.
E. 513a Miller, Mrs. Louisa.
S. 2048 Miller, Madison L.
S. 182a Miller, T. Galt.
E. 708a Miller, R. I.
S. 1779y Miller, W. G.
S. 781y Miller, Wm. A.
E. 541a Millett, E. P.
W. 366a Milligan, Mrs. Eva.
E. 424a Milligan, John.
S. 1582a Milligan, H. B.
S. 836a Minary, T. H.
W. 373y Minor, J. S.
W. 477a Minnott, C. F.
M. 1439y Minton, R.
M. 845a Mitchell, Miss Alma.
S. 243y Mitchell, Augustus.
S. 787y Mitchell, E. C.
W. 146a Mitchell, O.
S. 1325a Mitchell, Mrs. L. H.
W. 484a Mitchell, Miss M.
S. 504a Monroe, Miss Clara L.
E. 486y Moise, M. Haden.
S. 633a Moon, S. H.
E. 922a Moore, Mrs. Robt. K.
S. 1972y Moore, Jas. C. Jr.
W. 407y Moore, J. E.
E. 1145a Moore, J. S.
M. 1127a Moore, M. G.
E. 843a Moore, Webster.
W. 587a Moore, Will H.
E. 684a Moral, L. C.
S. 162y Morganroth, J. L.
W. 355y Morgan, F. G.
E. 537y Morris, Jas. T.
S. 2145a Morris, J. M.
E. 415a Morris, Robt. C.
S. 1335a Morris, W. M.
S. 407a Morton, Mrs. Douglas.
E. 271a Mortimore, W. E.
M. 1471a Morton, Ben.
S. 633y Morton, Thos. B.
S. 1772y Moses, Mrs. A.
S. 2322a Moses, C. L. & R. S.
S. 1233y Moses, Wm.

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W. 575m Muir, H.
S. 1363a Muldoon, J. W.
E. 196y Mulhall, J. H.
E. 1093y Mullen, Wm. E.
E. 349y Mullinix, Geo. F.
S. 839y Murphy, C. C.
S. 1880m Murphy, Mrs. E. E.
S. 1776a Murphy, H. P.
S. 925a Murphy, J. R.
E. 687m Murphy, Miss Kate.
S. 412a Murphy, T. J.
S. 1197a Murray, John Allen.
S. 670m Murray, Logan C.
E. 607a Murray, Miss Ruth A.
E. 207a Murray, Jos. P.
S. 1069a Myer, Isaac.
E. 643a Myer, Peter B.
E. 927y Myer, Sam P.
S. 2476y Myer, Mrs. S.
S. 1038a Myer, W. T.
S. 1825y Nall, I. B.
E. 863a Nanz, Henry.
E. 566y Neal, M. W.
S. 1194y Neiger, J.
S. 2194y Neatherlan, Mrs. L. R.
S. 457y Newberger, E.
S. 2083y New, Chas.
S. 2553y Miller, Frank J.
E. 189a Newbold, S. H.
E. 352a Newbold, E. C.
E. 268y Newcomb, H. D.
M. 1249a Newman, Dan.
E. 409a Newman, Miss E. H.
E. 139a Newman, Geo. R.
E. 37y Newman, H. W.
S. 1221a Nicholls, Jas. A.
S. 509a Nicholson, J. H.
E. 897a Nightengale, Mrs. J. A.
W. 182y Nobbe, Mrs. M.
E. 655a Noble, Sam'l R.
E. 214a Norrall, Mrs. A.
S. 1345a Norman, Mrs. I.
S. 1055 Norman, Mrs. S. M.
S. 2167y Norris, A. A.
E. 259y Norris, J. H.
S. 1911a Norton, Chas. B.
S. 1246y Nugent, Mrs. K. E.
S. 568a Nunnelly, W. R.
E. 220m Nuss, Mrs. J.
S. 2268y O'Bannon, J. W.

S. 1698a Obenhausen, Mrs. Jos.
S. 214a O'Brien, C. R.
W. 816a O'Connell, Mary.
W. 104 O'Connon, Chas. J.
M. 2915y O'Connor, Jas. C.
S. 929a O'Connor, Miss Joe.
W. 586a Oestrich, Louis.
M. 932a O'Farrell, J. M.
S. 982z Offutt, Mrs. A. S.
M. 405y Ogle, George.
S. 993a Oleacre, W. C.
S. 2134y O'Hara, Mrs. Mary.
S. 2965a O'Hern, Wm. J.
S. 1341a Oliver, M. R.

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S. 2064y Oliver, J. C. B.
S. 1591a Olmstead, C. A.
M. 1892y Olmstead, Geo. W. B.
S. 1327y O'Neill, James.
S. 1327a Oppenheimer, D. S.
S. 1023a Oppenheimer, M. S.
S. 1113a Opper, J. E.
S. 1623a Orendorf, H. H.
S. 1441a Osborne, W. G.
M. 1092y Ott, Geo. J.
S. 1454y Ottenheimer, E.
E. 583a Ouerbacher, J., Jr.
S. 451y Overstreet, E. N.
E. 432a Oyler, Miss Sophia.
M. 1852a Oppenheimer, S. C.
S. 237a Osborne, J. D.
E. 649a Owen, Jordan.
W. 426a Owens, Geo. W.
E. 131y Owens, Dr. B. F.
E. 327y Pargny, Mrs. J.
S. 134y Paine, A. V.
S. 2042a Parks, R. M.
E. 752a Parsons, Dr. A. L.
M. 1384a Patterson, Chas. E. L.
M. 1412a Patterson, Mrs. Hill.
S. 1238a Patterson, John.
S. 2344a Payne, E. H.
E. 918y Payne, J. B.
S. 1665y Payton, S. M.
S. 1073y Peak, Mrs. E. Y.
S. 539y Peak, R. F.
S. 81y Peck, W. E.
S. 1978y Pedigo, Mrs. B. F.
M. 2183a Pegourie, J. B.
S. 2029z Pennebaker, E. K.

E. 853a Peper, C. G.
W. 346z Perkins, T. J.
S. 2016a Perry, Wm. A.
S. 2081a Peter, Arthur.
E. 1033y Peterson, O. G.
E. 483y Petrie, C. B.
W. 953a Pettibone, S. W.
S. 856a Pfingst, Dr. A. O.
E. 435y Pheley, J. C.
S. 593y Phelps, J. S., Jr.
S. 255a Phelps, Laban.
W. 311a Phillips, Dr. Harry.
E. 1159a Phillips, I. & F.
W. 496y Phillips, Mrs. Mary A.
S. 1307a Phillips, Mrs. R. M.
S. 1183a Piatt, R. A.
S. 654a Pickrill, O. G.
M. 1498y Pike, R. K.
E. 272z Pilcher, J. V.
E. 719a Pilcher, Paul.
E. 482y Pilcher, Mrs. R. B.
E. 386y Pilcher, W. E.
S. 2228a Pinney, A. B.
S. 2371y Pirkey, S.
S. 503y Pirtle, Dr. Henry.
S. 455a Plaskett, B. N.
E. 224a Playford, Mrs. C. W.
E. 263y Pohlman, A. J.
S. 2371a Polk, W. G.

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S. 2565y Pollei, A. C. & Y. A.
S. 2194a Pope, John S.
E. 280m Pope, A. M.
E. 238y Popper, Mrs. O.
S. 1479y Porter, Mrs. E. S.
S. 394a Porter, N. B.
S. 1355z Potter, H. V.
E. 784a Potter, H. D.
S. 1769z Powell, C. E.
W. 249a Powell, T. W. Jr.
M. 2579a Prather, W. Scott.
E. 267a Price, Mrs. A. C.
W. 906a Price, J. E.
S. 893a Proctor, G. W.
E. 57a Pryor, Robt.
S. 647m Pulliam, G. D.
S. 471y Quarles, James.
S. 1479a Queen, Miss Octavia C.
S. 858z Quigley, Mrs. L. G.
E. 468a Quisenberry, Tandy.

S. 938a Radford, Miss Lula.
M. 1354a Raff, M.
S. 539a Raff, S.
M. 1241a Ramsey, Wm. P.
S. 1911y Ranney, E. E.
S. 1677a Ramsey, G. W.
E. 543y Rarick, Mrs. Donia.
W. 252y Rashid, R. F.
W. 251y Ratterree, A. E.
E. 102a Rau, P. Daniel.
S. 26m Rauterberg, Mrs. Chas.
M. 1023y Ravitch, Dr. M. L.
S. 1249a Rawson, Alonzo.
S. 791y Ray, Dr. D. H.
E. 376y Raybourne, Mrs. L. R.
S. 381y Reed, J. D.
E. 624y Reedy, M. J.
E. 922y Rees, Dr. B. G.
S. 1090a Rees, Evan S.
S. 805a Rees, Mrs. H. W.
M. 1487y Reh, Euphie.
W. 827a Reich, Chas. A.
E. 131a Reid, O. L.
E. 788m Reimers, E. G.
E. 784y Renz, Mrs. F. J.
S. 1143a Reasor, C. L.
M. 3583a Reidhar, Miss E.
M. 1239y Reinecke, Geo. W.
E. 454a Reutlinger, Albert.
M. 3802y Revell, Mrs. Howard.
S. 1421a Reynolds, Sid G.
E. 669a Rich, Albert.
S. 1128a Richards, Mrs. C.
E. 254a Richards, C. Rowland.
S. 1915y Richardson, Mrs. A. W.
E. 186a Richardson, C. C.
S. 1039y Richardson, Mrs. C. H.
S. 1516y Richardson, E. A.
S. 385y Richardson, O. C.
S. 343y Richie, Henry Clay.
E. 1099a Ridley, M. I.
E. 214y Riehm, J. L.
S. 2488y Rieser, Mrs. E.

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S. 203y Richardson, Annie A.
M. 3888m Rockert, Ida.
W. 581z Riddell, Cary.
S. 449a Roberts, W. E.
S. 2483a Robinson, Mrs. J. M.
S. 2043y Rogers, R. W.

S. 921a Rosenbaum, Isaac.
S. 2176a Rosenberg, G. S.
S. 2886y Riley, Mrs. Margaret.
E. 993y Riley, W. E.
S. 1675a Riney, Mrs. Fred.
S. 256a Richter, Wm.
E. 99a Roach, Mrs. John G.
E. 192m Robbins, Mrs. Fannie C.
W. 648a Roberts, G. Cliff.
M. 3941a Roberts, G. W.
S. 2235a Roberts, J. M.
S. 1116y Roberts, Mrs. W. M.
E. 593a Robertson, E. B.
S. 2499 Robertson, T. G.
S. 1947y Robertson, Wm. C.
M. 709a Robertson, W. O.
E. 673a Robinson, A. G.
E. 185a Robinson, E. W.
S. 1825a Robinson, J. S.
S. 2478a Robinson, L. L. Miss.
S. 1089a Robinson, Morris.
E. 696z Robinson, W. L.
S. 838a Roche, J. E.
E. 902a Roche, J. P.
E. 869z Rock, G. N.
M. 806y Rockwood, C. F.
S. 1831y Rogers, Ben F.
S. 2192a Rodman, Lee.
E. 1128m Roe, E. W.
W. 488a Rogers, Alex.
S. 2472y Rogers, Chas. & B. Jr.
E. 832m Rogers, Geo. M.
W. 351a Rogers, H. L.
M. 3931a Rogers, Preston.
S. 1607a Rogers, Mrs. Newton.
S. 1723y Root, Geo. E.
E. 229a Rose, A. G.
S. 1502a Rosenau, Mrs. Lee.
S. 656a Rosenbaum, L. A.
S. 1425a Rosenfelder, E. M.
S. 346z Rosenheim, Chas.
S. 1075a Rosenheim, Jacob.
E. 745a Ross, Mrs. C. M.
S. 819a Rothschild, Aaron.
S. 841a Rothschild, Sylvia.
S. 799z Rothschild, Mrs. S.
M. 3894a Rothernill, Peter.
E. 988y Rowell, J. Kirk.
W. 136z Rowell, Robt.
S. 2375y Rowland, Edw. E.
S. 1634a Rubel, Louis L.

E. 903a Rubel, R. O.
E. 479a Rubel, Thos. H.
S. 586a Rubel, W. J.
S. 1135y Rudell, Mrs. Mattie.
E. 165y Rudolf, Vic. H.
S. 1091z Rugg, Fred W.
E. 225a Russell, Frank B.
S. 1596y Russell, L. G.
E. 772y Russell, Mrs. L. L.

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S. 2586y Rutherford, Robt.
S. 1268a Rutherford, Horace.
E. 507a Rutherford, S. B.
S. 1506a Ryan, J. M.
M. 517a Ryan, John.
S. 462m Sabel, A. J.
S. 627a Sabel, Sam.
S. 869m Sachs, Edw.
S. 457m Sachs, Jos. G.
S. 1378a Sachs, Morris G.
S. 1727y Sackett, Wm.
S. 576a St. Clair, W. T.
S. 269a Sale, Miss Nettie C.
S. 1741y Sale, E. Hewett.
S. 1627y Sale, Selby H.
S. 2062y Salom, S. L.
E. 451a Sampey, Rev. John R.
E. 473a Sampson, L. D.
M. 517y Sandbrink, B. G.
S. 982 Sanders, Mrs. H. B.
E. 579a Sanders, John W.
M. 1407a Sandford, E. T.
M. 3353a Sapinsky, Mrs. Carrie Rothschild.
E. 21y Sargent, A. W.
S. 2121m Satterwhite, Mrs. A.
S. 2374y Satterwhite, C. E.
S. 1453a Satterwhite, Miss Florence.
S. 346a Satterwhite, M. L.
S. 1423a Saunders, Miss M. I.
S. 1314a Scales, J. H.
S. 1982a Schaffer, H. F.
M. 2876a Schmitt, Geo. W.
S. 573y Schaffer, I.
S. 1913y Schaeffer, Mrs. Susie.
S. 2373a Scheffer, Ed. B.
S. 1612a Schieman, Ed. B.
E. 401y Solveter, J. A.
E. 1035y Schleicher, Frank.
E. 385a Schmidt, A. W.
S. 1537y Schmidt, Karl.

W. 382y Schnedekecht, E.
S. 1334y Schnadig, Jos. B.
E. 109a Schneider, Albert.
S. 1264a Schneider, B.
W. 401a Schneider, Henry.
M. 3048a Schneider, Theo.
E. 1053a Scholtz, Herman F.
W. 351z Schoppenhorst, Edw.
S. 1006a Schroder, H.
S. 643a Schroer, Aug. H.
M. 1091a Schulte, Mrs. Emma.
S. 1497a Schulte, W. F.
S. 1975y Schulz, Miss Alma
E. 984a Schulz, Jacob.
M. 1031a Schuman, A. G.
S. 674a Shumaker, C. F.
E. 869a Schuster, Caroline.
E. 107y Schurech, C. J.
S. 1106y Schwabacher, J. L.
S. 707y Schwabacher, Mrs. J.
E. 939a Scoggan, W. D.
E. 622a Scott, W. G.
S. 2043a Seaboldt, John.
E. 2297y Sears, C. M.
M. 1727a Sehon, Geo. L.

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S. 2091a Seibert, Geo. D.
S. 2130m Seiler, Frank P.
S. 2469a Selligan, D.
S. 2062a Sellman, W. J.
S. 944a Semonin, Minnie.
E. 835y Semple, Chas.
E. 1014a Semple, Harry C.
E. 498a Sercombe, O. G.
S. 2594y Serpell, Mrs. J. R.
W. 143a Settle, J. E.
S. 109 Settle, John M.
E. 792a Seubold, John.
W. 177y Shafer, Miss L. A.
S. 1687y Shaffer, Chas. A.
S. 1275 Shalleross, S. H.
S. 787a Shalleross, W. C. A.
S. 276a Shanahan, Mrs. D. A.
S. 1013y Shanks, H. G.
M. 1672a Shanley, R. G.
M. 1401a Shannon, M.
S. 1104a Shapinsky, Julius.
E. 764y Sharrard, Geo. G.
E. 592m Sharrard, Louis W.
E. 391a Shaw, Phil D.

S. 1438y Shehan, Miss Anna.
E. 983a Shehan, Frank P.
S. 639y Sheild, C. H.
S. 1552y Shelley, Mrs. Blanche.
S. 462y Shelley, W. H.
M. 609y Shepard, Mrs. Alexnia.
S. 2497a Sehpard, Mrs. S. R.
E. 947a Sherman, Elmore.
E. 702a Shipley, W.
M. 1695a Shewmaker, Mrs. L.
S. 838y Short, Jos.
S. 612a Shreve, C. M.
S. 1694y Shulhafer, I. L.
S. 2377y Shulhafer, Simon.
E. 316a Sigmier, Miss K.
S. 1485y Seivers, Miss Reta M.
S. 1663a Simcoe, J. E.
S. 958a Simon, Mrs. Caroline.
S. 722y Simm, Mrs. T. L.
S. 697y Simon, Henry.
W. 220 Simon, B. C.
S. 408y Simson, Mrs. Jas. M.
E. 273y Sinder, Fred.
E. 235a Sinton, Miss.
S. 2983y Sivori, Mrs. A. B.
S. 1409y Slaughter, T. Grant.
S. 732m Sloan, Mrs. Mary.
S. 2374a Sleets, Clarence.
S. 2172a Sloan, Mrs. S. J.
S. 674y Sloss, Mrs. S. E.
E. 653y Smiley, John F.
M. 1438 Smith, E. T.
E. 194y Smith, D. W.
S. 236y Smith, Geo. T.
S. 529y Smith, John L.
S. 499a Smith, L. L.
S. 1418y Smith, Miss Lula.
S. 1728y Smith, Mrs. Mollie R.
M. 1852y Smith, Walter E.
E. 426y Smith, Robt. M.
S. 1297a Smith, Mrs. R.
W. 781a Smith, E. J.
S. 1747m Smith, S.

2860

W. 886y Smith, W. Ward.
S. 1248y Smith, D. D.
S. 2464y Smith, W. Lyne.
W. 336a Snawder, Peter.
S. 1231y Snively, Mary D.
E. 56a Snyder, Claude F.

S. 374y Snyder, T. G.
S. 1034a Snyder, H. T.
S. 1639a Snyder, J.
S. 1957a Snyder, Keith P.

2861

S. 1283y Snyder, Mrs. Mary E.
S. 1695y Snyder, S. C.
S. 1469m Snyder, T. J.
S. 1098y Solger, C. H.
S. 1879z Solomon, Jos.
M. 827m Solomon, Louis.
M. 2601 Sommerville, Chas. A.
E. 386a Sommerville, Rev. C. W.
W. 762y Southard, Mrs. D.
W. 299a Sowders, Mrs. Nellie.
M. 1243a Spalding, Mrs. Belle.
S. 5914a Spalding, Hill.
E. 16a Speaker, C. E.
S. 406y Speed, A. P.
E. 133a Speed, Chas.
E. 616a Speed, Evarts.
E. 198a Speed, James.
S. 1489a Speed, J. F.
S. 1576a Speed, Mrs. Tom.
S. 822y Spidel, Dr. Edw.
S. 1013a Spieden, Filliston L.
S. 1465y Speith, Chas.
E. 469y Spurrier, Mrs. Geo. E.
W. 839a Spurrier, Mrs. M. B.
S. 1521y Staadeker, Mrs. F. B.
S. 746m Staib, J. L.
E. 159a Starks, J. S.
S. 1279y Starr, L.
S. 1455a Steele, Jas. K.
S. 1204y Steele, Robt. M.
S. 1242y Stagman, Mrs. M.
S. 779a Steible, D. M.
W. 221a Steinhous, Geo.
E. 224y Stephens, Susie.
S. 274a Stern, A.
S. 1951a Stern, Morris.
S. 1106a Sternau, Mrs. Fannie.
S. 1616a Stevens, R. L.
S. 2049z Steward, Miss Jessie.
M. 3801a Stewart, J. T.
S. 1076y Stiebel, D. H.
W. 403a Steiger, F. P.
S. 485m Steine, R. J.
E. 1162a Stinson, E. B.
W. 482a Stites, Richard.

E. 611a Stith, Percy.
E. 603y Stockwell, Mrs. Edw.
S. 341a Stokes, M. McGehee.
S. 2275y Stoll, Fred.
S. 208a Stoll, Christene.
E. 857a Stone, Mrs. J. M.
E. 323a Stone, John S.
E. 760y Mrs. Lee.
S. 1834a Stone, Sam H.
S. 1567a Storts, W. W.
S. 1862a Stratton, John A.
S. 1774a Straus, Mace.
S. 255y Straus, Mose.
S. 854y Straus, Mrs. Sophia.
S. 228y Streng, H. J.
S. 2188a Strother, John C.
M. 1967a Suss, Miss C.
W. 314a Strother, Phil.
S. 1204a Strauss, Mrs. S. B.
E. 888a Stuart, Chas. T.
E. 516a Stuart, Mrs. Mary F.
S. 689y Stubbs, W. P.
E. 247a Stucky, Mrs. H. C.

2862

S. 1821a Sturgis Mrs. Ruth.
E. 108y Sullivan, Edw. M.
E. 882y Sullivan, J. T.
S. 1507a Sullivan, Nellie A.
M. 585y Summers, Miss Jessie.
S. 1496y Summers, Jennie T.
S. 564a Sutliffe, John H.
E. 236m Sutton, T. H.
S. 1126y Swearingen, H. B.
S. 2089y Sweeney, H. R.
S. 1485a Sweets, David N.
E. 415y Sweets, Rev. Hennry H.
S. 1714y Swope, Mrs. C. E.
S. 1083a Tabb, R. S.
S. 583a Tachau, E. S.
S. 279y Tachau, Mrs. Mattie L.
S. 942a Talbot, Thos. B.
S. 987y Tashican, Mrs. Herbet.
S. 1875y Taylor, Albert.
S. 2219a Taylor, C. L.
S. 2321a Taylor, H. B.
S. 862y Taylor, H. C.
S. 1364y Taylor, Mrs. M.
S. 587y Taylor, Mrs. M.
E. 968a Taylor, Thos. P.
E. 293a Taylor, Hancock.

S. 4554y Taylor, Mrs. T. P.
S. 406a Terry, Alvah L.
E. 328a Theobald, G. P.
M. 497a Theisen, F. A.
S. 456y Thixton, John, Jr.
M. 3751y Thomas, Arthur.
S. 418a Thomas, J. B.
E. 348y Thomas, John H.
E. 681y Thomas, Louis St. J.
S. 1579y Thomas, Owen W.
S. 1576y Thomas, Mrs. Pat.
S. 647y Thomas, W. P.
S. 2149a Thompson, C. S.
S. 1827y Thompson, E. V., Jr.
M. 1591y Thompson, Thornton.
E. 662a Thompson, Mrs. Hite.
S. 2243a Thompson, Willbray J.
E. 504y Thornton, B.
W. 176y Threlkeld, Mrs. K. L.
E. 285m Tileston, Dr. H. B.
M. 1967a Suess, Miss G.
E. 349y Tillford, Henry J.
E. 636m Tillford, Robt. J.
S. 1926a Thum, A. W.
S. 547a Tichenor, H. E.
E. 837a Tingle, Roy E.
E. 591y Tinsley, E. B.
E. 132a Tinsley, John E.
S. 2361 Tinsley, Mrs. Lou.
S. 1317z Tinsley, Samuel B.
W. 812a Tippett, C. B.
E. 495m Toller, Wm.
S. 1836a Toy, James.
S. 1355a Trabue, Rich.
S. 1448a Trabue, Mrs. R. D.
E. 374y Trautman, Miss Alice.

2863

S. 1549a Trimble, W. J.
S. 2617m Trost, Jacob.
S. 1021a Troxler, C. L.
S. 843y Trost, W.
S. 1877a Trost, Wm. J.
M. 1826a True, J. L.
S. 663y Trueheart, C. T.
E. 258a Truman, Mrs. H. C.
E. 217y Tuker, E. F.
E. 949a Tuker, John W.
S. 1799a Turner, Marshall.
S. 537a Turner, Thomas.
S. 1283a Turner, Thomas J.

M. 711y Tyler, Henry S.
E. 353a Tyler, Mrs. Jennie O.
S. 971a Tyler, Mrs. Robert.
S. 332y Ullman, Sam'l.
S. 1474a Ullman, Sol.
M. 1774a Ullman, Wm.
S. 2192y Ummethum, A.
S. 1635y Underhill, Tracy.
S. 1743a Van Arsdale, Mrs. K.
E. 666a Van Cleave, Mrs. E. J.
S. 1179a Van Dyke, V. D.
S. 1994y Van Pelt, Mrs. Eva M.
E. 195a Van Pelt, R. K.
S. 2247a Van Zandt, Dr. Thos.
S. 648a Vaughan, Walter L.
S. 269y Vaughn, W. M.
S. 2263a Venable, Wm. Mayo.
S. 319y Van Dyke, Mrs. S. M.
S. 1728a Vick, Rev. Eben G.
E. 473y Viglini, J. A.
S. 1838a Villiers, Stuart H.
E. 611y Virden, Miss Julia.
S. 554a Voelker, Mrs. J. C.
E. 1014a Vogel, A. R.
E. 1033a Voght, John H. L.
S. 717a Volmer, Mrs. D.
E. 9849 Volz, Aug.
S. 1719a Von Borries, Fred.
E. 624a Von Borries, W. J.
E. 434y Wachtell, Mrs. J.
E. 424y Wachter, C. C. & J.
E. 229y Waechter, Geo. J.
S. 1436a Walker, David C.
S. 1205a Walker, E. G.
E. 336y Walker, Frank.
E. 446y Walker, Mrs. Fred K.
S. 678a Walker, Henry A.
S. 2401a Walker, J. G.
S. 16y Walker, Walter.
S. 2297a Wallace, Mrs. Arthur M.
E. 392m Wallace, J. H.
S. 451a Wallace, J. Richard.
S. 1289y Wallace, Dr. J. W.
M. 3723a Wallace, Mrs W. J.
S. 1224a Walsh, F. J.
S. 887y Walsh, M. J.
W. 1483y Walsh, P. J.
E. 965a Walston, John S.
S. 383m Walton, D. A.
E. 823y Walton, Geo. P.
S. 1447y Walton, H. A.

S. 85 Wanless, George.
S. 2312a Wanless, Hugh.

2864

E. 845a Wanner, Julius.
S. 697a Wanner, Julius.
S. 697a Ward, Henry C.
E. 846y Warder, H. T.
M. 599a Warner, Roy E.
S. 1022a Warren, Cary I.
E. 563a Warren, Mrs. Chas.
S. 318y Warren, Chas. Newell.
S. 315a Warren, Mrs. Clarence A.
E. 337y Warren, Edw. L.
W. 126a Warren, Miss Ella.
M. 1306a Warren, Miss Mary.
S. 933a Washburne, M. P.
M. 2079a Waters, Wm. F.
M. 1039y Wathen, Dr. John R.
S. 684a Watkins, Chas. T.
S. 1331y Watkins, E. J.
S. 2242y Watkins, W. J.
W. 493a Watson, P. J.
S. 2311y Watters, H. A.
S. 1470a Watts, E. M.
S. 1416y Watts, H. Allen.
M. 741a Watts, Wm. A.
S. 2015a Weaver, J. C.
S. 206a Webb, A. N.
E. 872y Webb, J. R.
M. 1073y Weber, Dr. Harry C.
E. 107a Weber, Geo.
W. 831a Weber, Miss Mamie.
S. 1192y Webster, H. B.
M. 3046a Webster, Miss Jane K.
S. 1915a Wehle, O. A.
M. 3041y Wehrley, Prof. Gus.
M. 3059 Weidekamp, E. A. & John A.
W. 237a Weidner, Dr. Carl.
S. 1492a Weiland, Mrs. S. L.
S. 1189q Weinbaum, Henry S.
S. 757y Weinstock, E.
S. 2224a Weisert, J. J.
W. 116a Weiss, John.
E. 527y Weisiger, Cary N.
W. 164a Weitzel, B. F.
W. 315a Welch, Mrs. Lizette.
E. 915a Weldon, Geo.
M. 1813a Wendling, Jake.
S. 905a Wells, Mrs. M. R.
W. 493y Werness, J.

E. 987a Werst, Mrs. Minnie.
M. 1875a Wessel, Mrs. Fannie K.
E. 742a West, C. A.
E. 429y Weller, Mrs. M. E.
W. 100a Wetzel, Geo. W.
E. 438 Whayne, Mrs. G. D.
E. 644a Whayne, T. H.
S. 389z Wheat, M. R.
S. 1687a Wheat, Mrs. A. T.
W. 433z Whedon, John W.
S. 858a Wheeler, W. C.
S. 1682a Wheeler, Mrs. W. T.
S. 1368a Whelan, Henry.
E. 855y White, Chas. S.
S. 746a White, Mrs. F. M.
S. 1407a White, J. N.
M. 2984 White, John.
W. 94y White, Miss Marie.
W. 2563a Whitlock, Mrs. Eliza.
S. 1058a Whitman, Roy & Skelton.
S. 2249y Whitney, J. E.

2865

E. 579y Weisen, Mrs. M. L.
E. 839a Wigginton, Mrs. M.
S. 1595m Wigham, Miss Pearl
S. 2568a Wilcox, I. B.
S. 1544y Wile, J. B.
M. 1235a Wile, Nathan
S. 1425y Wiley, Mrs. Hannah
E. 733a Willey, C. E.
S. 1472a Willey, Mrs. E. S.
S. 1498a Williams, Mrs. B. P.
E. 361a Williams, Ed. L.
E. 1041y Williams, S. C.
S. 2578a Williams, Hugh D.
S. 2342a Williams, H. E.
S. 1233a Williams, J. P.
S. 1143y Williamson, Loren B.
S. 1168y Willis, E. M.
E. 855 Willis, H. L.
S. 1872y Wilson, Mrs. Daisy
S. 987a Wilson, Miss Etta J.
S. 1297y Wilson, Miss M. E.
E. 993a Windhorsy, Joe
S. 2670y Winkler, A. P.
E. 641z Winkler, H. A.
S. 1181a Winkler, Mrs. W. F.
S. 2063a Winn, M. J.
S. 2171y Winscot, Mrs. H. K.
S. 237y Wintersmith, Mrs. Emma
S. 594y Wintersmith, H. V.

S. 1837z Wintersmith, John B.
S. 774a Wintersmith, Theo. B.
S. 1328a Wirgman, Menefee
E. 723a Wischmeyer, H.
S. 165a Withers, J. A.
S. 2398y Witherspoon, The Misses
S. 599y Witty, Alex P.
S. 822a Witherspoon, Dr. E. O.
S. 791a Wolf, A.
S. 1381a Wolf, Geo. W.
S. 439y Wolfe, Dr. Dewitt, H. H.
S. 1625a Womack, Maj. J. M.
E. 545a Wood, Chas. G.
S. 916a Wood, Mrs. E.
S. 1872a Wood, John S.
S. 1597a Woodbury, J. L.
S. 1448y Woodruff, Alex. M.
M. 3751a Woodruff, Mrs. S. C.
S. 879y Woodson, Isaac T., Jr.
S. 554a Woodsob, Mrs. T. M.
S. 997a Woody, Dr. S. E.
S. 1625z Wooldridge, W. T.
W. 882y Wyatt, Geo. T.
S. 1583a Wyrick, M. W.
E. 449a Yager, Dr. M. T.
M. 2915a Yenner, J. O.
S. 2226z Yoe, Dr. Richard T.
E. 904a Yontz, Morton K.
E. 843y Youman, A. S.
S. 1158y Young, Mrs. C. S.
S. 1539m Young, Rev. Geo. W.
S. 669a Young, Miss E.
S. 1467y Young, John T.
S. 1933y Young, J. L.
E. 331y Young, Robt. H.
E. 951a Yust, Wm. F.
E. 108a Zang, Edw. W.
E. 1082a Zanone, Mrs. A.
W. 1049a Zeiser, J. M.

2866

S. 1035y Zimmerman, A.
S. 1098a Zimmerman, Dr. B. F.
M. 1338a Zehnder, Miss E.
S. 1736a Woodson, S. T., Sr.
E. 599a Young, J. C.
S. 1926y Young, Mrs. John B.

2867 *Non-Exchanges.*

American Dist. Co.	3	Inst.
Byrne & Speed	2	"
" " "	1	"
" " "	2	"
	2	"
City of Lou. Fire Dept.	12	"
" " " " "	1	"

Private Branch Exchanges. Business.

Ahrens & Ott	2	Trunk.
" " "		Switch Board.
" " "	11	Stations.
American Grocery Co.	1	Trunk—List.
" " "	4	Stations.
American Mch. Co.	1	Trunk.
" " "		Switch Board.
" " "	5	Stations.
American Nat. Bank	1	Trunk.
" " "		Switch Board.
" " "	5	Stations.
Avery, B. F. & Sons	1	Trunk.
" " "	1	"
" " "	11	Stations.
Bacon, J. & Sons	3	Trunks.
" " "		Switch Board.
" " "	7	Stations.
Baird, David & Son	1	Trunk.
" " "	7	Stations.
Ballard & Ballard	2	Trunks.
" " "		Switch Board.
" " "	13	Stations.
Belknap Hdw. Co.	1	Trunk.
" " "	1	"
" " "	1	"
" " "	1	"
" " "	1	"
" " "	58	Stations.
Bittner, G. & Sons	1	Trunk.
" " "		Switch Board.
" " "	2	Stations.
Bodley & Baskin	1	Trunk.
" "	1	"
" "		Switch Board.
" "	4	Stations.

2868

Bonnie Bros.	1	Trunk.
" "	5	Stations.

Bowen, E. H. & Co.	1 Trunk.
" " "	4 Stations.
Bradley, Gilbert Co.	1 Trunk.
" " "	Switch Board.
" " "	4 Stations.
Brinkley Hardy Co.	1 Trunk—Ex. Bell.
" " "	5 Stations.
Brown & Sons, J. T. S.	1 Trunk.
" " "	5 Stations.
Brown, Forman Co.	1 Trunk.
" " "	6 Stations.
Caldwell & Co., W. E.	1 Trunk.
" " "	Switch Board.
" " "	3 Stations.
Carroll Rogers Co.	1 Trunk—list.
" " "	4 Stations.
Chicago, Ind. & Lou. R. R.	1 Trunk.
" " " "	1 Trunk.
" " " "	Switch Board
" " " "	1 Station.
" " " "	5 "
Citizens Life Ins. Co.	1 Trunk.
" " "	7 Stations.
Citizens Nat. Bk.	1 Trunk.
	4 Stations.
Clark & Co., Jas.	1 Trunk.
" "	1 "
" "	6 Stations.
Clegg & Co., F. A.	1 Trunk.
" " "	Switch Board.
" " "	3 Stations.
C. C. C. & St. L. R. R.	1 Trunk.
" " "	1 Trunk.
" " "	1 "
" " "	1 "
" " "	1 "
" " "	1 "
" " "	Switch Board.
" " "	17 Stations.
Commercial B. & T. Co.	1 Trunk.
" " "	7 Stations.
Colgan Gum Co.	1 Trunk.
" "	5 Stations.
Columbia Trust Co.	1 Trunk—3 Jt. Users.
" "	1 "
" "	Switch Board.
2869	11 Stations.
Courier Journal and Times	1 Trunk.
" " " "	1 "
" " " "	1 "
" " " "	1 "
	14 Stations.

Courier Journal Job Pt. Co.	1 Trunk.
" " " "	1 "
" " " "	Switch Board.
" " " "	9 Stations.
Cowan & Co., Andrews	1 Trunk.
" " "	Switch Board.
" " "	5 Stations.
Crutcher & Starks	1 Trunk.
" "	1 "
" "	6 Stations.
Dow Wire Works	1 Trunk.
" "	Switch Board.
" "	3 Stations.
" "	1 "
Duffin, Jas. R.	1 Trunk—2 Lists.
" "	Switch Board.
" "	4 Stations.
Eclipse Coal Co.	1 Trunk—List
" "	1 "
" "	2 Stations.
" "	1 "
" "	1 "
" "	1 "
Equitable Life Ins. Co.	1 Trunk.
" " "	Switch Board.
" " "	8 Stations.
Evening Post	1 Trunk.
" "	1 "
" "	1 "
" "	9 Stations.
Fetter, G. G. Ptg. Co.	1 Trunk.
" " "	1 "
" " "	5 Stations.
Fidelity Trust Co.	1 Trunk.
" "	1 "
" "	1 "
" "	9 Stations.
Galt House	1 Trunk—2 Lists—Ext. Bell
"	1 "
"	1 "
"	1 "
"	2 Switch Boards.
"	249 Stations.
Gibson, Marshall & Gibson	1 Trunk.
" " "	4 Stations.
2870	
Gifford & Stinefield	1 Trunk—1 List.
" "	4 Stations.
Globe Tanning Co.	1 Trunk.
" "	1 Switch Board.
" "	3 Stations.
" "	1 Station.

Grabfelder & Co., F.	1 Trunk.
" " "	1 Switch Board.
" " "	3 Stations.
Grainger & Co.	1 Trunk.
" "	1 Switch Board.
" "	2 Stations.
Harbison & Gathright	1 Trunk.
" "	5 Stations.
Hartman Fur. Co.	1 Trunk—2 Ext. Bells.
" "	1 Switch Board.
" "	3 Stations.
Hast Bldg.	1 Trunk—7 Lists.
"	1 "
"	1 Switch Board.
"	15 Stations.
Helm & Helm	1 Trunk—2 Lists.
" "	1 Switch Board.
" "	3 Stations.
Hunt, Bridgeford & Co.	2 Trunks.
" " "	1 Switch Board.
" " "	5 Stations.
I. C. R. R. Co.	1 Trunk.
" "	1 "
International Harv. Co.	1 Trunk.
" " "	1 Switch Board.
" " "	3 Stations.
Jellico Laurel Co.	2 Trunks.
" "	1 "
" "	1 Switch Board.
" "	1 Station.
" "	1 "
" "	1 "
" "	2 "
Jones Bros. & Co.	1 Trunk.
" "	1 Switch Board.
" "	3 Stations.
Kaufman, Straus Co.	5 Trunks.
" "	1 Switch Board.
" "	18 Stations.
Ky. Dis. & W. H. Co.	1 Trunk.
" "	1 "
" "	1 Switch Board.
" "	10 Stations.
2871	
Ky. Title Co.	1 Trunk.
"	1 Switch Board.
"	14 Stations.
Ky. Wagon Co.	1 Trunk.
"	1 "
"	19 Stations.

Kohn, Baird & Spindle	1 Trunk.
" " "	5 Stations.
Laib & Co	1 Trunk.
"	1 "
"	6 Stations.
Lampton, Crane & Ramey	1 Trunk.
" " "	1 "
" " "	1 Switch Board.
" " "	5 Stations.
" " "	2 "
" " "	1 "
Levy Bros	1 Trunk—Ext. Bell.
"	1 Switch Board.
"	4 Stations.
Lewis, & Co., Jno. C	2 Trunks.
" " "	1 "
" " "	1 Switch Board.
" " "	7 Stations.
L. & N. R. R. Co	1 Trunk—2 Gongs.
" "	1 "
" "	27 Stations.
" "	1 Trunk.
" "	1 "
" "	1 "
" "	13 "
" "	3 Opr. Sets.
" "	120 " Stations.
" "	3 " "
" "	1 " "
" "	2 " "
" "	1 " "
" "	1 " "
" "	1 " "
" "	1 " "
Lou. Bridge & Iron Co	1 Trunk.
" "	1 Switch Board.
" "	2 Stations.
Lou. Free Pub. Lib	1 Trunk.
" "	6 Stations.
Lou. Hotel Co	6 Trunks.
" "	1 Switch Board.
" "	3 Stations.
" "	153 "

2872

Lou. Lgt. Co	1 Res. Direct.
"	1 " "
"	5 Trunks.
"	1 Switch Board.
"	19 Stations.
"	1 "

"	1	"
"	2	"
"	2	"
"	1	"
"	1	"
Lou. Paper Co	1	Trunk.
"	1	"
"	1	Switch Board.
"	3	Stations.
Lou. R'way Co	1	Trunk—2 Lists—1 Ext. Bell
"	2	"
"	1	"
"	1	Switch Board.
"	15	Stations.
"	6	Stations.
"	3	"
"	1	"
"	1	"
"	1	"
"	1	"
Lou. Tob. W. H. Co	3	Trunks.
" "	1	Switch Board.
" "	1	Station.
" "	22	"
Lou. Trust Bldg	7	Trunks.
" "	1	" —19 Lists.
" "	1	Switch Board.
" "	2	Stations.
" "	54	"
Lou. Water Co	1	Trunk—Ext. Bell.
" "	1	" —2 " "
" "	10	Stations.
Mnfrs. Fur. Co	1	Trunk.
" "	1	Switch Board.
" "	3	Stations.
Mengel Box Co	3	Trunks.
" "	1	Switch Board.
" "	9	Stations.
" "	2	"
Mengel & Bro. Co., C. C	1	Trunk—1 Jt. User.
" " " "	1	"
" " " "	1	Switch Board.
" " " "	7	Stations.
Morton & Co. Jno. P	1	Trunk.
" " "	1	Switch Board.
" " "	3	Stations.
" " "	1	Trunk.
" " "	5	Stations.

2873

Natl. Bank of Ky	1	Trunk.
" "	1	"
" "	11	Stations.
Nat. Biscuit Co	1	Trunk—Ext. Bell.
" "	1	Switch Board.
" "	4	Stations.
Nat. Casket Co	1	Trunk.
" "	1	Switch Board.
" "	3	Stations.
Nat. Tobacco Wks	1	Trunk—2 Ext. Bells.
" "	1	Switch Board.
" "	19	Stations.
New England Ins. Co	1	Trunk.
" "	1	Switch Board.
" "	5	Stations.
Norton Mem. Inf	1	Trunk.
" "	1	Switch Board.
" "	7	Stations.
Ohio Falls Dye Wks	1	Trunk.
" "	1	Switch Board.
" "	6	Stations.
Old Inn	1	Trunk.
"	2	"
"	1	"
"	61	Stations.
"	2	Trunks.
"	1	Switch Board.
Ouerbacker, Gilmore Co	1	Trunk.
" "	2	Stations.
Paine & Co., E. E	2	Trunks.
" "	1	Switch Board.
" "	3	Stations.
Peaslee Gaulbert Co	4	Trunks.
" "	1	Switch Board.
" "	15	Stations.
" "	2	"
" "	4	"
Pendennis Club	2	Trunks.
"	1	Switch Board.
"	5	Stations.
P. C. C. & St. Louis Ry. Co	3	Trunks.
" " " "	4	"
" " " "	1	"
" " " "	1	Set Switch Bd.
" " " "	13	Stations.
" " " "	8	"
" " " "	2	"
" " " "	1	"
" " " "	1	"
" " " "	9	"
" " " "	1	"

2874

Robinson Pettet Co..... 1 Trunk.
" " " ..... 1 "
" " " ..... 7 Stations.
School Board..... 1 Trunk.
" " ..... 2 "
" " ..... 1 Switch Board.
" " ..... 50 Stations.
Seelbach Hotel..... 7 Trunks—Ex. Bell.
" " ..... 1 Trunk.
" " ..... 2 Switch Boards.
" " .....296 Stations.
" " ..... 1 "
Southern Nat. Bk..... 1 Trunk.
" " ..... 1 Switch Board.
" " ..... 4 Stations.
Speed & Co., J. B..... 2 Trunks.
" " ..... 1 Switch Board.
" " ..... 6 Stations.
Stndard Oil Co..... 1 Trunk.
" " ..... 1 "
" " ..... 1 Switch Board.
" " ..... 1 Station.
" " ..... 5 "
Standard Mfg. Co..... 1 Trunk.
" " ..... 1 "
" " ..... 1 Battery Trunk.
" " ..... 18 Stations.
Stewart Dry Goods Co..... 1 Trunk—1 List.
" " ..... 1 "
" " ..... 1 "
" " ..... 1 "
" " ..... 1 "
" " ..... 25 Stations.
Stratton & Terstegge Co..... 1 Trunk.
" " " ..... 1 "
" " " ..... 1 Switch Board.
" " " ..... 4 Stations.
" " " ..... 1 "
Straus, Herman & Son..... 1 Trunk.
" " " ..... 1 "
" " " ..... 1 "
" " " ..... 1 Switch Board.
" " " ..... 10 Stations.
Sunny Brook Dis. Co..... 1 Trunk.
" " " ..... 1 Switch Board.
" " " ..... 11 Stations.
Tapp Clothing Co..... 1 Trunk.
" " ..... 1 Switch Board.
" " ..... 2 Stations.
Third Nat. Bk..... 1 Trunk—Ex. Bell.
" ..... 6 Stations.

2875

Torbitt & Castleman	1 Trunk.
" "	4 Stations.
Travellers Ins. Co	1 Trunk.
" "	4 Stations.
Turner, Day, Woolworth	1 Trunk.
" " "	1 Switch Board.
" " "	10 Stations.
Tyler Bldg	1 Trunk—List.
"	1 Trunk.
"	1 Switch Board.
"	12 Stations.
Union Coal Co	1 Trunk.
"	4 Stations.
Union Nat. Bk	1 Trunk.
"	1 "
"	8 Stations.
Vienna Bky. & Rest	1 Trunk.
" "	1 "
" "	1 Switch Board.
" "	8 Stations.
Vogt Mch. Co	1 Trunk.
"	1 Switch Board.
"	1 Trunk.
"	9 Stations.
Webb & Co., Douglass	1 Trunk.
" "	4 Stations.
Weissinger & Gaulbert Bldg	1 Trunk—List.
" " " "	1 "
" " " "	1 "
" " " "	1 "
" " " "	1 "
" " " "	1 "
" " " "	1 "
" " " "	1 "
" " " "	2 Switch Boards
" " " "	70 Stations.
" " " "	1 "
" " " "	44 "
" " " "	1 Trunk.
Wright & Taylor	1 Trunk.
" "	1 Switch Board.
" "	6 Stations.
Zorn & Co., S	1 Trunk.
" "	1 "
" "	1 Switch Board.
" "	4 Stations.

2876 *Private Lines.*

Palmer & Hardin	2	Inst.
Richards, N. J.	2	"
St. Bernard Mining Co	5	"
" " "	1	"
Taylor, T. P. & Co	2	"
Walton, Jos. & Co	2	"

2877 *Business Pay Stations,* $4.00 *Guar.*

W. 743	Abel, C. W.
M. 2328	Abraham, Leon.
S. 1480	Alexander, J. H.
M. 2663	Arnold, W. B.
S. 973.	Arthur, A. C.
M. 1453	Baass, W. C.
E. 371	Bader, Otto J.
M. 1002	Baird, Foster.
M. 1165	Bakrow, R. B. & Bro.
M. 883	Bakrow & Bro., R. B.
M. 1500	Baptist World Pub. Co.
M. 2937	Beasley, W. H.
W. 310	Beeten, Calvin E.
W. 380	Becker, C. H. Jr.
S. 2596	Beverman, Wm.
S. 895	Blancagneil, W. N.
W. 689	Bode, Chas. H.
E. 510	Bohn, H. A.
W. 324	Briel, C. W.
S. 602	Bruen's Hotel & Café
M. 1216	Bryan, J. E.
W. 879	Buchold, A.
S. 1430	Burnett Ave. Pharm.
M. 2437	Capitol Steam Laundry.
S. 3070	Centennial Groc. & Cream.
M. 2896	City Hall Phar.
M. 2589	Clem, Frank.
E. 490	Clifton Bakery.
W. 756	Cohn, H. S.
M. 2483	Contract The (Cleaners & Pressers).
M. 1420	Coppage Café Co.
M. 2410	Cornell & Bridwell.
M. 1288	Corso & Son, J. B.
M. 1070	Dicken, Henry.
M. 1410	Dickson & Eurton.
S. 2274	Eckerle, Edw.
S. 635	Eichhorn, G. E.
S. 1392	English, R. C.
S. 2700	Fernow, Edw. J.
S. 1970	Ficks, Jno. C.

S. 168 Fischer, Geo. A. & Co.
S. 2136 Fischer, Geo. A. & Co.
M. 2080 Geivel, J. Wm.
S. 226 Grieshaber, F. A.
M. 3216 Grom, Wm.
M. 3700 Baltimore Dairy Lunch.
E. 104 Hoffman, John, Jr.
S. 250 Miller, Chris. & Sons.
M. 2583 Haley & Hester.
M. 2599 Hartell & Abbott.
S. 1003 Hawkins, F. W.
W. 280 Herp, Chas.
W. 148 Hess, W. H. E. & Co.
E. 1001 Highland Cleaners & Pressers.
M. 868 Hollenach, Phil & Co.
S. 2399 Hopkins, W. B.
S. 1881 Hurley, Horace O.
S. 2036 Hurley, Horace O.
S. 465 Jacob, Mrs. Jno. C.
M. 1552 J. & J. Tailoring Co.
M. 714 Jasper, E. M.

2878

M. 1560 Johns, M.
M. 698 Jones, Simon N.
S. 2837 Kachler, Frank J.
S. 1758 Kahn & Cohen.
W. 316 Kannapell, F. N.
S. 753 Katzman, Harry.
S. 628 Keaney, Thos. J.
M. 850 Ky. Garment Cleaning Co.
S. 302 Kilgus, J. E.
S. 849 Korfage, Geo. F.
W. 271 Kranz Bros.
M. 372 Krieger Drug Store.
M. 2548 Krieger Drug Co.
W. 145 Krul, Wm. F.
M. 231 Kunz Co.
M. 1370 Kurz, Herman.
M. 1397 Lenox Hotel.
S. 1980 Leunenberger & Co.
M. 3554 Levi, Henry.
S. 920 Link, Louis.
M. 3067 Lou. Furn. Co.
M. 2481 Mack & Judge's Café
S. 2832 Magnolia Creamery.
M. 1395 Maneman, C. R.
E. 1044 Mann, Geo. R.
S. 581 Marcus, A.
M. 2836 Mathey, Dolph (Café).
M. 859 McCabe & Cummins.

M. 2726 McElroy & Shannon Spg. Bed Mfg. Co.
S. 1138 McGee Drug Co.
M. 2581 McKinley, W. H.
M. 1286 Mendelsohn, J. L.
E. 81 Mueller, Otto E.
M. 922 Millard, Bobbie.
M. 274 Miller, Mollie.
M. 3390 Model Lace Curtain L.
M. 961 Murray, Harry.
M. 586 Nagel's Confectionery.
M. 759 Nock & Snyder.
S. 99 Norwood, W. H.
M. 2787 November, B.
S. 2052 Oakwood Pharmacy.
E. 168 Oatey, Ernest.
S. 2685 Ormsby Ave. Phar.
M. 2479 Orrill, Rosa.
S. 1530 Overberg, Jos.
M. 3090 Patrick Bros.
M. 2117 People's Market.
M. 1284 Petty, T. A.
S. 855 Pfau, C. E.
M. 2480 Pickler, Geo. L.
W. 739 Portland Laundry.
M. 457 Prospect, The.
M. 1210 Rademaker Seed Co.
M. 2540 Randolph, E. G.
M. 3080 Reeb, H. J.
M. 267 Regal Tailors.
S. 49 Reis, Geo.
M. 265 Reker, Tony.
S. 1180 Rice, W. H.
M. 1524 Rothchild A.
M. 153 Rufer Hotel.
M. 323 Schafer, I.
S. 621 Schlange Bros.

2879

M. 102 Schlosser Bros.
W. 464 Schmitt, Peter B.
W. 890 Schneiders' Sons, A.
M. 3143 Schoening & Co., H.
S. 2340 Schuman, Joe.
S. 506 Schuster, J. G. A.
M. 316 Schwarz Bros.
M. 1224 Schweitzer, Fred E.
M. 1042 Shipley & Co., Ben.
S. 962 Shipley, W. H.
S. 1664 Snow White Laundry.
S. 491 Southern Drug Co.
M. 671 Stag Hotel.

M. 917 Stickler & Son, J. B.
M. 2259 Stitzel Dist. Co.
W. 402 Stork, Ben.
M. 676 Tafel & Sons, C.
M. 237 Taylor & Co., T. P.
M. 355 Taylor & Co., T. P.
M. 239 Taylor & Isaacs Drug Co.
W. 681 Thome, Carl.
M. 2587 Thomas & Bassett.
M. 332 Treber Drug Co.
S. 954 Troxler, Jr., C.
E. 990 Valet, The.
M. 722 Vandiver, J. A.
M. 1120 Vaughn, Ethel.
S. 1640 Wallshield, M. J.
E. 565 Weindel, J. C.
M. 729 Weisenstein & Co., Jno.
S. 1614 Weiss Bros.
S. 1374 Wells, S. T.
M. 2484 Westerfield & Bonte.
S. 1160 White, W. E.
W. 180 Winges, Geo.
M. 579 Winkler, W. E.
S. 2022 Winslow, V. V.
S. 860 Wulf, J. H.
E. 83 Young, W. B.
M. 950 Zaami, Peter.
M. 1994 Zubrod & Co., Geo.

2880 *Business Pay Stations,* 10%.

M. 2606 Abel, Martin.
S. 2852 Ackerman, E. & Son.
M. 2588 Adams, F. X.
M. 1345 Adams, H. J.
M. 1506 Adams, Jno.
W. 58A Erney, C. J.
M. 1908 Bagot, K. D.
W. 958 Ball, A. W.
W. 848 Barnes, Lee M.
M. 1922A Baron, Louis.
M. 2586 Bauer, M.
S. 2591Z Bawel, Rudolph.
W. 55 Beeten, Frank.
M. 1611 Bender, Fred.
S. 1753 Bender, H. A.
M. 1380 Benedict, Jennie C. & Co.
S. 2593 Bessendorf, V.
W. 304 Beyer, Geo.
W. 368 Bibb, R. H.
W. 230 Biehl & Hofstatler.
M. 3347 Block, H. D.

M. 1987A Block, T. L. & Co.
S. 2008Y Bloemer, Frank.
M. 1580 Bloemer, F. V.
M. 3708 Bode, Wm.
W. 418A Boeswald, Chas.
W. 7Y Boone Meat Market.
M. 3214 Burban Hotel.
W. 979 Bridwell, C. W.
M. 1409 Britenbach, F.
M. 2873 Brown, L. A.
W. 460Y Breuchler, Matt.
M. 1437 Buch, C.
S. 2805 Buehner, H.
M. 1329 Buster, E. J.
W. 620 Butler, Geo. J.
M. 1706 Button Bros.
W. 805 Campbell, Jno.
M. 2858 Canfield, Thos. J.
M. 1037 Carraro Bros.
M. 3035 Caydel, Mrs. C.
E. 29 Cherokee Golf House.
M. 3367 Cherry, Chas.
M. 1514 Churchman, Geo. J.
W. 7A Cleaver, Jno.
M. 1206 Cole, Thos.
W. 460A Crone, C. O.
M. 3645 Cummings, Wm.
M. 2900 Davidson & Murphy.
M. 1208 Davis, R. L.
M. 2895 Deddens, Herman.
W. 578A Deiss, Fred.
S. 2762 Deppen, Jno. P.
M. 1614Y Desse, C. H. & Son.
M. 3061A Diehlman, J.
M. 3761Y Dillman, Fred E.
M. 3070 Drew Bros.
S. 2721 Droppelman & Tobe.
M. 2506 Dumstorf, Theo.
S. 488A Dunigan, Stephen.
W. 348A Dupere, Jno. T.

2881

M. 2089 Eckert Hotel.
M. 2853 Economy Groc. Co.
S. 2251Z Edelen, G. L.
S. 2782Y Eiler Bros.
W. 540 Eilers, Henry E.
M. 1929 Erasmine & Kastner.
M. 3180 Fahey, J. B.
S. 2758 Fehribahc Bros.
W. 558 Feige, Adolph.

S. 2750A Feldman, Geo.
S. 2890 Fenz, Bernhard.
S. 2798 Finley, Alex.
W. 660 Fischer, Geo. A.
S. 2731 Fitzpatrick, M.
S. 527A Flanigan, Mrs. Mary.
M. 2920 Fleischaker, Wm.
S. 2251A Ford, C. J.
M. 3179 Fourth Ave. Hotel.
S. 3023Y Franz, Otto.
W. 78 Frehling, L.
M. 921 Frick, R. J.
M. 3643 Gambert & Geibel.
S. 2743 Gannon, Jno.
W. 24 Gassman, Geo.
M. 3151 Gentile, Frank.
M. 2202 Globe Steam Dye Works.
E. 989 Goemmer, Otto.
W. 61 Goering, Theresa.
M. 1922Y Gold, J.
M. 1987Z Gottbrath, Joe. & Co.
W. 480 Graf, Thos.
M. 3350. Graft, Jacob.
M. 2100 Grauman, D. E.
S. 2751 Grenwell, J. A.
M. 3892 Grote, Chris.
M. 3647 Grote, Wm.
W. 353 Gruber, Jno. L.
S. 2793A Grimmer, Frank.
M. 2700 Bosler, Nick.
M. 2261 Capitol Hotel.
M. 1926 Enterprise Hotel.
M. 1690 Farmers Home Hotel.
M. 2346 Haager Bowling Alley.
W. 840Y Hadfield, W. A.
W. 910 Happy Jack's Saloon.
S. 2757 Haragon, J. N.
S. 2008M Harbsmier Bros.
S. 2589 Hartstern Bros.
M. 2887 Hauber, A. & Son.
S. 767Y Hawkins, Z. T.
M. 3730 Heer, Moritz.
S. 2251Y Heffernan, P.
M. 994 Hehl, Robt. F.
S. 2733 Heitkamper, B.
M. 3812Y Hellenthal, Peter.
S. 2791Y Hempfling, A. F.
M. 3716 Hendricks, Jno.
S. 767A Herman, C.
M. 3540 Herman, Emil.
W. 168 Heuser, J. L.
M. 3002 Heuser's Pharmacy.

S. 2750Y Hinkebein, J. H.
M. 3040 Hirsch, M.
W. 6 Holland, Mrs. M. A.

2882

W. 64 Holloran, N.
M. 1952 Hortsman, J. W.
W. 51 Hourigan, Jas.
S. 2591 Huesman, E. H.
M. 2905 Hugelmeyer, L. W.
S. 680 Ising, Wm.
M. 2571 Jaroach, Jos. F.
S. 1748A Kampfmueller, C. A.
W. 26 Keller, Christ.
W. 248 Keller, Geo.
M. 1644 Kemp & Co.
S. 1132 Kernan, Frank.
W. 44 Kice, J. H.
S. 2592Y Kilgus, J. F.
W. 897 Kilker, Jno.
W. 820 King, B. H.
M. 1654 Kissel, L. A.
S. 2793M Klarer, Lambert.
W. 800 Klarer, Leo.
S. 2809 Kleier, Ernest.
S. 279 Klippel, C. Bro.
S. 2821 Klumb, Frank.
M. 958 Klusmeyer, W. F.
W. 890 Knauer, Fred.
M. 1316 Koch, Chas.
M. 3840 Koch, Wm. Jr.
M. 2564 Koehler, Mill L.
M. 3833 Kohlmeier, Peter.
M. 2035 Kolb, J. Alton.
M. 2315 Kottman, Joe.
W. 840 Krekel's Pharmacy.
W. 73Y Krull, Jno. G.
E. 975 Kruse, Wm.
W. 62 Kuckenbrod, A.
W. 320A Lacher, Fred.
W. 330 Lamping, W. F.
W. 53 Lamburtes, Chas.
S. 1753Y Langolf, Geo. J. & Son.
M. 2855 Lauer, Henry C.
S. 2590Y Lehman Bros.
W. 6M Leonhardt, A. H.
W. 537 Leonhardt, Fred W.
M. 2990 Lepping, Dora.
M. 1005A Lepping, Jno.
M. 2426 Leverone's Café.
M. 2135 Levy, S.

S. 2711 Linder, Ed. E.
M. 2094 Linton, W. F.
M. 1440 L. & E. Packet Co.
M. 2191 Lou. & Sou. Ind. Trac. Co.
S. 2590A Lubbers, D.
S. 2742 McCleary, A. R.
W. 750 McDevitt, Wm.
M. 3620 McDonald, Stockdale Co.
M. 1915 McFarland & Sons.
W. 813 McHugh, Mrs. D.
W. 710 McKibbin, A. J.
M. 2514 McNally, Tom.
S. 2749A Meerman, Jno.
W. 39 Mehringer, A. J.
S. 2008A Melton, C. F.
S. 2741 Menar, Ernest N.
S. 2806 Metzroth, Jno.
W. 708 Miller Bros.

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S. 2781 Miller, J. J.
M. 2110 Miller, Louis,
M. 2306 Mitzlaff, H.
W. 518A Mitzlaff, O.
M. 2590 Moeller, Geo.
S. 2713 Moorman, H.
W. 38 Mosser, Ed.
M. 3118 Muench, Julius.
M. 3812A Mussler, Martin.
W. 75 Nelligan, P. J.
W. 83 Netherton, C. W.
W. 18 Niemeier, H. Jr.
W. 538 Nold, Chas. W.
E. 988 O'Brien, J. H.
S. 2722 Obst, Chas. J.
S. 2783 O'Connell, Wm.
S. 2068 Ohmann, Fred.
M. 2630 Peinz, F. J.
M. 1780 Peinz, F. J.
M. 1960 Pelle Bros.
M. 2095 Peoples Drug Co.
M. 3808 Perkins, F. M.
M. 2841 Pierman, Joe.
S. 2591M Plouvier, Mrs. P.
W. 268 Quatman, Rosa.
W. 518Y Quinn, Mrs. H.
W. 342 Rapier, C. P.
M. 2642 Rectanus, Theo.
M. 2612 Reed, C. E.
S. 3023M Riechle, Jacob.
M. 2865 Reising, Chas.

S. 952Y Reuck & Grasmick.
W. 288 Rhodes, Geo.
S. 2749Y Rickert, J. F.
M. 3668 Roach, G. B.
S. 1523A Rocap, D. C.
M. 1614A Roe, Chas.
S. 2703 Ross, J. H.
W. 20 Rowland Bros.
S. 2732 Rueve Bros. H.
W. 665 Rusche, Joe.
W. 68M Rush, G. A.
E. 769 Rush, Joe.
S. 527Y Rush, P. J.
M. 2293 Russell, J. A.
M. 2012 Samuels, Mrs. Nora C.
M. 2644 Sandmann, Ben.
M. 2862 Sandmann, Jno.
M. 1866 Sauer, A.
M. 820 Schafer, Frank.
E. 646 Schenck, Chas.
M. 2907 Schenck, Ed.
S. 2816 Scherzinger, Theo.
S. 3023A Schick, Fred.
E. 768 Schimpler, Max.
M. 2470 Schindler, Jos.
M. 3051Y Schmitt, Joe.
S. 2793Y Schott, Wm.
W. 578Y Schraffenberger, Fred.
M. 2731 Schroder, Henry.
M. 1232 Schulte, Henry.
M. 2451 Schulz, Lee.
S. 2802Y Schuster, J. G. A.
W. 828 Schweizer, Frank.

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W. 138 Seeger, Louie.
M. 1615 Seiberz, Jno. J.
S. 2592M Seidel, W. B.
M. 1637 Seitz, Jno.
S. 2597Y Selter, Miss T.
M. 1910 Siltman, Henry.
M. 2072 Simms, F. V.
S. 2008Z Simon, Geo.
S. 2251A Simon, Peter.
M. 1986 Simon, K.
S. 2402 Smithers, Miss L.
S. 952A Sonne, J. P.
S. 2714Y Stammel, Geo.
S. 2706 Stark, Jr. Jno. B.
W. 450 Stauber, Geo. C.
W. 878 Steverson, Mrs. E.

S. 2819 Straub, Jno. C.
M. 2550 Straus & Sons.
M. 3920 Sullivan, J. J.
M. 3061 Sullivan, Thos. J.
M. 3284 Thoben, Geo.
W. 560 Tichenor, A. W.
S. 524A Tierney, M.
M. 2398 Tonini, Ferdinand.
M. 1860 Trebing Hotel.
M. 1415 Uhl, Geo.
M. 2640 Up to Date Restaurant.
M. 2404 Veeneman, J. H.
W. 58M Von Allmen, C.
W. 478 Wagner, A. H.
W. 45Y Walker, M. D.
W. 378 Walsh, R. F.
M. 3912 Weber, Jno.
W. 580 Weilman, Albert.
W. 39 Weissrock, Jerome.
W. 58Y Wells, L.
W. 6Z Wempe, Geo. C.
S. 2782A Wiggington, T. E.
M. 3790 Wiggington, W. M.
W. 68Y Will, Chas.
E. 417 Wills' Cafe Louie.
S. 2827 Williams, R. D.
E. 981 Willinger, A.
M. 1882 Woelflin, Wm.
S. 2803 Wolf, Jas.
M. 3622 Wolf & Sons R.
S. 2834 Yenawine, J. J.
E. 971 Young, H. G.
M. 1267 Yount, W. B. C.
M. 3025 Zabel, Chas. L.
E. 767 Zabel, Gus.
W. 760 Zahn, Carl O.
S. 2592A Zeigler, Frank.
M. 1912 Zutt, Dan'l.
M. 1982 Post Office.
M. 3562 Penna. R. R.
M. 3022 Seventh Ave. Hotel.
M. 2009 Victoria Hotel.
M. 2010 Wallner, P. H.

2885 *Business Pay Stations.*

E. 547 Baass, H., 2 Jt. Users..... 6.00
W. 424 Eclipse Vinegar Works, Ext. Bell..... 4.15
M. 1665 Glenview Station..... 6.50
Blank Galt House.....P. S. Trunk.
M. 3036 Galt House.....P. S. Trunk.
S. 2701 Harpring, L. H., List..... 4.17

E. 481	Jansing, Jno. D., Jt. User	5.00
M. 1282	Klishman House (The), List	4.17
M. 457	The Prospect, Ex	1.25
M. 3080	Reed, H. J	1.75
W. 1	Cum. Tel. & Tel. Co	0
S. 1	" " " " "	0
E.	" " " " "	0
M. 3267	Columbia Bldg	0
M. 2061	Cumb. Tel. & Telg. Co	0
M. 2062	" " " " "	0
M. 2063	" " " " "	0
M. 2064	" " " " "	0
M. 1458	Fifth Ave. Hotel	0
S. 523a	Kenwood Park	0
M. 2981	Lou. & East. Ry. Co	0
M. 1430	Lou. & Jeff. Ferry	0
M. 3013	L. & N. Railroad Co	0
M. 301a	" " " " "	0
E. 324	Lou. Ry. Co	0
W. 77	" " "	0
W. 76	" " "	0
W. 73a	" " "	0
W. 71	" " "	0
W. 70	" " "	0
S. 2824	" " "	0
S. 2524y	" " "	0
S. 2822	" " "	0
S. 2255	" " "	0
S. 2850	Norton Memorial Inf	0
M. 3978	Old Inn	0
M. 3019	Union Depot	0
M. 3016	Willard Hotel	0
	Lou. Hotel Co., 8 Pay Stations	Free.
M. 2092	Noramdy Hotel	0
M. 1072	Renz Drug Store, 1 Jt. User	5.00
E. 206	Zehnle, R., 2 Jt. User	6.00

2886 *Residence Pay Stations,* $1.00.

W. 59Z	Albers, Henry.
E. 852	Albrecht, Gus. Jr.
M. 3861Y	Allen, J. M.
S. 2886M	Allen, J. M.
E. 759M	Anderson, Edw. C.
W. 917Y	Andriott, Peter M.
S. 2332A	Anz, Adam.
S. 2553M	Arnold, A. M.
W. 507M	Arnold, J. W.
S. 3016M	Aronson, L.
M. 3726	Ashby, C. S.
M. 3563	Bachman, H.

S. 2379A Bagby, R. C.
S. 3062Y Bagerly, Mrs. C. M.
S. 3064M Baird, W. T.
S. 2582Y Baker, J. K.
W. 593A Baldwin, Mrs. Kate.
M. 3803A Bardin, Geo. W.
S. 2166A Barlow, J. S.
S. 2099Y Barnett, Mrs. J. C.
S. 2689A Basler, J. E.
M. 3656 Beahl, Miss Mary.
E. 1028A Bell, Mrs. C. J.
W. 959A Bender, Fred. M.
W. 507Y Bennett, Jno. Jr.
S. 3024 Berry, Mrs. Ellen.
S. 2302Z Beuther, Mrs. A.
W. 962A Beyer, Emil.
S. 2976M Black, J. C.
S. 2107 Blackford, Dr. W. F.
W. 715 Blincoe, J. C.
S. 2091 Blitz, Sam'l. S.
E. 935Y Boegerhausen, H.
W. 723A Boettler, B. H.
S. 2910Y Bohlson, Henry.
E. 553A Bohn, Wm. H.
W. 804A Bolger, Jno.
M. 3502 Bomar, H. V.
S. 2492 Bonner, A. D.
E. 1129A Borntrager, G. F.
S. 2179M Boswell, C. R.
M. 3093 Bottoff, Mrs. Mattie.
W. 46A Bouse, Geo.
W. 337A Bolling, M. F.
W. 141Y Bradley, Mrs. Julia.
W. 961Y Brand, Alfred.
W. 793Y Brands, Theo.
S. 2818Y Breckler, A. M.
S. 2206M Brennan, Mrs. M.
W. 421A Brenner, Mrs. Eliz.
S. 2088M Breslin, Mrs. F. J.
E. 456 Brock, M. W.
S. 1882Z Broderick, T. H.
S. 2437A Brooks, Mrs. Edw.
W. 507A Brown, E. H.
E. 1039A Brown, Henry E.
S. 2267Y Brown, J. B.
S. 2913Y Brown, J. S.
S. 2444A Brown, W. A.
E. 1131Y Brunck, Jno.

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W. 209 Bruner, W. T.
W. 789Y Bryant, J. B.

M. 3003A Buckman, C. R.
S. 2102M Buechl, Edw. J.
M. 3763 Burch, Guy E.
E. 621A Burke, P. J.
S. 2895A Bussey, Mrs. Mattie.
M. 3551 Calveard, S. R.
E. 1084A Campbell, Mrs. J. V.
M. 3728 Carman, W. T.
S. 2454 Carr, A. D.
E. 1062A Carrithers, Chas. I.
M. 3607A Carson, M. G.
M. 3739 Carter, I. E.
E. 477A Carter, Dr. Roy.
S. 2792A Catlin, Ollie.
W. 141Z Cecil, R. L.
S. 2100Z Cerf, M.
E. 1052 Cheatham, A. L.
E. 1002A Choate, Dr. Ben.
E. 1076Y Chowning, J. R.
S. 1365A Chreste, Mrs. Geo.
W. 755A Clark, A. G.
E. 789A Clark, Edwin.
W. 937A Clark, Mrs. Hallie P.
W. 516 Clay, E. W.
E. 1036 Clingman, Wm. F.
E. 1106A Cochran, Jas. A.
W. 421Y Cofer, L. L.
E. 1104Z Cohn, Edw.
S. 983Y Collins, Dennis.
W. 3874Y Collins, Mrs. T.
S. 2232M Collins, T. W.
W. 557A Comer, G. P.
S. 3068A Conn, H. J.
W. 624 Connelly, A. F.
W. 141M Conner, L. S.
W. 331Y Coombs, Wm. E.
S. 2947Z Cooper, Jno. T.
M. 3815A Corbin, Mrs. D. W.
M. 2786 Corrigan, F. E.
E. 741Y Cox, R. Gratz.
S. 3075Y Cradick, E.
E. 1068 Crawford, Wm. W.
S. 585A Crittenden, H. C.
S. 2937 Croft, Dr. Geo.
S. 2884Z Cummins, C. L.
S. 3005Z Dabelstein, Chas.
S. 2761Z Dages, W. T.
W. 304A Daniell, Mrs. Harry.
S. 2229A Daubert, Chas. L. W.
E. 74M Davidsen, J. R.
S. 2272Y Dawson, Mrs. J. W.
S. 2684Y Dawson, R. A.

S. 2988 DeBow, H. M.
E. 174Y Decker, Adam F.
W. 819A Denhard, Mrs. L.
E. 73 Deutsch, Mrs. Carl H.
M. 3813A Devan, Mrs. E.
W. 608Y Dey, Wm. G.
W. 802Y Dick, Dora H.
E. 407Y Ditto, C. J.
W. 508A Donohue, Mrs. Mary.

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S. 1365M Dowling, P. J.
S. 2671 Drake, Mrs. J. W.
W. 961Y Dreier, E.
S. 2972 Drisdale, E. C.
W. 661A Duckwall, A. H.
W. 141A Duckwall, E. D.
W. 875A Duckwall, Mrs. E. L.
M. 267Y Durning, Miss Margaret
W. 896A Dusch, Jos. F.
S. 2953M Ehrmann, G. A.
E. 85A Eicher, Philip
W. 994 Endrich, Mrs. Matilda
W. 67Y Engelmann, H. M.
S. 3087A Epperson, Jno. P.
S. 2287A Erasmine, Mrs. Rose
W. 887Y Erberle, Jno.
S. 1412Y Esterle, Mrs. Bettie
S. 2875A Etzel, Geo.
W. 501A Eury, H. E.
S. 2186A Evans, P. A.
S. 2978Y Fielden, Mrs. S. V.
M. 3549Y Fieldhaus, A. E.
S. 2046Z Fink, E. F.
E. 1012A Fitzgerald, M. A.
S. 2142A Flahive, P. M.
W. 81A Flanagan, J. P.
S. 2788A Flynn, Jas. T.
S. 2359M Forsee, Dr. C. J.
S. 2958 Foster, Jno. A.
E. 741Z Freudenberger, J. J.
W. 644 Friedel, J. C.
W. 838A Gaar, Mrs. H. F.
W. 59Y Gaertner, Wm.
E. 412 Gailbrath, Mrs. S. T.
S. 2910A Galvin, J. W.
S. 2818M Gardner, Louis C.
E. 572A Garrity, T. H.
S. 2504M Gatto, A.
E. 1125A George, Ed.
E. 103Y German, Phil T.
S. 2948A Gibson, Mrs. Emma

W. 92Z Gibson, Jno. B.
M. 3817A Gilchrist, Miss Minnie
S. 2859 Golden, T.
S. 2772Y Goodwin, W. W.
S. 3002A Gossett, Dr. Walker D.
S. 2289Y Gottwald, Frank
W. 975Y Graefenhan, A.
W. 528W Graefenhan, A. J.
E. 306A Graft, Mrs. Eliz.
W. 114Y Grant, Mrs. H. B.
S. 2023A Graves, Miss Libbie
S. 2618Z Gregory, W. F.
W. 559A Gresham, J. M.
W. 872Y Griffin, Joe. T.
E. 64Y Guecks, Mrs. L.
W. 899A Gudex, Chas. L.
S. 2974Y Hack, N. J.
S. 2179Y Haehl, Chas.
E. 736A Haile, Mrs. Minnie
W. 867M Hall, Ernest
S. 2978A Hall, Thos. E.
W. 559Y Hampton, Irvine
W. 898Y Hampton, W. R.

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W. 1004A Hansen, R. E.
S. 1637Y Happell, Frank
W. 395A Harrington, Julian S.
S. 1725M Harris, L. Lee
M. 3644A Harris, Paul F.
S. 2165Y Hardigan, Mrs. Jas.
S. 1414Z Hatcher, H. P.
W. 630 Head, E. P.
S. 2618M Healine, Frank J.
M. 3504A Hebebrand, P. A.
W. 1027A Heck, Mrs. J.
W. 536Y Heck, Mrs. Louis
E. 294Y Heddin, Curtis
E. 656A Heeb, Helen
S. 2099A Heilman, J.
S. 2384A Heitkamper, B. C., Sr.
W. 797Y Hemp, C. W.
E. 68Y Herbert, Rosa
W. 34A Hess, C. F.
W. 28A Hesser, W. G.
E. 1057A Hibbs, Mrs. H. C.
S. 2737M Higgins, P. A.
E. 65A Hillen, Mrs. Geo.
S. 2097Y Hillard, Mrs. B. C.
S. 1944Y Hinderer, Mrs. A. G.
S. 3058A Hinsley, Geo. W.
S. 1091A Hirsch, Albert

M. 3799Z Hirsch, E.
W. 859A Hobbs, R. R.
S. 2256M Hoertz, Adam
W. 536A Hoey, Jas. F.
W. 988M Hossftatter, Miss M.
E. 1161A Hoke, Miss Iva
E. 1149Y Hollingsworth, L. D.
W. 975A Holmes, Mrs. E. L.
S. 2763 Hopkins, W. L.
E. 1134Y Huber, Leonard, Jr.
S. 2304A Huber, Samuel
W. 867Z Huhn, Jno. E.
W. 303A Humphrey, Chas. A.
S. 1105A Hubrich, Miss Mary
E. 311 Humphries, T. C.
M. 3455Y Ianke, R.
W. 131Y Ireland, Mrs. Fannie
W. 718Y Irvine, V. H.
S. 2314Y Isenberg, Alfred
S. 2869Y Jackson, J. R.
W. 806Y Jackson, Oscar
W. 9A Jewell, Curtis D.
S. 2329 Johnson, G. E.
E. 1107A Johnson, Mrs. E.
W. 661Z Johnson, Mrs. S. B.
E. 365A Jones, Miss Anna F.
S. 1823Y Jones, C. H.
S. 2100A Jones, J. A.
W. 21Y Jones, Jno. H.
W. 448 Kanston, Aulyn E.
W. 716Y Kavanaugh, Miss Kate E.
W. 306 Kepp, Jno. F.
M. 3782A Keightly, Mrs. Ella B.
W. 521A Killer, Dr. Wm. A.
S. 2332Y Kelley, Jas. J.

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E. 333A Kelley, M. P.
W. 352A Kellsall, Dr. O. H.
S. 2409 Kennedy, Grace A.
E. 1062 Kennedy, Jno.
W. 992Y Kenney, Mrs.
E. 458A Kerlin, L. W.
M. 3711Y Kerrick, Miss Mattie
W. 298 Kerrick, W. M.
S. 2287Z Kessler, Dr. P. L.
M. 3744 Kimbel, J. J.
E. 365Y King, J. B.
S. 2169Y Kipp, M. C.
S. 3022A Kirk, Mrs. G. A.
S. 1822A Kissell, Mamie
S. 2236Y Kline, G. E.

S. 2163A Koingelsmith, A. W.
M. 3057A Klumb, Nick J.
S. 2883Y Knapper, Geo.
M. 4490 Knight, Agnes
S. 2248M Knighton, Mrs. Lon
W. 663A Knock, Dr. E. H.
W. 634 Kohler, Miss Alice
M. 3053Y Krauth, F.
E. 1104A Krull, Edw. A.
W. 854A Kohn, Jos.
S. 2912Z Lally, Mrs. J. D.
E. 810 Lanahan, Thos.
S. 2236A Lancaster, Miss B.
W. 82 Landrum, W. H.
E. 571Y Lang, W. F.
W. 767M Larkin, E. T.
E. 759Y Larkin, Jno. E.
W. 48A Lavely, A. E.
S. 2248A Leake, Jno. S.
S. 2744Y Le Bree, Mrs. Louis
M. 3705 Leet, Mrs. L.
E. 442Y Leezer, Dr. J. R.
E. 492A Leonard, B.
S. 2277Y Lewis, Lee
M. 3590 Lillian, Mrs. E.
S. 3061Y Lindig, Geo. H., Jr.
M. 3791A Linton, W. H.
M. 3412A Littrell, Robt. E.
W. 907 Locke, Wm. P.
W. 569A Long, J. R.
S. 2348Y Long, Phil D.
W. 1021Y Lovett, M.
M. 3663 Ludwig, W. E.
E. 459Y Lurding, Henry
S. 2516Y Lutz, F. L.
E. 736Y Lynn, C. H.
W. 893A Lyons, Mrs. M. J.
M. 3737A Madden, D. H.
S. 2232A Magness, J. H.
S. 2895Y Maloney, J. J.
W. 677 Mannion, Miss Maggie
S. 2747A Mann, Owen R.
E. 294M Mapother, T. C.
W. 296Z Marcell, A. G.
W. 855 Martin, J.
S. 2875Z Martin, Jno. T.
S. 2726A Martin, T. H. L.
S. 2927Z Martine, J. P.
S. 2956M Mason, Mrs. S. L.

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S. 1237A Mason, W. W.

E. 351A Matthews, F. W.
S. 2722Y Maury, Mrs. J. P.
E. 15 Maynard, C. N.
S. 2689M McBride, W. H.
M. 3537A McClelland, M.
M. 3043 McCosh, M.
E. 531Y McCoy, Dr. S. C.
E. 408A McCoy, L. M.
M. 3754Y McDaniel, L. C.
S. 1399A McDonough, Edw. J.
W. 1008A McElroy, R. H.
S. 1137Y McGill, Miss Nellie V.
M. 3555A McGinn, Jos. P.
S. 3098 McGlothlin, W. J.
S. 2582A McGrath, Wm.
M. 3773A McGuire, C. J.
S. 2236M McKenney, E. B.
S. 3064Z McKenny, G. W.
S. 3072Y McLeland, C. V.
E. 1126A McLaughlin, M. E.
M. 3057A McLaughlin, Thos.
S. 2156A McPhie, F. R.
W. 955A Meddis, C. S.
W. 32 Meisner, Mrs. Jno.
W. 888A Meyer, Edw. C.
W. 819 Middleton, Geo. R.
W. 444Y Miller, G. A.
S. 2397A Miller, Miss Lula.
S. 2232Z Miller, W. A.
W. 867Y Mills, Mrs. Anna.
S. 2533Y Mills, W. S.
W. 898A Mittler, Mrs. Emily.
S. 2902M Mix, Miss L.
S. 2910M Moir, Dr. Charles.
S. 2995A Moll, Edw. L.
S. 3029A Monsch, Mrs. H. J.
S. 2947M Moore, Mrs. Emma.
S. 3095Z Moore, H. B.
M. 3791Y Moore, Mrs. Louisa.
M. 3736 Moran, Ed.
S. 2981 Morgan, E. W.
S. 2776Y Morgan, Mrs. H.
W. 701M Morris, Mrs. James.
W. 967 Moss, Forrest.
S. 3093Y Mudd, Jas. A.
W. 701A Mullen, Mrs. Ella.
E. 615A Mullins, E. Y.
S. 1399Y Mulloy, Mrs. Ella.
M. 3629A Musselman, J. J.
W. 968A Myers, L.
M. 3675 Neff, Dr. Chas. O.

E. 1047A Newhall, Wm. H., Jr.
E. 1085 Newman, H. W., Jr.
S. 2930Y Nichols, W. H.
E. 976 Nightingale, Jno.
M. 3432 Noble, Clarence.
E. 731A Noelling, Sophia.
W. 303Y Noland, G. K.
W. 481A Nuss, Mrs. Edna.
S. 2472Z O'Bryan, Catherine.
S. 2299A O'Connell, Mrs. Mary.
M. 3769Y O'Connor, Mrs. Kate.

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W. 866A O'Neal, J. J.
W. 1012A Osborne, Prather.
E. 944 Ouerbacher, A. N.
W. 184 Palmer, E. T.
S. 2997Y Parker, Mrs. E. J.
W. 21A Parsons, Mrs. L. V.
S. 2125Y Peake, Thad.
E. 85Y Peake, J. Walter.
E. 738A Pegram, Emma.
W. 224Z Pfeiffer, V. J.
S. 2163M Pfeiffer, P. E.
E. 74A Phelps, Joe.
S. 2844M Piazza, Jos. E.
S. 2302A Pitt, Mrs. L. C.
E. 642 Pohlman, Edw. J.
S. 2046A Pontrick, Mrs. Nick.
E. 734A Porter, W. L.
S. 983M Poynter, W. S.
W. 945Y Quaife, C. E.
W. 608 Queenan, Frank.
S. 3012A Quinby, C. L.
E. 452 Quinn, Chas. D.
W. 783Y Quinn, Thos. A.
E. 940 Rademaker, Mrs. Mary.
S. 3062Z Ragland, E. D.
E. 477Y Raleigh, Miss Alice.
E. 1076A Ramsey, Mrs. A. M.
M. 3825A Randall, J. D.
W. 67A Ransdell, Mrs. J. Ed.
S. 2318A Ratcliff, C. T.
M. 3692 Rau, Mrs. E.
W. 500 Reecius, Mike.
S. 1571 Reeser, F. E.
E. 650 Reidling, Mrs. Wm.
E. 741A Reisinger, G. A.
S. 2928 Renn, Matt. M.
E. 1057M Reutlinger, Adolph.
E. 311Y R-yerman, Aug. C.

W. 120Y Rice, Mrs. Anna.
S. 2153A Richards, M. L.
S. 2299Y Richardson, W. W.
W. 295 Rieke, Aug.
M. 3819Z Rigsby, Mrs. Eliz.
W. 189M Riley, J. F.
S. 2491Y Robinson, E.
M. 3695Y Robinson, H. W.
S. 2775M Robinson, Mrs. Jno.
S. 1738A Roelker, Mrs. Jno.
E. 291 Rogers, Geo. D.
M. 3836A Root, Geo. T.
W. 971Y Root, Louie A.
S. 3008A Rosenbaum, Henry.
S. 3019A Ross, J. Hunter.
W. 970M Rosson, Miss Mary.
E. 754A Ruby, Wm.
M. 3762A Rucker, Mrs. A. M.
S. 3005A Russell, Mrs. Isabella.
S. 3039A Russell, Joe C.
W. 968Y Rustenholz, H. E.
W. 889A Ryan, Jas. A.
W. 785Y Ryan, Mrs. M.
E. 1120 Ryan, W. F.
S. 3073Y Sacksteder, Overton.
W. 853 Salmon, Anna.

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W. 998A Sanders Miss Margaret.
M. 3807A Sanders, N. M.
S. 1823A Sanders, W. G.
W. 702A Sandidge, Edw.
M. 3824A Sandeman, C. J.
E. 130M Sapp, Chas. E.
W. 1046Y Scanlon, Mrs. Edw.
W. 463 Schanberger, H.
E. 847 Scheydt, Mrs. Jeanette.
W. 546 Schiffman, Miss Mollie.
E. 883Z Schleger, Mrs. Eliz.
E. 1111A Schmitt, Adolph.
M. 3361A Schmitt, Wm.
W. 819Z Schneider, Fred W.
W. 574A Schnerider, J.
S. 2463A Schnerider, Mrs. Minnie.
S. 2546M Schreeker, Jos. S.
M. 3775 Schweizer, A.
M. 3686 Seebolt, Mason.
W. 507Z Seiler, Amelia.
S. 1823M Shelley, T. W.
W. 789 Sherley, G. H.
S. 2918Z Sherman, W. R.

W. 627A Singer, C. A.
S. 3068Y Smith, Miss Anna.
E. 1073A Smith, Mrs. Cummins.
E. 905 Smith, H. McClaren.
W. 445Z Smith, Mrs. May.
M. 3769M Smith, Mrs. W. H.
W. 718A Snodgrass, W. A.
S. 757A Snyder, C. S.
E. 1122A Sorg, Lee.
W. 943Y Sparks, Geo. D.
M. 3537A Spies, Leo P.
S. 1852A Staebler, Mrs. Mida.
W. 892A Stanley, Mrs. C. R.
S. 2553A Stork, Geo. P.
M. 3779A Stauff, Anton.
M. 3731A Sticker, H.
S. 2362A Stiegerwald, Jno.
W. 767Y Stith, Mrs. M. E.
E. 333M Stockhoff, H. H.
S. 716A Stoddard, Mrs. Mary.
M. 3595A Stoltz, Dr. M. P.
M. 3670 Story, Thos. A.
S. 2472Y Strachn, Wm.
M. 3713 Strauss, Nathan.
W. 571Y Sullivan, E.
S. 1882Y Sullivan, Jno.
E. 972A Sullivan, Thos.
W. 1005A Summers, A. A.
E. 1103M Swann, W. P.
S. 2740Y Swartz, A. R.
S. 3007M Sweeney, Mrs. J.
E. 403A Schwenk, Mrs. Julia.
W. 3484Z Tanzey, Nettie.
S. 2836A Tarrant, J. C.
S. 1198A Taylor, Mrs. Louise.
S. 2314A Taylor, Dr. R. W.
E. 1013Y Thompson, Phil B.
W. 88A Tiller, Theo. F.
E. 84Y Tipton, J. W.
S. 2699A Schwab, Mrs. Mary.

2894

E. 564M Tobin, C. W.
W. 468A Todd, Mary E.
W. 260M Towels, Harry B.
W. 922A Tracy, J. W.
M. 3569 Tully, Jno.
S. 3054 Tydings, Lula.
E. 571Y Tyler, Miss Mary.
W. 636A Urich, Chas.
M. 3683Y Veeneman, Harry.

E. 1028M Veth, Aug.
W. 28Y Villier, Chas. A.
E. 1084M Vogel, J. J.
M. 3411 Vonderbeck, J. H.
E. 480 VonSiebelthal, Jno.
M. 3464 Waflart, Geo.
S. 3067A Walker, Miss Katherine,
W. 995A Walsh, Thos. F.
E. 251 Ward, J. D.
M. 3584 Ware, J. A.
S. 2934 Warfield, Jennie.
S. 2982A Wathen, M. E.
S. 2088Y Watkins, W. R.
W. 712 Watson, C. L.
E. 661 Webb, W. W.
E. 1102A Weber, Albert W.
W. 609 Weber, Miss R.
W. 349Y Weidley, Freda.
E. 1129Z Welker, Clarence.
E. 569 Welker, W. H.
E. 314A Welle, Mrs. M. H.
S. 3022Y Weller, Mrs. C. B.
S. 2927A Wells, L. L.
W. 521Z Welsh, J. C.
M. 3698 Wheatley, W. N.
S. 2875Y White, Anna.
E. 1110 White, C. W.
S. 2383Y Wieland, F. J.
S. 2671A Wigham, Joe.
S. 2961Y Wiley, Ernst.
E. 1048 Wilhelm, Jno.
M. 3598 Wilhoit, Dr. Fred.
S. 2748A Wilkerson, Mrs. J. H.
W. 131A Wilkes, Mrs. H. Dorsey
M. 3395A Williams, C. B.
E. 771Y Williams, Frank.
M. 3759A Williams, J. M.
M. 3453Y Williams, Dr. Jno. Mason.
S. 2179Y Williams, Mrs. R. D.
S. 1365Y Williams, W. H.
S. 1542M Willis, Frank R.
E. 693A Willis, T. N.
W. 693Y Wilson, M. S.
S. 2844Y Winkel, Nick.
W. 406A Wolf, Geo.
S. 2967Y Wood, Bryce M.
E. 691Y Woodruff, Jno. F.
W. 552A Wright, Dr. Jno. R
W. 473A Wright, W. L.
E. 741M Wyatt, R. H.
S. 2582 Wyble, Jno. C.

S. 2833A Young, W. H.
E. 783 Yuenker, Henry C.
E. 734Y Zarbell, Elmer.
E. 1100A Zimmerman, Mrs. P.
W. 865Y Zoeller, Edw.
W. 810M Zoll, M.

2895 *Residence Pay Stations.*

W. 571M Abel, Geo. L.
M. 3534Z Alexander, Coke.
W. 455M Allen, Mrs. Garland E.
S. 1542A Ameling, Wilfred C.
E. 262A Anderson, H. H., Jr.
E. 1154Y Ansboro, Wm.
W. 864M Arnold, Dr. A.
S. 3082A Backert, Joe.
E. 1155A Baird, Jno. A.
M. 3664M Baker, H. C.
S. 3082Y Balmer, Geo. H.
W. 804Y Bayer, T. W.
M. 3431Y Beasley, W. H.
M. 3538Y Beck, Jno. J.
E. 1127Z Beha, Thos. H.
S. 2553Y Bell, J. E.
S. 3050Y Bersot, A. R.
W. 944Z Biehl, Frank.
S. 2001Y Birr, Wm. E.
S. 2883M Boeller, Mrs. P. J.
S. 1852Y Bourke, Mrs. Virginia.
E. 1148Y Brandt, Mrs. Annie.
M. 3731Y Briggs, M. E. J.
M. 3495Y Bronston, Mrs. Mollie.
S. 2664A Brown, R. E.
S. 1608Y Brown, W. E.
S. 2679A Bryan, Mrs. J. M.
S. 2861A Buchold, Chas.
E. 553Y Burns, Mrs. Eliz.
E. 1132A Burton, J. C.
S. 2254Y Burwinkle, C. H.
M. 3704A Butts, Mrs. E.
W. 224Y Buyer, E. C.
W. 28Z Campbell, M. T.
S. 2179A Canada, Tilden.
W. 387Z Caron, Euphemia.
M. 3742M Carter, H. G.
E. 1129Y Cate, Mrs. C. I.
W. 548M Cawthon, Wm. C.
S. 2955Y Chapman, R. T.
S. 2689Z Chawk, W. J.
S. 983Z Chickering, B. C.

S. 2924Y Cissell, W. G.
W. 459A Clare, Wm.
S. 2332Z Cockerill, Wm. H.
W. 872Z Cohn, Mrs. L. B.
S. 2933A Coleman, Lula.
S. 2304Z Coombe, Mrs. Albert.
S. 2999Y Courtney, Mrs. M. C.
E. 738Y Covert, Mrs. B. H.
S. 2995Y Cronan, Mrs. K. C.
S. 2166Y Cropper, R. G.
W. 528M Crowder, Chas. P.
E. 130A Curtin, C. A.
W. 771M Davern, M. L.
S. 2861Y Davis, A. L.
S. 2305A Davis, Ike.
M. 3863A Dearing, Geo. S.
S. 2304M Delph, L. K.
W. 899Z Diehl, Theo. H.

2896

W. 1018A Donohue, T. A.
M. 3607Y Dorsey, Mrs. Fred.
W. 858Y Draut, Mrs. C. H.
E. 568A Dufficy, Jas.
S. 2001Z Dufficy, Thos.
E. 718A Eager, G. B.
W. 838Y Everenz, Cath.
S. 3095Z Eiff, J. G.
W. 775Z Eisenmenger, Rose.
E. 1136Z Eillinger, Mrs. S.
S. 2023Y Enos, Mrs. E. C.
S. 1927A Erdman, Chas. T.
W. 843A Esch, Mrs. Elsie.
W. 226Y Euller, Joe.
S. 2504A Evans, Miss Lola.
S. 2775 Farmer, Mrs. Harry.
W. 34Z Ferrell, A. P.
E. 230A Finger, Cath.
S. 2359Z Fink, Jno. M.
W. 763Y Finnegan, J. J.
E. 1119A Fisher, H. J.
W. 986A Fitch, Mrs. B. F. D.
W. 49Y Flahive, Mrs. Jno.
W. 898M Flemming, J. W.
W. 917Z Flynn, Jno. J.
S. 2737A Frantz, Dr. Theo.
E. 1124A Frazier, G. M.
E. 492Y Frenke, Henry H.
S. 2876Z Gabhart, Mark H.
S. 3075A Gassier, Mrs. L. E.
E. 382M Galt, Mrs. E. P.

W. 541Z Gare, Miss M.
W. 905Y Gates, W. H.
S. 2582A Gemung, W. J.
S. 3075M Gerard, F. W.
W. 893M Gerardin, Lizzie.
M. 3664Z Gesing, Wm. F.
W. 676 Gleeson, Mrs. P. J.
W. 789M Goebel, E. L.
S. 2277A Grabfelder, A.
E. 1086M Gray, A. L.
S. 2384Z Greene, Mrs. I. R.
W. 443Y Gregory, Edw.
E. 586Y Gribble, Dr. B. G.
W. 390Y Guenther, Oswald.
S. 2533M Gyllensrard, P. J.
W. 864A Hadfield, Archie A.
W. 312M Hardesty, Otto W.
W. 971M Hardesty, Mrs. Catherine.
W. 989A Hardin, Mrs. J. A.
W. 1026A Hardin, Walter.
S. 2906Y Harrell, C. R.
E. 1039M Harrington, Dr. I. H.
W. 131Y Howard, E. M.
E. 945M Hawkins, R. W.
E. 1129M Hays, Dr. T. A.
S. 2318Y Head, Mrs. N. E.
S. 2287M Heintz, Louis.
W. 698Z Herber, Marie.
M. 3619A Herd, J. C.
W. 46Y Herrig, Tom.
W. 747M Hessian, Mrs. Lizzie.
M. 3462A Hettick, Mrs. Geo.
W. 804Z Hickey, Alice B.

2897

S. 2836Y Higgins, Wm.
E. 1136A Highfield, Miss Anna
W. 899M Hile, Mrs. Jno. H.
S. 3008Y Hillenbrand, C.
W. 726A Hines, Mrs. D. J.
E. 753Y Hitt, Dr. A. E.
S. 2776A Hodgkins, A. M.
S. 1412M Hoertz, Mrs. Adam.
S. 3038A Holland, J. D.
E. 1084Z Homire, Jno.
S. 2665A Horn, L. G.
W. 337Y Howard, Miss Rosa.
M. 3539Y Huggins, Miss Rose D.
E. 450Y Hurter, Arnold.
E. 536A Hyatt, W. R.
W. 875Y Irving, Harry B.

M. 3015A Isaacs, David.
W. 1016M Isert, H. P.
S. 2209M Jackson, Mrs. Alex. H.
W. 864Y Jackson, Jas. P. W.
E. 1066M Jackson, James L. W.
E. 1098A Jerricho, Mrs. P.
S. 2962A Johansen, Peter.
S. 2254M Johnson, A. S.
W. 592A Johnson, Dr. C. A.
S. 2256Y Jones, W. C.
M. 3832A Jones, Mae E.
W. 802A Jones, M. S.
E. 985Y Jones, T. I.
W. 260Z Jones, W. G.
S. 2677A Johanboeke, Mrs. H. W.
W. 701Z Kahnt, Albert.
S. 3005M Kaiser, Alex.
W. 1016Y Kaiser, Mrs. W. H.
E. 428A Keiren, Owen.
W. 783A Kelly, Miss Mayme.
W. 28M Kelly, M. F.
W. 893Z Kibby, Mrs. M.
S. 2842Y Kidd, H. J.
W. 955M King, Dr. M. E.
E. 1163A Klapheke, Chas. G.
M. 3426 Kleinberg, O. K.
E. 574A Kock, Geo. R.
W. 539A Kohl, Geo.
E. 1111Y Kohnhorst, W. S.
S. 2699Y Kremer, Fred J.
S. 2775A Ladd, W. P.
M. 3795Y Laffon, L. J.
W. 81Y La Mar, Mrs. Bettie.
E. 1136M Lamber, W. A.
W. 757Y Lang, Jno. R.
S. 2910Z Lapp, Ethelyn.
S. 2961Z Lauletta, Nick.
S. 585Y Leidigh, Samuel.
S. 2964Z Levi, Max.
W. 653M Leisinger, W. J.
S. 1396Y Lindenberger, Dr. Irvin.
W. 843Y Lindsay, H. C.
E. 597Y Lindsay, R. H.
W. 989Y Lloyd, F. S.
S. 2684M Lockart, Thos. B.
W. 859Y Lodde, G. D.
S. 2788Y Lisch, D. E.
S. 2876A Mass, Ben E.

2898

E. 227A MacDonald, Mrs. L.

E. 230Y Maier, W. A.
E. 1054M Maloney, Nellie.
E. 1057Y Markoff, Wm. S.
W. 88M Marks, Mrs. Kegwin.
W. 698M Marion, Frank T.
S. 2546Y Martin, T. H.
S. 2971Y Martin, W. A.
M. 3829A Martin, W. F.
W. 473M Matlack, G. F.
S. 2729A Mattingly, Mrs. C. A.
W. 37Y Maxwell, Mrs. R. F.
E. 848Y McCann, Owen.
W. 986Y McClain, J. Wesley.
W. 224M McCrory, J. L.
M. 872M McKelvy, J. P.
W. 59M McJenkins, Mrs. M.
M. 3595Y McKenzie, Mrs. T.
S. 982A McClure, Maud Reynolds.
M. 3852Y McMillan, T. C.
S. 2906A Mercke, R. E.
E. 943A Mercke, Geo.
W. 661Y Meyer, Robert.
E. 1117A Middendorf, Jno. J.
S. 2679Y Middleton, J. L.
M. 3841Y Miller, Marion.
S. 1603M Mils, C. K.
E. 1147A Moayon, Birdie.
W. 9Y Molter, H. A.
E. 787Y Montgomery, H. C.
M. 3648A Moore, Mrs. Nannie.
E. 1092Y Morrow, W. E.
E. 799A Mottler, Mrs. J. H.
S. 2088A Newman, Mrs. Josephine.
M. 3813Y Ohlmann, Alois.
E. 1104Y Oldham, A. S.
W. 974Y O'Neill, Chas. B.
W. 838Z Osterman, Guy.
W. 865Z Ostrander, C. C.
E. 1152A Otte, Will.
S. 2953Y Overstreet, Mrs. N. M.
W. 114M Palmer, Ed.
M. 3704M Paul, Hallie F.
S. 2933A Peters, Wm.
E. 1110M Pfeiffer, H.
S. 1542Y Piazza, Jno. A.
S. 3034A Pike, Robt.
W. 377Y Quill, Michael.
E. 218A Quinn, Mrs. M. A.
S. 2326Y Quinlan, Mrs. Josephine
S. 2232Y Redman, Mrs. C. P.
S. 2868Z Reynolds, Mrs. Willis B.

W. 944M Richter, Mrs. Rose.
M. 3045A Riehl, Ed. M.
S. 2747 Riggs, E. V.
S. 2046M Robards, Nancy.
S. 2761A Robb, G. F.
S. 2047Y Robinson, W. J.
E. 558Y Rollings, Mrs. E.
W. 765A Ross, Mrs. A. J.

2899

S. 3012Y Ross, Miss Lena.
W. 395M Rothweiler, Ed.
E. 1115M Ruby, Mrs. Henry.
E. 1103A Rudig, Henry.
S. 2955A Russ, Mrs. Hugh.
M. 3781A Russell, Miss Mattie B.
S. 3077A Scales, Harry.
W. 377Z Scally, Mrs. M.
E. 403Z Schanzenbacher, Wm.
S. 2305Y Schmeer, Fred.
S. 2348M Schranz, Mrs. C. J.
E. 1054A Schuele, Geo.
S. 2214Z Seaton, Mrs. W. H.
W. 291Y Sell, Wm. H.
S. 2088Z Senior, Mrs. C. D.
S. 2472M Settle, Sam. P.
W. 868Z Shoemaker, W. H.
M. 3626Y Simms, Mrs. M. V.
E. 314M Simpson, W. E.
M. 3494A Sloane, Jas.
W. 662Y Smith, A. G.
W. 501Y Smith, Jos.
M. 3803Y Smith, Mrs. Lawson.
E. 156Y Smith, Mrs. Sam.
M. 3415Y Smith, W. P.
W. 92A Smithers, Jas.
M. 2423Y Spraner, Edw. J.
M. 2430Z Spurrier, B. C.
M. 3007A Stanley, W. M
W. 970Y Stanton, Eliz.
S. 2723Y Stephan, Geo. W.
M. 3759Y Steumpel, Herman.
S. 2971A Stobbe, Helen M.
E. 64Z Stoehr, Marie.
M. 3789A Stoll, Mrs. Mary.
S. 2842M Stoltz, Louisa.
W. 754A Steumpel, L.
W. 995Y Sullivan, Jno.
W. 291M Sweeney, Mrs. Lizzie.
W. 171A Swoboda, Miss D.
S. 2883A Tharp, T. W.

W. 999A Thielman, J. E.
W. 1005Y Thierman, M. S.
S. 2868M Thixton, J. C.
W. 802M Thomas, J. C.
S. 2419Y Thornton, Nellie.
W. 554 Till, Henry.
M. 3784M Timmons, Lawrence.
S. 2359A Tobbe, Philomena.
W. 822A Toops, W. H.
E. 262M Van Arsdale, D. Price.
M. 3749Y Van Arsdale, Mrs. R. A.
E. 970M Van Meter, Mrs. A. D.
M. 3505Y Wachtel, E.
W. 868M Wahle, Henry.
S. 1608A Walker, J. H.
S. 2100M Walker, Sada.
S. 1236M Wallace, T. D.
M. 3476Y Wallwork, W. A.
E. 1102M Wantland, Jno. S.
W. 726Y Wege, Miss Lena.
W. 498M West, W. H.

2900

W. 851M Will, Mrs. C. C.
W. 1017Y Wilenborg, T. A.
S. 2302Y Willett, Mattie.
S. 3037Y Williams, J. C.
W. 675Z Winstell, Mrs. Otto.
M. 3701A Yuenker, Mrs. A.
E. 972M Yuenker, Emily.

Country Residence Direct.

2901

Circuit.	Name.	Rate.	Ex. set .
E. 813	Adams, Fred. W.	$4.50	
E. 118	Akers, M. L.	4.50	
E. 854	Alderson, Jno. H.	5.50	
M. 2334	Allen, C. J. F.	5.00	1.50
E. 396	Atherton, J. M.	4.50	(2) 2.50
M. 675	Atherton, P. L.	6.00	(2) 4.50
M. 1451	Ballard, S. Thruston	6.00	
S. 989	Bernard, I. P.	4.50	
E. 668	Barrett, Mrs. Ann E.	4.50	1.25
E. 340	Bigelow, A. A.	4.50	1.25
E. 690	Bingham, R. W.	4.50	1.25
E. 250	Bishop, Harry	4.50	
E. 705	Bonnycastle, Mrs. H. E.	4.50	
E. 900	Brown, Jas. Wright.	4.50	
E. 17	Caldwell, Mrs. W. B. (List)	4.75	1.25
E. 184	Callahan, R. L.	4.50	

M. 378	Caperton, J. H.	5.50	
E. 151	Carrier, R. N. (List)	4.58	
M. 1870	Chess, W. E. (Ext. Bell)	6.15	1.75
E. 606	Atwood, Louis R. (Ext. Bell)	4.15	1.50
E. 248	Breidenthal, Dr. Geo. B.	4.50	
E. 234	Cowan, AlbertA.	4.50	1.50
E. 601	Cox, Attilla, Jr.	4.50	
S. 497	Deering, W. G.	6.00	
S. 1300	Dulaney, E. H. (List)	5.25	
E. 562	Duncan, S. E.	3.50	
E. 1095	Evans, C. S.	3.50	
E. 637	Groves, Dr. Chas. I.	4.50	
E. 89	Cowan, Andrew	4.50	1.25
E. 276	Cowan, Gilbert S.	4.50	
E. 746	Cowan, Gilbert S.	4.50	
S. 1960	Haggerty, C. H.	4.00	
E. 460	Hamilton, T. S.	4.50	
M. 1901	Hartwell, F. N.	4.00	
S. 277	Hays, Dr. J. Edwin	5.50	
E. 42	Henning, S. C.	4.50	
E. 213	Hite, A. R. (Ex. Bell)	3.65	
M. 1010	Humphrey, Alex. P.	5.00	1.50
E. 269	Isaacs, E. G.	4.50	
E. 448	Jarvis, J. G. (Gong)	4.75	
E. 162	Jones, Stephen E.	4.50	
E. 212	Kent, J. Edwin	4.50	
E. 296	Knott, Richard W.	4.50	1.25
E. 356	Long, Geo. J.	4.50	1.50
M. 699	Louisville Boat Club	4.50	
S. 543	Marking, John	4.50	
S. 1218	McClarty, C. G.	4.50	1.25
E. 953	McFerran, J. B. (Ex. Bell)	4.73¼	1.25
E. 626	Miles, Lee	5.50	
E. 1121	Miller, S. C.	4.50	
E. 71	Moore, W. S.	4.50	
E. 116	Nettleroth, H. H.	4.50	
E. 535	Norton, G. W.	4.50	1.25
S. 1584	Phelps, Ida L.	4.50	
E. 113	Schrader, C. R.	4.50	
E. 520	Simcoe, Mrs. A. B.	6.50	
S. 95	Smoot, B. M.	5.50	
E. 289	Starks, Jno. B.	4.50	1.25
		$272.51¼	$28.75
2902		$272.51¼	28.75
E. 127	Starks, I. F.	4.50	
E. 112	Stuart, Mrs. J. B.	4.80	1.25
S. 108	Stonestreet, Miss Rosa	5.00	
E. 476	Struck, Alfred	4.50	
S. 1126y	Swearingen, Embry L.	5.00	1.50

E. 612	Tatum, C. (List.)	4.58⅓	1.25
S. 847	Taylor, Dr. R. P.	5.00	
E. 362	Thompson, W. A.	4.50	1.50
E. 300	Tyler, Robt. (Ex. Bell)	4.65	1.25
E. 885	Viglinni, P.	4.50	
E. 861	Wagner, R. C.	4.50	1.25
E. 815	Walker, Fred. K. (List)	4.58⅓	1.25
E. 54	Webb, Douglass	4.50	
W. 157	Whallen, Jno. H.	4.50	
E. 465	Wilson, David H.	4.50	
E. 146	Wood, Geo. T.	4.50	
S. 2116	Wyman, L. H.	5.00	
		$351.63	$38.00

2903 *Country Residence, Party.*

Circuit.	Name.		Rate.	Ex. set.
E. 779y	Abraham, W. J.	4 Party	$3.00	
S. 2378m	Arbegust, Jno.		3.00	
E. 509y	Adams, Mrs. F. X.	4 Party	3.75	
S. 1919a	Alman, Prof. Marcus B.	4 Party	3.25	
E. 761m	Applegate, O. F.	4 Party	4.25	
E. 761y	Applegate, W. B.	4 Party	4.25	
S. 2306y	Arnett, F. B.	4 Party	3.25	
S. 2413a	Atkinson, E. R.	4 Party	3.25	
S. 1943z	Augustus, James	4 Party	4.00	
S. 877m	Bailey, W. O.	4 Party	3.50	$1.25
M. 1400	Belknap, W. R.	4 Party	3.75	
E. 729a	Birdhill Farm	4 Party	4.50	
E. 859y	Black, Chas. A.	4 Party	4.00	
S. 463y	Bodley, Temple	4 Party	3.75	
E. 817m	Bohannon, H. H.	4 Party	3.00	
S. 1326y	Botto, Mrs. Jno. R.	4 Party	3.00	
S. 2579a	Bowers, R. A.	4 Party	3.25	
E. 618a	Bowman, A. H.	2 Party	3.50	
E. 618y	Braden, Clarence	2 Party	3.50	
E. 763a	Brady, Matt	4 Party	3.50	
S. 2503y	Brame, C. M.	4 Party	3.25	
E. 764y	Brown, H. A.	4 Party	4.50	
E. 309y	Brown, Leslie S.	4 Party	3.00	
S. 2106z	Bryan, V. H.	4 Party	3.50	
E. 446z	Bryan, W. J.	4 Party	3.00	
S. 2539a	Buchanan, Mrs. Ada F.	4 Party	3.25	
S. 463m	Buetenbach, Chas.	4 Party	3.75	
E. 124a	Bullitt, J. R.	4 Party	3.00	
S. 1681m	Burnett, Caldwell	4 Party	3.25	
S. 2106a	Bush, S. S. (Ext. Bell)	4 Party	3.65	1.50
M. 3378a	Callahan, Jas.	4 Party	3.00	
S. 1943a	Caperton, Ranch (List)	4 Party	4.33	
S. 311z	Carter, V. H.	4 Party	3.25	

S.	1154y	Cassidy, Mrs. S. R. ..	4	Party	3.25
S.	2099m	Charlton, Albert B. ...	4	Party	3.00
M.	2206m.	Chrisler, Jose B.	4	Party	3.75
S.	2434a	Colley, W. H.	4	Party	3.25
E.	280a	Colvin, L. L.	4	Party	3.00
E.	721a	Coombs, Dr. M. S.	4	Party	3.00
M.	3272m	Cooper, A. R.	4	Party	3.75
M.	1851a	Cooper, Mrs. J. Detchen.	4	Party	3.50
S.	2019y	Corn, Carey	4	Party	3.25
S.	2319y	Cotner, Ed.	4	Party	3.25
S.	18817	Craig, W. B.	4	Party	3.25
M.	3760a	Crouch, J. E.	4	Party	3.00
S.	877y	Cummins, C. L.	4	Party	3.00
S.	1339a	Cunningham, Mrs. A. C.	4	Party	3.75
E.	779a	Dannenhold, J. F.	4	Party	3.00
S.	1761y	Darnell, W. W.	4	Party	3.25
E.	446m	Davidson, J. G.	4	Party	3.00
E.	97y	Detert, Mrs. C. L.	4	Party	3.00
S.	1437a	Detrick, Mrs. Scott	4	Party	3.25
S.	1686y	Dietzman, A. S.	4	Party	3.25
S.	1343y	Dold, C. B.	4	Party	3.25
E.	182a	Dukes, A. T.	4	Party	3.00
E.	817y	Durff, Mrs. Anna B. ..	4	Party	3.00
S.	1347z	Ellaby, Dr. E. M.	4	Party	4.50
S.	1980z	Ellison, Chas.	4	Party	3.00
E.	114A	Englehard, V. H.....	2	Party	3.50
					$200.98 $2.

2904

S.	910y	Escott, Jas. V.....	4	Party	3.25
S.	1347a	Farmer, Ed. C.....	4	"	4.50
M.	1721a	Farnsley, E. H.....	4	"	3.25
E.	125A	Fegenbush, Edwn J...	4	"	3.75
S.	2055a	Feighan, Mark A.....	4	"	3.25
E.	76y	Fenley, W. C.....	4	"	3.00
E.	268a	Fink, Mrs. Rudolph...	4	"	3.00
M.	3378z	Finnegan, Jno.....	4	"	3.00
E.	859z	Frederick, Mrs. H. P...	4	"	3.75
S.	1636	Gardner, Miss E. R....	4	"	3.25
S.	2434m	Gates, S. J.....	4	"	3.25
S.	2033z	Geoghegan, R. B.....	4	"	3.25
E.	573a	Goss, Henry A.....	4	"	3.00
E.	474y	Gould, Henry	2	"	3.50
E.	721z	Greenup, Bruner.....	4	"	3.00
S.	1025y	Gregg, E. H.....	4	"	3.00
S.	576y	Hardy, W. T.....	4	"	3.00
S.	364y	Harris, Chas. G.....	4	"	3.25
S.	2306a	Hawes, Dr. Edwin.....	4	"	3.25
S.	1941y	Hawes, H. F.....	4	"	3.25
S.	1751a	Hays, Mrs. Mary F....	4	"	3.25
S.	155z	Hazzard, E. E.....	4	"	3.25

S.	1097y	Hegan, Mrs. J. E.....	4	"	3.25
E.	145m	Hikes, G. K.....	4	"	3.50
S.	991y	Hill, Edw. G.....	4	"	3.25
M.	1943y	Hill, Dr. W. W.....	4	"	4.00
E.	687z	Hodges, Geo. (Ex. Bell)	4	"	3.15
E.	538z	Hilliard, Byron	4	"	3.00
S.	1681a	Hoertz, Geo. Sr.....	4	"	3.25
E.	323y	Hughes, Mrs. A. C....	2	"	3.50
E.	145y	Huntsinger, Chas.	4	"	3.50
E.	1157y	Hupe, A. L. (1 List)..	4	"	3.25
E.	561y	Hutchinson, Mrs. A. L.	4	"	3.00
S.	1742z	Immorde, Henry W...	4	"	3.25
E.	817a	Irwin, Carrie B.....	4	"	3.00
M.	3378y	Jefferson, T. L., Jr....	4	"	3.50
E.	25y	Jones, Lon	4	"	3.50
S.	2413y	Jones, W. J.....	4	"	3.25
E.	509z	Kamer, P. J.....	4	"	3.00
S.	1808	Kinkead, R. C.....	4	"	4.00
E.	795z	Kramm, Mary S.....	4	"	3.00
S.	2033y	Kuevler, D. J.....	4	"	3.25
S.	1343a	Lang, Lenard C.....	4	"	3.25
E.	114y	Locke, W. W.....	2	"	3.50
S.	2365a	Losey, F. M.....	4	"	3.50
E.	1079m	Louches, F. I.....	4	"	3.00
S.	2366a	Luken, Clem	4	"	3.00
S.	1681y	Lyons, Mrs. Julia F....	4	"	3.25
E.	654a	McPherson, A. I.....	4	"	3.00
S.	1975a	MacQuithy, M.	4	"	3.50
M.	3760	Marshal, E.....	4	"	3.50
S.	1919y	Maxey, Mrs. L. M.....	4	"	3.25
S.	1048a	McDonald, E. L.....	4	"	3.25
S.	1636z	McGee, W. A.....	4	"	3.50
E.	182y	Newborn, R. G.....	4	"	3.00
E.	1079a	Milburn, John W.....	4	"	3.00
E.	279y	Miller, W. Scott.....	4	"	4.25
E.	549y	Moran, Thos. W.....	4	"	3.00
M.	3760z	Morris, Mary Scott....	4	"	3.50
S.	2365y	Murphy, C. T.....	4	"	3.50
E.	279z	Nachand, Peter, Jr....	4	"	4.00
E.	761z	Nalley, C. C.....	4	"	4.00
E.	279a	Netherton, N. W.....	4	"	4.00
E.	66	Newman, S. O.....	4	"	3.00
E.	63a	Norris, J. E.....	4	"	3.00
E.	319y	Nickell, Dr. A. W.....	4	"	3.00
					$219.40
2905					219.40
E.	312a	Nutty, Jno. F.....	2	Party	3.50
S.	1959y	Nicholson, T. F.....	4	"	3.25
S.	783y	Nugent, R. I.....	4	"	3.25

S.	1154m	Parker, C. A.....	4	"	3.25
E.	729m	Ohlman, Frank A.....	4	"	3.75
S.	1712y	Pelfer, Rev. Jno. B....	4	"	3.25
S.	1941a	Phillips, C. M.....	4	"	3.25
S.	311m	Pidgeon, Thos.	4	"	3.25
M.	185y	Pirtle, Jno. B.....	4	"	3.75
E.	764m	Reynolds, P. A. (List).		Party	4.00
M.	3272z	Richards, W. T.....	4	"	3.75
S.	155m	Roach, Etrich	4	"	3.25
E.	761a	Robb, H. D.....	4	"	4.00
E.	992a	Roederer, Christ. K....	4	"	3.00
S.	1960m	Ronald, A. G.....	4	"	3.25
E.	589a	Rupp & Son, J.....	4	"	3.25
S.	1959a	Schaftlein, Otto	4	"	3.25
E.	431y	Schlict, Peter J.....	4	"	3.00
E.	321z	Schlosser, Jos. J.....	4	"	3.00
S.	2008a	Schneider, H. C.....	4	"	3.00
S.	631a	Schuman, G. S.....	4	"	3.25
E.	683y	Scoggin, Chas.	4	"	3.00
M.	1968a	Sea, Andrew M.....	4	"	4.00
E.	319m	Sears, Mrs. Chas.....	4	"	3.00
S.	556y	Seaton, Chester O....	4	"	3.25
S.	2733a	Seaton, W. H., Sr.....	4	"	3.25
S.	1943m	Seirpp, W. K.....	4	"	4.25
S.	2539y	Shively, J. C.....	4	"	3.25
S.	1048y	Short, Jas. T.....	4	"	3.25
S.	1667z	Sibley, J. B.....	4	"	3.50
E.	145	Simcoe, J. L.....	4	"	3.25
E.	763z	Smith, R. M.....	4	"	4.00
S.	1373a	Smith, R. R.....	4	"	3.00
M.	2206z	Smith, T. F.....	4	"	3.75
S.	2372y	Smith, W.	4	"	3.00
E.	654y	Specht, Geo. H.....	4	"	3.00
E.	1079z	Speer, G. G.....	4	"	3.00
S.	1636m	Steele, Mrs. Jas. A.....	4	"	3.50
S.	556m	Stevens, W. R.....	4	"	3.25
E.	763y	Stuart, I. T.....	4	"	3.75
E.	884y	Stivers, S. A.....	4	"	4.00
S.	1048m	Stout, F. V.....	4	"	3.25
E.	673m	Taylor, D. S.....	4	"	4.75
E.	280z	Taylor, D. S., Jr.....	4	"	3.00
E.	280y	Thomas, H. T.....	4	"	3.25
E.	747a	Thompson, A. V.....	4	"	3.50
S.	155y	Toombs, Wm.	4	"	3.25
S.	361a	Trueman, L. S.....	4	"	3.00
E.	509m	Veech, J. M.....	4	"	3.25
S.	631z	Vogt, Geo.	4	"	3.25
E.	161m	Von Borries, W. H....	4	"	3.00
E.	932a	Walker, Edith	4	"	3.00
M.	3272y	Waters, S. J.....	4	"	3.50
M.	1097a	Wathern, J. B., Jr.....	4	"	3.25
		Weber, Martin	4	"	5.25

E.	319a	Welsh, J. T.	4	"	3.25
S.	783a	Wemes, Wm.	4	"	3.00
S.	2366y	West, F. S.	4	"	3.50
E.	299a	Wetstein, Edwin	4	"	3.00
E.	992m	Wheeler, W. F.	4	"	3.75
E.	764z	William, Thos.	4	"	3.00
M.	1347a	Wuest, W. R.	4	"	3.00
S.	2425y	Wolf, Mrs. W. A.	4	"	3.50
S.	2106y	Wuertle, Andy	4	"	3.00
S.	1656y	Wuertle, Jno.	4	"	3.00
S.	1684y				$438.65

2906 *Country. Business Party.*

Circuit.		Name.			Rate.	Ex. set.
					200.98	2.75
S.	1701a	Association Sanitarium.	4	Party	5.50	1.75
E.	464a	Bank of Beuchel	4	"	6.00	
E.	246a	Bauer, Chas. & Bro.	4	"	5.25	
Toll	Bd.	Bruce, W. J.	4	"	6.75	
S.	644a	Chilton-Guthrie Mfg. & Bag	2	"	5.50	
S.	644y	Continental Car & Equipment Co.	2	"	6.00	
E.	551a	Eilers, Albert G.	4	"	5.25	
S.	3243a	Grubers Mark & F. Groc.	2	"	5.50	
E.	249a	Ky. Nursery Co.	4	"	5.50	
S.	1646y	Louisville Ax & Tool-Co.	2	"	6.00	
E.	318a	Nolls Meat Mkt.	2	"	5.50	
E.	147a	Southern Brick & Tile Co.	2	(List) Party	5.66⅔	
M.	1373a	Southern R. R. Co.	4	"	4.50	
S.	1347y	South Park Fishing Club	4	"	5.75	
S.	2503a	Suburban Grocery Co.	2	"	5.50	
S.	1377a	Wurach, J. B.	4	"	5.50	
S.	1646a	Wood Mosaic Floor Co.	2	" (2 lists. (joint user.	6.33⅓	
					$295.98	$4.00

2907 *Country. Business Direct.*

Circuit.	Name.	Rate.	Ex. Set.
		438.65	
M. 1108	Country Club	8.50	
M. 1520	Lotus Club	26.75	
M. 1521	Lotus Club	26.75	
M. 845	Reilly's Hotel	18.00	

E. 110	Ky. Culvert Mfg. Co.	10.00	
S. 45	Kosmos Portland Cement Co.	15.00	2.00
M. 357	Louisville Golf Club	7.50	
M. 4609	Cent. Ky. Lun. Asy.	9.00	3–3.00
W. 1357	Indiana Reformatory	18.00	
M. 401	Interstate News Bureau	26.75	
M. 402	Interstate News Bureau	26.75	
S. 1304	Lou. Fire Brick Works	9.00	
M. 1030	Lou. Water Co.	9.00	
		$210.00	$5.00

2908

Joint Users.

M. 3131	American Surety Co.	1
M. 2673	Adams Express Co.	1
M. 441	Allen, Lafon	3
M. 2978y	Asman, Dr. Bernard	1
M. 595a	Austin, J. R. & Co.	1
M. 27	Barbour & Davidson	4
M. 3149a	Barnes, Dr. W. W.	1
M. 1281y	Bate, V. A.	1
M. 907	Benedict Tea & Coffee Co., W. R.	1
M. 885y	Bentley, E. W.	1
M. 1289a	Barnard & Crum	1
M. 2109	Bingham & Davies	1
M. 212	Blackford, Dr. W. F.	4
M. 214	Blackford, Dr. W. F.	6
M. 155a	Bodine, Dr. J. M.	1
M. 1101	Bohannon, Thos. & Co.	1
M. 404	Boyd, Dr. A. J.	3
M. 335	Bruce, Helm	1
M. 1751	Bruner, Ambrose	1
M. 1972y	Bryan, W. E.	1
M. 83a	Building Con. Ex.	2
M. 78	Bullitt Bros.	1
M. 640	Burnett, Henry	1
M. 1010m	Burton, Whayne & Co.	1
M. 776	Cartledge & Ireland, Drs.	2
M. 589a	Childers & Waters	1
M. 939	Clift, J. L.	1
M. 1014a	Clodeway, Wm. G.	2
M. 245y	Colvin & Nicholson	1
M. 447	Coon, Dr. G. S.	1
E. 529a	Crescent Drug Co.	2
M. 978a	Cummins, E. L.	1
M. 262	Current, W. D.	2
M. 1350	Dabney, Dr. S. G.	1
E. 966y	Day & Co.	1
M. 931a	Dick, Al. M.	1
M. 510	Duncan, Dr. Ellis	3
M. 10	DuReulle & Fleece	1

M.	406y	Eble, Dr. Max M.	1
M.	3706a	Edwards, Ogden & Peake	1
M.	3291	Fireproof Storage Co.	1
M.	124	Flexner & Campbell	3
M.	975	Forcht, Fred, Jr.	1
M.	935y	Fort, Dr. F. T.	1
M.	1209y	Fox & Lucas	3
M.	2604	Frank, Dr. Louis	4
M.	1473a	Gardner, Benj. F.	3
M.	179a	Goddard & Co.	1
M.	1638y	Grant, Drs. W. E. & R. E.	1
M.	654y	Grant, W. E. & W. C.	1
M.	906a	Chreste, Chas. & Co.	1
M.	1429a	City Warehouse Co.	1
M.	1472y	Cassilly, John P.	2

2909

M.	478a	Clarke, J. S.	1
M.	1281M	Harris, Abner	1
M.	1064y	Heidelberg, Miss M.	1
M.	1100y	Hieatt, Joe	1
M.	1088	Hoffman, Ahlers & Co.	1
M.	1021	Howe & Co.	1
M.	828	Jenkins, Dr. Wm. A.	4
M.	1985A	Joyes, Martin V.	3
M.	1548	Kearns, Dr. Leo	5
S.	130	Ky. Refining Co.	1
M.	627A	Lee, Dr. Harrys S.	1
M.	26	Lee Line Steamers	1
M.	1476A	Lord, A. & Co.	1
M.	1600	Louisville Carriage Co.	1
M.	995	Louisville Stock Exchange	2
M.	3715Y	Lyons, Fred W.	1
M.	620Z	MacPherson & Co.	1
M.	242	Mathews & Hanes, Drs.	3
M.	617	Matlack, W. H.	1
M.	1048A	Maurer Trager & Co.	1
M.	3112A	McDowell, R. A.	1
M.	1700	McMurtry & Sherrill Drs.	1
M.	300M	Miller, Will B.	1
M.	3162Y	Mitchell, John & Co.	1
E.	867Y	Morris, Mark F.	1
M.	92	National Life Ins. Co. of Vermont	1
M.	1260	Nettleroth, H. H.	1
M.	2359y	Office Equipment Co.	1
M.	1214	O'Reilly & Poutch	1

2910

M.	1625	Pelle, W. B. & Bro.	1
M.	1819A	Polk, John R. M.	4
M.	3353A	Prather, Dr. Scott	1

M.	2400	Pusey, Dr. H. M.	2
M.	1023Y	Ravitch, Dr. M. L.	1
M.	1118	Ray, Dr. J. M.	1
M.	962A	Russell, M. B.	1
M.	2721	Satterwhite & Underhill	1
M.	971Y	Savage & Welsh	1
M.	2241	Schneider, C. J.	1
M.	286y	Selligman, Alfred & Jos.	1
M.	3149y	Schacklette, Dr. C. R.	2
M.	1051Y	Slaughter, W. H. Jr. Coal Co.	1
S.	24	Solomon, Dr. L. L.	1
M.	898	State Fire Marshall	2
M.	2519y	Sweeney, Dr. Jos. A.	1
S.	862y	Taylor, H. C.	1
M.	112y	Thum-Clark & Ray	1
S.	350	Vance, Dr. A. M.	1
M.	3095a	VonBorries, Grau Co.	2
M.	75	Wallace, J. Richard	3
M.	2233A	Washer, B. F. & N. L. Goldsmith	1
M.	3925y	Weaver & Sons, Ben C.	2
M.	363A	Wellman Bros. & Co.	1
M.	1490	White & Co., Allen G.	1
M.	1024Y	Wilder, Dr. Fred R.	1
M.	1076	Willett, W. R.	1
M.	849	Yager, Dr. M. T.	2
M.	742A	Yonts, Morton K.	2
M.	374Y	Young, Dr. W. J.	3
M.	619	Samuel, Dr. F. W.	4

2911 Extension Sets.

S.	2846	Abell, Dr. Irvin	1
M.	2673	Adams Express Co.	2
M.	2676	Adams Express Co.	1
E.	175	Adler, C. L.	1
W.	274	Adler Organ Co.	1
M.	977	Aetna Life Ins. Co.	1
S.	118	Akers, M. L.	1
M.	441	Allen, Lafon	4
S.	1744	Allis, Mrs. Ernest	1
M.	1622	Altsheler & Co.	1
M.	2446	American Butter & Cheese Co.	1
M.	2829	American Dist. Telg. Co. of Ky.	1
M.	152	American Express Co.	2
M.	3131	American Surety Co. of N. Y.	2
M.	282	Anglo-American Tar Product Co.	1
M.	49	Armour & Co.	2
M.	48	Armour & Co.	1
M.	870	Atherton Realty Co.	1
M.	957	Avery, Saml. & Co.	1
M.	575	Bailey, Dr. Wm.	1
M.	6	Baldwin Co.	1

S.	857	Ballard, Chas. T	1
W.	255	B. & O. S. W. R. R. Co	1
M.	291	B. & O. S. W. R. R. Co	1
M.	321	Bank of Commerce	1
M.	27	Barbour & Davidson	4
S.	1963	Barnes, Claud R	1
M.	980	Barnett & Barnett	1
E.	222	Barr, Jno. W., Jr	1
S.	404	Barrett, H. W	1
M.	2360	Bax, L. D	1
S.	538	Bayley, J. W. E. & Co	1
E.	257	Beechhurst Sanitarium	1
S.	1657y	Beilstein, J. W	1
S.	852	Belknap, Morris B	1
S.	1400	Belknap, Wm. R	1
W.	12	Bell & Coggeshall	1
M.	752	Benedict, Jennie C. & Co	1
M.	1392a	Bensinger Ou-fitting Co	1
M.	885y	Bentley, E. W	2
M.	777	Bernheim Bros.	1
E.	274	Bernheim, Morris U	1
M.	364	Besten & Langen	1
E.	891	Bickel, Henry	1
M.	108	Big Spring Dist. Co	1
M.	548	Bingham, Hewett Co	2
M.	2109	Bingham & Davies	2
M.	212	Blackford, Dr. W. F	3
M.	214	Blackford, Dr. W. F	3
M.	2300	Bloom, Bronner & Robbins	1
S.	304	Bloom, Dr. I. N	1
M.	1611	Blow, Hiram & Co	3
M.	52	Blue Ridge Dispatch	1
M.	1906	Board of Church Ext. of M. E. Church	3
M.	342	Board of Fire Underwriters	1
S.	480	Dr. Board's Sanitarium	1
S.	5	Boardman, W. K	1
S.	2079	Boldt, A., Jr	1

2912

M.	83a	Building Con. Ex	1
S.	89	Bonnie, Mrs. Robt. P	1
E.	740	Bonnie, W. O	1
M.	616	Booth, A. & Co	1
M.	541	Bourbon Stock Yards Co	1
M.	404	Boyd, Dr. A. J	1
M.	268	Bradas & Gheens	1
M.	72	Bradstreet's Mercantile Agency	1
S.	1842	Brandeis, Alfred	1
S.	345	Brandeis, Dr. Florence	1
M.	1433	Brandeis, Robt. E. & Co	1
M.	28	Brewer Printing House	1

W.	343	Bridgeford & Co	1
S.	1385	Bridges, C. A. & Co	1
S.	2010	Bridges, Isham	1
S.	435	Brown, Geo. G	1
S.	739	Brown, J. T. S	2
S.	2157	Brown, J. T. S., Jr	1
S.	1435	Bruce, Mrs. Helen	1
M.	335	Bruce, Helm	2
M.	1751	Bruner, Ambrose	1
M.	83a	Building Con. Ex	1
M.	78	Bullitt, Bros.	1
M.	42	Bullitt & Bullitt	2
M.	640	Burnett, Henry	1
S.	2006	Burnett, Henry	1
M.	1010m	Burton, Whayne & Co	1
M.	66	Buschmeyer, Dr. Jno. H	1
M.	972	Button Bros.	1
S.	211	Caldwell, Junius	1
S.	1070	Calhoon, Miss L	1
M.	2027	Cal. Fig Syrup Co	1
M.	201	Carter & Carter, Drs	1
M.	2672	Carter Dry Goods Co	1
S.	765	Carter, Mrs. John A	1
M.	776	Cartledge & Ireland, Drs	2
S.	1130	Castner, Chas. S	1
S.	1241	Cecil, Dr. J. G	1
M.	73	Chandler, John H	1
M.	2146	Chatterson & Blitz	1
M.	576	Cheatham, Dr. Wm	1
E.	90	Chenoweth, Dr. James S	1
M.	272	Ches. & Ohio Ry. Co	1
M.	263	Ches. & Ohio Ry. Co	1
M.	275	C. & C. & St. L	1
S.	572	Chess & Wymond	1
M.	2044	Cin. Gas Coal Coke & Min. Co	1
M.	162	Citizens Nat'l Bank	1
—.	—	City of Louisville	9
—.	—	Police Dept. City	—
—.	—	Fire Dept. of City	2
M.	261	Cohen & Mann	1
S.	608	Coleman, Jno.	1
M.	125	Commercial Club	1
M.	500	Commissioner of Sewerage	1
M.	427	Commissioner of Sewerage	4
M.	428	Commissioner of Sewerage	1
M.	383	Commonwealth Life Ins. Co	3
S.	1267	Coggell, Dr. H. A	1
M.	1598	County Sheriff's Office	1
M.	1067	County Common Pleas Court	1
M.	1183	County Jail	1
S.	1370	Craik, Rev. Chas. Ewell	1

M. 430	Cralle, Lee E.	1
2913		
M. 76	Cronin, Rev. Jas. T.	1
S. 2290	Crutcher, Thos. B.	1
S. 1651	Culbertson, S. A.	1
S. 649	Culbertson, Mrs. Wm. S.	1
M. 359	Cumberland Gap Dispatch	1
M. 262	Current, W. D.	1
M. 1350	Dabney, Dr. S. G.	2
S. 209	Davies, Hywell	1
S. 815	Davis, Edw. L. Lumber Co.	1
M. 330	Davis, Urwick Co.	2
M. 3267z	Denhard Co.	1
M. 2758	Diem & Wing Paper Co.	1
M. 326	Dolfinger, J. & Co.	1
S. 173a	Doolan, Jno. C.	1
M. 3014	Doyle, Drs. O. B. & H. S.	1
S. 1347	Drummond, W. T.	1
M. 41	Dun, R. G. & Co.	1
M. 510	Duncan, Dr. Ellis	3
M. 1563	Duncan, T. B. & Son	1
M. 431	Dunlap, Jno. L.	1
M. 555	Dunnington, W. G. & Co.	1
M. 10	Du Relle & Fleece	1
M. 30	Economy Life Ins. Co.	1
S. 2150	Egan, A. H.	1
M. 2058	Ehrmann, Gilmar & Co.	1
E. 666y	Eisenmann, F. T.	1
E. 870	Embry, D. W.	1
S. 1380	Embry, H. F.	1
M. 786	English, Dr. Carroll C.	1
M. 993a	Fairbanks-Morse Co.	2
M. 2	Fairleigh, Straus & Fairleigh	3
M. 1203	Falls City Const. Co.	1
M. 1414	Federal Chemical Co.	3
M. 467	Fehr, Frank Brewing Co.	1
M. 856	" " " "	2
S. 540	Fenley, Oscar	1
S. 960	Ferguson, Edw. H.	1
M. 440	Ferguson & Scott	1
M. 2266	Fidelity & Casualty Co.	2
M. 4600	Fidelity & Guaranty Co.	1
M. 423	Finck, Dr. T. D.	1
M. 220	First Natl. Bank	1
M. 1651	First Regiment Armory	1
M. 124	Flexner & Campbell	3
S. 990	Flexner, Dr. J. A.	1
M. 116	Flexner, Washington & Co.	1
M. 975	Forcht, Fred, Jr.	1
S. 334	Frank, Dr. Louis	1

M. 2604 Frank, Dr. Louis.....
S. 470 Frazier, Dr. Ben Carlos.....
S. 570 Fulton, Frank J.....
S. 1276 Gaulbert, Mrs. Geo.....
M. 232 German Bank.....
M. 243 German Ins. Bank.....
M. 159 German Security Bank.....
S. 1061 Gheens, C. W.....
S. 475 Gifford, H. N.....
M. 1292a Gilbert, Dr. R. B.....
M. 1153 Gilmour, Alex.....
M. 2113 Golden Rule Store.....
M. 4113 " " " .....
M. 164 Gordon, Thos. R.....
S. 1461 Grainger, Chas. F.....
E. 221a Doel, F. Grocery Co.....

2914

S. 15 Gray, J. P. Sanitary Milk Co.....
M. 687 Great Atlantic & Pac. Tea Co.....
M. 688 " " " " " " .....
M. 55 Green, Jnc. W. & D. S.....
S. 541 Greer, Frank T.....
M. 925 Gregory & McHenry.....
M. 801 Grubbs & Grubbs.....
M. 1291 Gutman, H. J. & Co.....

2915

S. 54 Haager, J. H.....
S. 1350 Haldeman, Bruce.....
S. 720 Haldeman, W. B.....
E. 260 Hanley, J. P.....
E. 187 Hays, E. W.....
S. 338 Helm, Jas. P.....
S. 1484 " John L.....
S. 1321 Hemphill, Rev. Chas. R.....
E. 475 Hendon, Dr. G. A.....
M. 727 Henning, S. C. & Co.....
S. 9578 Hert, A. T.....
S. 1007 Hewett, Leonard A.....
M. 1921 Hichman, Williams & Co.....
S. 358 Hichman, Baylor.....
M. 1516 Hilliard, J. J. B. & Son.....
S. 1427 Hines, J. J. .....
W. 489 Hirsch Pros. & Co.....
M. 450 Hite, W. W. & Co.....
M. 395 Home Bldg. Co.....
M. 226 " Ins. Co. of N. Y.....
M. 2305A Hughes, E. L. & Co.....
M. 1090Y Hughes, W. J. & Sons Co.....
M. 21 Humphrey Davie & Humphrey.....

M. 17	Humphrey, Ed. P.	1
M. 3592	Husch Bros. & Co.	1
S. 1384	Hussey, Miss Emily	1
S. 23	Hydraulic Brick Co.	1
M. 2395	Illinois Glass Co.	1
S. 1002	Ingram & Lawrence	1
S. 1999A	Inman Ice Co.	1
M. 673	Inter-Southern Life Ins. Co.	1
S. 1843	Ireland, L. R.	1
M. 106	I. C. R. R. Co.	7
S. 60	James, Miss Grace C.	1
E. 120	James, Sam'l R.	1
M. 194	Jefferson & Co.	1
M. 1841	Jefferson, Noyes & Brown	1
M. 828	Jenkins, Dr. Wm. A.	1
S. 41	Johnson, Chas. F.	1
M. 1057	Jones, Paul & Co.	2
S. 676	Jones, Saunders P.	1
M. 1253	Juvenile Court	1
S. 2160	Kahn, E. M.	1
M. 2748	Kennett, P. C. & Son	1
E. 470	Kennett, W. L.	1
W. 178	Ky. & Ind. Bridge Co.	2
W. 121	" " " " "	3
S. 94	Ky. Auto Co.	1
M. 2233Y	Ky. Central Life Accident Co.	1
M. 1481	Ky. Electric Co.	2
S. 2110A	Ky. Heating Co.	1
M. 892	Ky. Inspection Bureau	1
S. 606	Ky. Tob. Product Co.	2
S. 130	Ky. Refining Co.	1
S. 399	Kiefer, John	1
M. 2158A	Kinkead, R. C.	1
M. 1656	Kis-me Gum Co.	1
M. 2382	Klauber, E.	1
S. 242	Klein, John W.	1
E. 1087	Knopf & Hudson	1
E. 963	Knopf, Peter & Sons.	1
S. 792	Koehler, Dr. F. W. & H. H.	2
M. 77	Kosmos Portland Cement Co.	2

2916

M. 2150	Kurfees, J. T. Paint Co.	1
S. 1754A	Leathers, John H.	1
S. 296	Leavell, Dr. Hugh N.	2
M. 303	Lewis, Marvin H.	1
M. 1143	Lincoln Savings Bank	2
E. 78	Lindenberger	2
S. 861A	Longest Bros.	1
M. 796	Lorch & Levi Co.	1
S. 1259	Lortz & Frey Planing Mills	1

M. 258	L. & N. R. R. Co.	1
M. 2402	"	1
M. 1134	L. H. & St. L. Ry. Co.	1
M. 1135	"	1
M. 1492	"	2
M. 1595	"	1
M. 2073	"	3
M. 2074	"	1
M. 927	Louisville & Evansville Packet	1
M. 623	Louisville Anzeiger Co.	1
M. 1768	Louisville Car Service Ass'n	1
M. 13	Louisville C. & Co. Co.	1
S. 1213	Louisville Cotton Oil Co.	1
W. 629	Louisville Fertilizer Co.	1
W. 643	Louisville Groc. Co.	1
M. 65	Louisville Herald	3
M. 2489	" "	2
W. 179	Louisville Lead & Color Co.	1
M. 863	Louisville Pub. W. H. Co.	1
M. 179	" Selling Co.	1
S. 940	" Soap Co.	1
S. 180	" " "	1
M. 962	" Tin & Stove Co.	1
M. 2264	" " " "	1
M. 621	Louisville Transfer Co.	1
M. 1268	" Varnish Co.	1
M. 59	Lyons, W. L. & Co.	1
M. 3600A	Macauley's Theatre	1
S. 1513	Mackin & Glynn	1
M. 1372	Manget, Fred.	1
S. 1570	Manson, L. B.	1
S. 889	Marvin, Dr. J. B.	1
M. 242	Mathews & Hanes, Drs.	1
S. 1101	Matthews, Mrs. Virginia	1
M. 632	McChord, Hines & Norman	3
S. 768A	McConathy, Dr. Herbert	1
M. 705	McCord & Co.	1
S. 908	McCulloch, Jos. G.	1
S. 3	McCutchen, H. J.	1
S. 1958	McDowell, Wallace W.	1
M. 1700	McMurtry & Sherril, Drs.	1
S. 2000	Mengel, C. C.	1
M. 3922A	Merchants Dispatch	1
M. 101	Merchants Ice & Cold Stor.	1
S. 258	Meyers, Dr. S. J.	1
M. 31	Michigan Svaye Life Ins.	2
M. 81	Miles Auto Co.	1
M. 1619	Miller & Lang, Drs.	1
S. 868	Milner, B. C., Sons Co.	1
M. 2810M	Minor, J. S. & Sons	1
S. 1208	Mockridge, Rev. John	1

M. 32	Model License League	2
M. 1425	Monon Route	1
M. 1880	Monongahela C. C. & Co.	3
M. 292	Montenegro-Rehm Music Co.	1
S. 1382	Louisville Bridge Co.	1

2917

M. 136	Moody-Mitchell Lum & Bldg. Co.	1
M. 211	Moorman & Co. (Button & Buzzer)	1
M. 104	Morgan-Abbott Barker Co.	1
S. 143	Morton, D. C.	1
E. 160	Muldoon, M.	1
W. 125	Murphy, D. X.	1
M. 513	Myer-Bridges & Co.	1
S. 624	National Ice Cream Co.	1
M. 92	" Life Ins. Co. of Vermont	3
E. 924	Nones, W. C.	1
M. 178	Norman, E. B. & Co.	1
S. 139	Norton, Geo. C.	1
M. 288	Nunnemacher, F. C.	1
M. 2828M	Nunnelly, W. R.	1
M. 666	Office Supply Co.	1
M. 1871	Ohio River Sand Co.	1
M. 524	O. K. Stove & Range Co.	1
M. 1522	Old. Ky. Dist. Co.	1
M. 630	Olds Motor Works	1
M. 1214	O'Reilley & Poutch	1
S. 703	O'Sullivan, Dan'l E.	1
S. 1046	Otis Elevator Co.	1
M. 160	Otter & Co.	1
M. 658A	Ox Breeches Mfg. Co.	1
M. 2726	McElroy & Shannon Mfg. Co.	1
M. 1497	New York Life Ins. Co.	1

918

M. 1389	Pabst Brewing Co.	1
S. 1200	Paine, Mrs. M. H.	1
M. 1149a	Parker Paper Co.	1
S. 696	Parker, W. S.	1
E. 752a	Parsons, Dr. A. L.	1
M. 170	Pearson & Son, L. D.	1
S. 581	Peerless Mfg. Co.	1
M. 253	P. C. C. & St. L. Rwy. Co.	2
M. 1648	Pero & Stoecker	1
S. 2230	Peter, R. A.	1
M. 2232	Pfingst, Mrs. F. J.	1
S. 128a	Pilcher's Sons, Henry	1
M. 2122	Pope Sanitarium	1
M. 560	Post Office	1
M. 145	Post Office	1
M. 2729y	Presby. Seminary	1

M. 588	Priest, W. C. & Co.	4
M. 2223	Pullman Co., The	1
M. 2400	Pusey, Dr. H. M.	1
M. 2624a	Pusey, Dr. W. B.	1
W. 565	Raffo, Rev. Chas. P.	1
M. 1118	Ray, Dr. J. M.	2
M. 7	Reliance Life Ins. Co.	1
M. 2405a	Reutlinger & Miller	1
M. 951	Rhodes-Burford Fur. Co.	1
S. 298	Roberts, H. P.	1
S. 1065	Roberts, Dr. W. O. & D. Y.	1
M. 167	Roberts, Dr. W. O. & D. Y.	1
M. 453	Robinson Bros. & Co.	1
S. 846	Robinson, C. B.	1
S. 2483a	Robinson, Mrs. J. M.	1
M. 294	Rodman, H. D. & C. D.	2
M. 3993a	Rogers, Newton G.	1
M. 582	Rohrman Ice Co.	1
M. 1827	Rowell, Rob't Co.	1
M. 191	Sabel, M. & Sons	1
M. 2024	Sachs & Sons, B.	1
S. 1155	Sackett, F. M.	1
M. 1015	Saint Joseph's Infirmary	1
E. 97a	Saint Louis Cemetery	1
M. 2160	Salvation Army	1
M. 619	Samuel, Dr. F. W.	1
M. 110	Satterwhite, Dr. T. P.	1
S. 405	Scanlon Coal Co.	1
W. 99	Schlitz, Jos. Brewing Co.	2
W. 841	Schoppenhorst Bros.	1
M. 223	Schultz, Jacob	1
M. 1231a	Schupp & Schmidt Mfg. Co.	1
S. 885	Schwartzwalder & Sons, J.	1
S. 1894	Seeboldt, Capt. Max	1
M. 186	Security Life Ins. of America	1
W. 452	Senn & Aekerman Brewing Co.	1
M. 3363	Sheild, C. H.	1
M. 2728	Smith, J. B. & Co.	1
S. 121	Smith, Rev. E. W.	1
M. 2607	Smith, Geo. W.	1
M. 810	Smith, Gran W. & Son	1
S. 1574	Smith, Milton H.	1
M. 1318	Smith & Nixon Co.	2
M. 842	Smith, W. M.	1
E. 916	Smyser, H. L.	1

2918½

E. 914	Smyser, J. L.	1
S. 372	Snead-Arch. Iron Wks.	1
M. 224	Snead & Mequire Coal Co.	2
M. 354a	Snow Church & Co.	1

M. 200	Solger, T. L. & Co.	1
M. 902	Southeastern Miss. Valley Assn.	3
M. 240	Southern Guaranty Co.	3
M. 1454	Southern Seed Co.	1
M. 277	Southern R. R. Co.	1
M. 531	Southern R. R. Co.	2
M. 568	Southern R. R. Co.	1
M. 770	Southern R. R. Co.	1
M. 941	Southern R. R. Co.	2
M. 1886	Southern R. R. Co.	4
M. 1937	Southern R. R. Co.	1
M. 634	Spalding & Steitz	1
E. 171	Spears, Dr. L. P.	1
S. 135	Speed, J. B.	1
S. 1679	Speed, W. S.	1
S. 1280	Starks, B. M.	1
M. 898	State Fire Marshall	2
M. 2085	Sterling Co.	1
E. 100	Stites, John	1
S. 1235	Straus, Mrs. Herman	1
M. 40	Struck, Alfred, The Co.	1
M. 2519a	Stucky, Dr. T. Hunt	1
M. 2519y	Sweeney, Dr. Jos. A.	1
M. 2566	Swift & Co.	1
M. 755	Tatum, Embry Co.	1
M. 130	Tavern Club	1
S. 892	Taylor, Marion E.	1
M. 1140	Tennis Co., The	1
M. 1150	Thompson, C. B.	1
M. 2059	Thompson, James & Bro.	1
M. 534	Tinsley, Mayer Eng. Co.	1
M. 95	Todd, Donigan Iron Co.	1
S. 107	Todd, James Ross	1
M. 85	Trabue, Doolan & Cox	3
M. 333	Treber Drug Co.	1
S. 1077	Tuley, Dr. Henry E.	1
M. 556	Tyler Box Co.	1
S. 1209	Tyler, Owen	1
M. 204	Union Central Life Ins. Co.	1
M. 1077a	U. S. Trust Co.	1
M. 1834	U. S. Clerk's Office	1
M. 3383	U. S. District Att'y	1
M. 854	U. S. Engineer	1
M. 176	U. S. Surveyor of Customs	2
M. 300	U. S. Weather Bureau	1
E. 123	Urwick, Christopher	1
M. 380	Utica Lime Co.	1
S. 350	Vance, Dr. A. M.	1
M. 56	Varble & Frazier Co.	1
M. 310	Verhoff, H. & Co.	1
S. 229	Victor Cotton Oil Co.	1

M. 1136a	Vogel Bros. & Co.	1
M. 209	Walter, Jno E. & Frank	1
M. 35	Walton, Joe. & Co.	1
M. 766	Waltz, Rev. S. S.	1
E. 153	Walz, F. J.	1

2919

S. 1252	Washburne Crosby Milling Co.	1
M. 252	Washburne, Geo. R.	1
S. 1875	Washburne, G. R.	1
M. 2233a	Washer, B. F. & N. L. Goldsmith	1
S. 204	Waters, Mrs. L. B.	1
E. 245	Wathen, J. A.	1
M. 105	Wathen, R. E. & Co.	2
M. 1869	Watkins, Carrithers & Co.	1
S. 2084	Watkins, Rush C.	1
S. 712	Webb, Rev. Aquilla	1
W. 598a	White Mills Distilling Co.	1
M. 2318	Whitesides Bakery	1
W. 191	Wiedeman Brewing Co., The Geo.	1
M. 97	Williams, Jas. E.	1
S. 1147	Williams, T. G.	1
S. 1987	Willoughby, J. E.	1
S. 796	Winston, Mrs. G. A.	1
S. 1716	Woman's Christian Assn.	1
M. 2368	Wood, Stubbs Co.	2
S. 702	Wood, Thos. J.	1
S. 2370	Woodcock, Chas. E.	1
S. 2140	Woolen, W. E.	1
S. 614	Wymond, Mrs. W. S.	1
M. 849	Yager, Dr. M. T.	1
S. 72	Young Men's Christian Assn.	1
M. 784	Zapp & Short Co.	2
M. 785	" " " "	2
S. 1692	Zorn, S.	1
S. 1195a	Washer, B. S.	1

2920 *Extension Bells.*

		No.
S. 448	Andreson, Henry	1
M. 575	Bailey, Dr. Wm.	1
S. 968	Beard, Miss Julia	1
E. 1080	Beckman, O. A.	1
S. 970	Bishop, T.	1
S. 2477y	Blanford, T. A.	1
S. 964a	Bloch, Dr. Leo.	1
M. 1611	Blow-Hiram & Co.	1
M. 206	Boden Bros.	1
M. 155a	Bodine, Dr. J. M.	1
S. 80	Bonnie, Shelby W.	1
S. 275	Brand, Jno. H.	1

S.	2006	Burnett, Henry	1
S.	691a	Bush, Dr. Evelyn R	2
E.	800	Carroll, A. J	1
M.	398y	Carroll, Chas.	1
E.	241	Cary, F. Grady	1
S.	1130	Castner, Chas. B	1
M.	2076	Chess & Whist Club	1
—.	—	Police Dept. of City	6
—.	—	Fire Dept. of City	1
S.	1490	Clarke, Geo. M	1
S.	292	Cochren, G. H	1
M.	3339y	Cohen, Dan	1
W.	212	Columbia Steam Laundry	1
S.	741a	Cook, C. Lee Mfg. Co	1
S.	649	Culbertson, Mrs. Wm. S	1
S.	2141y	Curd, M. O	1
S.	512y	Davis, R. Hays	1
S.	1481	Dodd, W. J	2
S.	588	Dugan, Mrs. A	1
S.	1565a	Edelen, Chas. A	1
M.	4738y	Eisenmann, A. D. & F	1
S.	266	Ferguson, Mrs. J. M	1
M.	2121	Fisel, Jno. C	1
S.	520	Fleischaker, Dr. Frank W	1
S.	1773	Gilmore, Mrs. E. W	1
W.	307a	Graf, Webb Iron Mfg. Co	1
E.	391y	Grasser, Dr. E. T	1
S.	1240	Gray, R. Norton	1
M.	1861a	Atlas Mch. Co	1
M.	576	Cheatham, Dr. Wm	1
M.	2762	Push Button & Buzzer	1

2921

S.	575	Hagan, Frank	1
M.	1432A	Hall, Miss M. Florine	1
S.	632y	Hamilton, W. G	1
S.	1601	Herb, Arthur	1
S.	1156	Hidden, Mrs. Otis	1
S.	98	Hilpp, S. A	1
S.	600	Holy Rosary Acad	1
S.	1418A	Home Carriage Co	1
W.	514M	Illinois Leather Co	1
E.	608	Judge, R. C	1
W.	641A	Kenner, Dr. R. C	1
S.	1272	Kline, D. E	1
S.	2225	Leslie, Mrs. M. K	1
M.	1521	Lewis, Miss Florence	1
M.	1143	Lincoln Savings Bank	1
W.	614A	Locke, Wm. P	1
S.	1568	Louisville Cotton Mills Co	1
M.	1	Louisville Packing Co	1

M.	1742Y	Louisville Testing Laboratory	1
E.	1030	Louisville Water Co	1
M.	59	Lyons, W. L. & Co	1
M.	1867	Lyons, W. L. & Co	1
M.	1406	Maas, John & Bros	2
M.	4738A	Marx, Nathan & Son	1
S.	1527Y	Mayer, Eli	1
S.	148	McCready, Rev. R. L	1
S.	878A	McDonald, Mrs. S. C	1
E.	646	McFerran, Mrs. J. C	1
M.	3006	McKnight, W. H	1
S.	2120	McPherson, Pattie	1
M.	1818Y	Mills & Menard	1
S.	1182	Morthorst, Jos	1
E.	659	Morris, Dr. J. M	1
S.	143	Morton, Dr. D. C	1
W.	1045A	Murphy, T. M	1
M.	736	Neighborhood House	1
S.	2083Y	New, Chas	1
W.	640	Newman, Scott, Jr	1
M.	1852A	Oppenheimer, S. C	1
S.	375	Querbacker, Frank	1
E.	131y	Owens, Dr. B. F	1

2922

M.	2122	Pope Sanitorium	1
M.	2624A	Pusey, Dr. W. B	1
M.	744	Raidt Milling Co	1
S.	2360	Ramsey, Wm. P	1
E.	413	Ranlett, Mrs. J. H	1
M.	173A	Reynolds, Dr. D. S	1
S.	921A	Rosenbaum, Isaac & Son	1
S.	2176A	Rosenbergm, G. S	1
M.	1269	Rosenham, C. H	1
W.	410	St. Benedict Cedar Grove Acad	1
E.	401y	Schueter, J. A	1
S.	2594Y	Serpell, Mrs. J. R	1
S.	1620	Skinner, Dr. C	1
S.	1404	Smith, S. S	1
M.	1852Y	" Walter E.	1
S.	966A	Sun Varnish Co	1
S.	429	Tapp, Wm. W	1
S.	892	Taylor, Marion E	1
M.	949A	Todd, J. M. & Co	1
S.	444	Trabue, Edmund F	1
S.	50	Trawick, Dr. John D	1
S.	1021A	Troxell, C. L	1
S.	1792Y	University School	1
S.	350	Vance, Dr. A. M	1
E.	849	Volz, Aug	1
S.	1594Y	Watson, John Crittenden	1

M. 100	Werne, Joe. A.	1
M. 492	Western Tanning Co.	1
E. 599A	Young, J. C.	1
M. 3583a	Reidhar, Miss E., gong	1

2923 *Lists.*

S. 440	Adath Israel Temple	1
E. 871	Allen, Mrs. C.	1
M. 461y	American Credit Indemnity Co.	1
M. 3131	American Surety Co. of N. Y.	1
M. 282	Anglo-American Tar Product Co.	1
M. 870	Atherton Realty Co.	2
S. 832y	Bacon, E. H.	1
E. 337a	Baldwin, J. R.	1
M. 291	B. & O. S. W. R. R. Co.	1
M. 741y	Baptist Book Concern	1
M. 248	Barbee & Castleman	2
W. 274	Beckwith Organ Co.	1
E. 257	Beechurst Sanitarium	2
M. 1289a	Bernard & Crum	1
S. 1508	Best, Mrs. W. H.	1
S. 601y	Bethel, J. C.	1
M. 2300	Bloom, Bronner & Robbins	3
M. 15	Dr. Boggess, C. F. & Marvin L. Thomas	1
E. 121a	Bonnycastle Feed Co.	1
M. 618a	Bowman, A. H. & Co.	8
M. 858a	Bowman, Hite D.	1
E. 57y	Boyd, A. A.	1
S. 345	Brandeis, Dr. Florence	2
M. 1433	Brandeis, Robt. E. & Co.	3
S. 2519a	Bright, Sallie	1
S. 2048a	Brucker, Mrs. R. S.	1
M. 156	Bryan, W. B.	1
M. 1972y	Bryan, W. E.	1
M. 83a	Building Con. Ex.	1
S. 788	Bull, Mrs. E. A.	1
M. 78	Bullitt Bros.	1
M. 42	Bullitt & Bullitt	4
S. 1661a	Burford, L. M.	1
S. 542	Burlingame, Paul	1
M. 315	Byrne & Speed	2
S. 1642	Caldwell, H. M.	1
M. 1776y	Campbell & Young	1
M. 1812y	Cole, Mrs. W. P.	1
S. 1067a	Carpenter, J. S.	1
M. 398y	Carroll, Chas.	1
M. 776	Cartledge & Ireland, Drs.	1
S. 147	Cary, Mrs. E. Selden	1
S. 235	Castleman, Sam. Sr.	1
S. 1846	Cayce, Ridgley	1

M. 249a	Central Boarding & Liv. Stable	3
S. 522	Chase, E. H., Jr.	1
M. 272	Ches. & Ohio Ry. Co.	1
M. 145	Chicago, Rock Island & Pac. Ry.	1
M. 2044	Cin. Gas, Coal, Coke & Min. Co.	2
—. —	City of Louisville	1
S. 1337y	Coady, J. F.	1
M. 1812y	Cole, Mrs. W. P.	1
S. 741a	Cook, C. Lee Mfg. Co.	1
S. 936	Cook, Frank S.	3
E. 313	County Health Office	1
E. 529a	Crescent Drug Co.	1
S. 1540	Barnes, Miss Maud C.	1
M. 1281y	Bate, V. A.	2
M. 1906	Board of Church Extension	1

2924

M. 851	Crescent Laundry Co.	1
M. 978a	Cummins, E. L.	1
S. 2141y	Curd, M. O.	1
S. 1159y	Dabney, J. M.	1
M. 1238y	Dallam, Farnsley, Means	2
S. 1214	Danforth, Miss Jos. L.	1
E. 208	Davidson, Dr. H. A.	1
M. 1881a	Davis, Miss Sue M.	1
M. 330	Davis, Urwick Co.	1
M. 3155y	Dearing, Chas. T.	1
M. 819	Dock, Miss Sarah	1
S. 764	Dugan, Thos. S. & Co.	1
S. 1935	Dugan, Basil W.	1
M. 10	Du Relle & Fleece	1
M. 30	Economy Life Ins. Co.	1
M. 410a	Eng. & Architects Club	1
S. 580	Fairleigh, Jas. F.	1
M. 2287y	Farmer & Short	1
M. 1414	Federal Chemical Co.	3
M. 467	Fehr, Frank Brewing Co.	1
M. 4600	Fidelity & Guaranty Co.	2
M. 681a	Fidelity Mutual Life Ins. Co.	1
M. 732a	Fishback's Compressed Air Carpet Clg. Co.	1
M. 477y	Focus, The	1
M. 3986y	Forman, Breen Mfg. Co.	1
S. 1752a	Forman, Geo. L.	1
E. 899a	Fox, Henry	1
M. 1209y	Fox & Lucas	2
M. 159	German Security Bank	1
E. 980m	Ghiselin, Miss Hope V.	2
S. 475	Gifford, H. N.	1
M. 688	Great Atlantic & Pac. Tea Co.	1
S. 1092a	Grenaugh, H. Al	1
M. 925	Gregory & McHenry	3

2925

S. 1557A	Haden, Mrs. Kate	1
S. 1853A	Hallenberg, Adolph	1
S. 51	Halsey, W. L.	1
S. 2075	Hardy, Mrs. Sallie	1
S. 983y	Harris Engineering Co.	4
S. 1015y	Harrison, Wm. H.	1
S. 1864y	Hedges, Miss Martha F.	1
S. 1044y	Heuser & Gasper, Drs.	4
S. 404	Heyburn, Wm.	1
E. 240M	Hicks, Miss Ella D.	1
M. 18	Hidden, Otis & Co.	1
S. 1965A	Hiner, J. A.	1
S. 1851A	Hirsch, Benn	1
S. 2333Y	Holt, Jas. L.	1
M. 2535A	Home Electric Co.	1
M. 226	" Ins. Co. of N. Y.	1
M. 963Y	" Life Ins. Co.	1
M. 2180	Hosch, C. F.	2
M. 1021	Howe Co.	1
S. 911	Hughes, Mrs. W. A.	1
S. 1253	" W. T.	1
M. 21	Humphrey, Davis & Humphrey	1
M. 3181Z	Hyman, E.	2
M. 2395	Illinois Glass Co.	1
S. 1002	Ingram & Lawrence	1
M. 673	Inter-Southern Life Ins. Co.	1
E. 732Y	Jacob, Thos. P.	1
S. 60	James, Miss Grace C.	2
M. 194	Jefferson & Co.	1
M. 2376	Jones, Thos. S. & Co.	1
M. 319	Kelly, Ritter, Abell & Spaulding	3
S. 1438A	Kennedy, Mrs. J. M.	1
S. 566A	Ky. Hardwood Floor Co.	1
M. 2267	Ky. Wall & Plaster Co.	1
E. 11	Kiefer, Dr. F. J.	1
M. 2158A	Kinkead, R. C.	1
E. 792Y	Knopf, Peter	1
S. 2270	Kohler, M. S.	1
S. 472	Kohn, Aaron	1
M. 2155A	Kubaugh, Braun & Co.	1
E. 846A	Lamb, Geo. W.	1
E. 372Y	Landrum, J. T.	1
S. 951	Laub, Victor	1
M. 901	Layer, Gottleib	7
S. 7067	Lee, R. C.	1
S. 1332	Lemont, Mrs. S. M.	1
S. 2225	Leslie, Mrs. M. K.	1
S. 494	Lloyd, V. A.	1
M. 1294A	Long, John S.	1
M. 780	Loomis, Arthur	1

M. 1134	L. H. & St. L. Ry. Co.
M. 1135	" " " " " " "
M. 2073	" " " " " " "
M. 1600	Louisville Carriage Co.
M. 13	" Coal & Coke Co.
E. 140	" Drying Machine Co.
M. 3957A	" Eng. & Emb. Co.
W. 629	" Fertilizer Co.
M. 1863A	" Interior Dec. Co.
M. 1188	" Laundry & Shirt Mfg. Co.
M. 179	" Selling Co.
S. 940	" Soap Co.
S. 41	Johnson, Chas. F.
M. 702	" H. M.

2926

S. 180	Louisville Soap Co.
M. 1864	" Towel Supply Co.
E. 673Y	Major, H. J.
S. 1810M	" W. D.
M. 1372	Manget, Fred.
S. 1570	Manson, L. B.
S. 97	Marx Hide & Tallow Co.
M. 242	Matthews & Hanes, Drs.
S. 764A	Maury, Miss Sallie S.
M. 1330	McBee, A. E. & Co.
E. 485A	McBride J. G.
M. 632	McChord Hines & Norman
M. 545A	McCurdy Mfg. Co.
M. 470	McDonald, Kenneth & W. J. Dodd
S. 1974A	McGlasson, Mrs. E. M.
M. 180	McLean & Boone
M. 1700	McMurtry & Sherril Drs.
M. 2689Y	McQuiddy, John H.
S. 262A	Meffert J.
M. 1873Y	Menefee Richard H.
M. 3922A	Merchants' Dispatch
M. 3310	Merchants' Mfg. Ass'n
M. 1874Y	Meyer Wm. E. & Co.
S. 1767	Meyers Joe E.
M. 31	Michigan State Life Ins. Co.
M. 300M	Miller, Will B.
M. 765	Milner B. C. Sons Co.
S. 2498	Moore Mrs. Anna E.
E. 638	Moore, Jos. W.
S. 162Y	Morganroth J. L.
S. 1105	Morris, Herman
S. 407a	Morton, Mrs. Douglas.
M. 2120	Mullen & Watkins
W. 125	Murphey, D. X.

M. 3310	National Adv't'g Agency	2
M. 29	" Foundry & Machine Co.	1
M. 92	National Life Ins. Co. of Vermont	1
M. 681Y	" Life Ins. Co. U. S. A.	1
M. 1138	Neboe Con. C. & C. Co.	1
M. 736	Neighborhood House	1
E. 189A	Newbold S. H.	1
M. 693	Newman Drug Co.	1
M. 3719	New Pantorium	1
M. 514	New York Laundry	5
S. 400	O'Brien, John F.	1
M. 2359Y	Office Equipment Co.	4
S. 993A	Oleacre W. C.	1
S. 237A	Orborne, J. D.	1
M. 1469A	" Livery Stable	1
S. 1202	Otters W. P.	1
E. 649A	Owen, Jordan	1

2927

M. 375	Rufers Residence	1
E. 327Y	Pargny, Mrs. J.	1
S. 1967	Pecar, Miss Mollie	1
M. 2232	Pfingst, Mrs. F. J.	1
M. 2053	Phœnix Mutual Life Ins. Co.	1
M. 956A	Pirtle, Alfred	1
S. 1089Y	" J. S.	1
E. 570	Pomeroy, Mrs. M. B.	1
S. 694	Powell, Henry J.	1
S. 212	Presby. Col. Mission	1
M. 2729Y	Presby. Seminary	1
S. 442	Price, John W.	1
M. 1245A	Prudential Ins. Co.	1
S. 1031A	Ramser's Son, Geo.	1
M. 39	Reimers, Mrs. C. W.	1
M. 1239Y	Reinecke, Geo. W.	1
M. 928	Richards, Albert J.	1
S. 203Y	Richardson, Annie A.	1
S. 428	Roach Neill *Diary* Co.	1
S. 240	Robinson, Geo. A.	1
S. 2483A	Robinson, Mrs. J. M.	1
M. 294	Rodman, H. D. & C. D. L.	1
E. 806	Rogers, Miss Eva J.	1
S. 2043Y	Rogers, R. W.	1
M. 3176Y	Rothchild & Weinbaum	1
M. 932	St. Bernard Mining Co.	1
S. 1741Y	Sale, E. Hewett	1
S. 405	Scanlon Coal Co.	1
M. 2876A	Schmidt, Geo. W.	1
S. 2303	Scholtz, Annie M.	1
S. 944A	Semonin, Miss Minnie	1
M. 3363	Sheild, C. H.	1

E. 702A	Shipley, W.	1
M. 1936A	Singer Sew. Mach. Co.	1
M. 2312Y	" " " "	2
S. 756Y	Slaughter, Miss Bessie B.	1
S. 732M	Sloan, Mrs. Mary	1
S. 567Y	Smith Cooperage Co.	1
M. 1318	Smith & Nixon Co.	1
M. 407A	Smith, W. Lyne	1
M. 344A	Snow Church & Co.	1
M. 568	Southern R. R. Co.	1
M. 190	Sowders Fish Market	1
M. 1887	Spalding Steam Laundry	1
M. 3524M	Spencerian Business Col.	2
M. 229	Starr Union Line	1
M. 898	State Fire Marshall	1
S. 324	Strong, M. J.	1
W. 214	Strohmenger, G. J.	1
M. 2913z	Sun Life Ins. Co.	1
S. 156	Tabb, C. S.	1
S. 2219A	Taylor, C. L.	1
E. 293A	Taylor, Hancock	1
M. 477A	Terry & Tice	2
E. 662A	Thompson, Mrs. Hite	1
M. 85	Trabue, Doolan & Cox	3
M. 109	Tracy & Co.	1
S. 50	Trawick, Dr. John D.	1
M. 204	Union Central Life Ins. Co.	2
M. 869	U. S. Life Ins. Co.	1
M. 176	U. S. Surveyor of Customs	1
S. 1319y	Van Dyke, Mrs. S. M.	1
M. 1118	Ray, Dr. J. M.	1
M. 1132	Rem. Typewriter Co.	1
E. 555	Rowland, Edward	1
M. 620M	Roy, W. D. & Son	1

2928

M. 56	Varble & Frazier & Co.	5
M. 1089	Walker Alonzo	1
M. 546A	Walker, S. G.	1
M. 558	" Wm.	1
S. 1289Y	Wallace, Dr. J. W.	1
M. 523	Walton, C. J. & Son	1
M. 296A	Ward, O. P.	1
M. 252	Washburne, Geo. R.	1
S. 1195A	Washer, B. S.	1
M. 183	Waters Billing & Co.	1
M. 105	Wathen, R. E. & Co.	1
M. 983A	Weaver & Bensinger	2
M. 3644	Webster, Bradford	1
E. 915A	Weldon Geo. C.	1
E. 429y	Weller, Mrs. M. E.	1

Cumberland Telephone and Telegraph Co

Charges made in Ledger at ...

Name	Circuit	From
Baptist Seminary	S 2294	Res. Direct
Chess and Whist Club	M 2076	Do Do
Childrens Free Hospital	M 2172	Do Do
Cliffs Christian Church	E 996 a	Res. Party
Cooke's Benevolent Institute	S 217	Res. Direct
Federation of Jewish Charities	M 2500	Do
Germ. Baptist Orphans Home	E 95	Do
Holy Rosary Academy	S 600	Do
Ger. Baptist Orphans Home	S 1223	Do
Ger. Free Kindergarten	S 1845	Do
Methodist Episcopal Home	S 397	Do
Neighborhood House	M 734	Do
Ky Children's Home Society	E 880 M	Res. Party
Do Do	E 880 R	Do
Presbyterian Colored Mission	S 212	Res. Direct
" Orphans Home	S 2182	Do
Presentation Academy	S 205	Do
Preston Lodge F & A. M.	M 2751	Do
Presbyterian Seminary	M 2727 C	Res. Party
" "	M 2727 R	Do
Protestant Episcopal Orphans Home	S 2860	Res. Direct
St. Marks " Church	E 1133 C	Res. Party
St Pauls " "	S 1456	Do
" Anthony's Hospital	E 778 C	Res. Direct
St Benedicts Cedar Jean Academy	W 410	Do
St. George's Lodge Do F & A. M	M 1920	Do
St. Joseph's Infirmary	M 1015	Do
St. Mary's and Elizabeth Hospital	S 93	Do
St Vincents Orphan Asylum	E 1840	Do
Salvation Army	M 2160	Do
Second Presbyterian Church	S 363	Do
Warren Memorial Church	S 535	Do
Watkins Reg't	M 737	Do
Womens Christian Association	M 2551	Do
Womens Club House	S 1111	Do
Y. M. C. A.	S 1305	Do
Y. M. C. A.	S 72 - S 340	Do
Orphanage of the Good Shepherd	C 933	Res. Party
Masonic Widows and Orphans Home	S 324 S 327	Do

From		To				
Res.	Street	Bus.	Street			
Do	Do	Do	Do			
Do	Do	Do	Do	From	To	
Res.	Party	Bus.	Party			
Res.	Street	Bus.	Street	Res. Street	Bus Street	39
	Do		Do	" Party	" Party	9
	Do		Do			
	Do		Do			
	Do		Do			
	Do		Do			
	Do		Do			
	Do		Do			
Res.	Party	Bus.	Party			
	Do		Do			
Res	Street	Bus.	Street			
	Do		Do			
	Do		Do			
	Do		Do			
Res.	Party	Bus.	Party			
	Do		Do			
Res.	Street	Bus	Street			
Res.	Party	Bus.	Party			
	Do		Do			
Res.	Street	Bus.	Street			
	Do		Do			
	Do		Do			
	Do		Do			
	Do		Do			
	Do		Do			
	Do		Do			
	Do		Do			
	Do		Do			
	Do		Do			
	Do		Do			
	Do	2929	Do			
	Do		Do			
	Do		Do			
910	Do		Do			
	Res.	Party	2:[illegible]	Bus.	Party	
5 527	Do			Do		

Earnings

1 Exchange Earnings
2 Proportion of Toll Earnings during 15 % on
3 Originating Commissions on L. J. Messages
4 Earnings from Telegraph Companies
5 Message Fees
C. J. and J. W.
C. J. and J. W.
6 Pole Lines and attachments
7 Private Lines
8 Net Advertisements
9 Rentals and Miscellaneous
10 Telegraph Drops
11 Bad Debts
Exchange
Toll
12 Total Revenue

Cumberland Telephone and Telegraph
Louisville Ky
Fa Year 19

	Total
	$ 307,
10 0/0 on all out going messages on L. J. and J.	1,
as	3,
ages for Telephone Service.	7
	6
chments	1,
	3,
	2,
	2
2980	
$ 3,113.22	
177.84	3,29
2989	$ 3 2

Company "Exhibit 15 A"

	Exchange	Earnings from Tolls excluded Louisville exchange
131.86	$ 301,431.85	
09.95		7,089.95
72.37		3,272.37
.79	141.79	
8.30		458.30
29.89	1,229.89	
51.57	3,151.57	
2.97	2,682.97	
0.55	2130.55	
	3,113.22	
.06		177.84
938.80	$ 314,275.52	$ 11,566.78

Cumberland Telephone and Telegraph Company

Earnings and City Rates

Business Direct	Instruments 970	Rate 6.50	6305.00
" Party	953	4.00	3812.00
Residence Direct	939	3.00	2817.00
" Party	2009	2.00	4018.00
Business Pay Station	625	4.00	2100.00
Residence " "	884	2.00	1772.00
Business and Residence			
Extension Sets	116	1.00	116.00
PB Exchange Instruments	2023	1.00	2023.00
	8721		
Trunks (PB Exchanges)	251	5.50	1413.50
PB Exchange Switch Boards	75	5.50	412.50
Joint Recs.	184	1.00	184.00
Jacks	429	.25	107.25

Gongs 2 .50 100

" 2463180
12
29558160

2990 Non Exchange service 37 Instruments actual Earnings as shown by Smith Exhibit No. 6 } 74113

County Service

Instruments	303
Ext. Sets	36
Sets	10
Ext. Bells.	9
Gongs	1
Ft. Poles.	1

Actual Earnings for month as shown by Smith Exhibit No 6. } 138171
12
" for Year 1657752

31290026

Total earnings for year

Instruments 8721
37
303
33
9294

Add miscellaneous Exchange earnings based on actual 1908 figures except Private Line earnings which are based on 1909 earnings 1938317

Deduct Bad Debts based on Average for 1906-7-8. 32728342
313152

Total yearly earnings 32415190

under rate ordinance based on Smith Exhibit No 6."

"Exhibit Warren No. 14"

Cumberland Telegr

Exchange Earnings and Expen

Gross Earnings

Expenses:
General Expenses
Operating Expenses
Maintenance Repairs
Instrument Expense
Net Revenue
Percent of Expense to Gross Revenue
" " Net Revenue to " "
" " " " " Book Cost of Plant
" " " " " Value of Plant
Average Number of Stations
" Gross Revenue per Station
" Expenses " "
" Net Revenue " "
Number of Subscribers, (Average)
Average Gross Revenue per Subscriber
" Expenses " "
" Net Revenue " "

Cumberland Telegraph & Telephone Company

Lawrence Ky

Exchange Earnings and Expenses for Year 1908.

			$ 314,275.52
		$ 35113.58	
		40,305.16	
		62,921.33	
		13,722.52	152,062.78
			$ 151,612.74
Revenue			51.74 %
"			48.24 %
Book cost of Plant		$ 1,701,388.03	8.91 %
Value of Plant		1,317,171.28	11.50 %
Lines.		14,006	
Ben Station			$ 31.41
" "			14.24
" "			15.15
(Connected) Subscribers		6,158	
"			40.73
"			21.33
"			27.40

"Exhibit Warren No 11"

2932

2991

Cumberland Telephone

Construction

	Aerial	Underground
Cost of Ohio Valley Telephone Co.	$269,121.31	$224,981.96
1900	82,318.16	30,111.92
1901	89,288.91	3,183.17
1902	75,801.10	21,418.44
1903	74,301.89	4,973.53
1904	97,742.29	248.24
1905	33,105.20	1,618.30
1906	20,763.10	2,322.06
1907	11,672.02	277.09
1908	6,332.98	18.93
Up to March 1st 1909	4,178.12	
Cost of Louisville & Nashville 1907 and classification thereof	$818,048.98	$292,710.91

2902

2933

Cumberland Telephone and Telegraph Company
Louisville Ky.
Construction Account as Corrected

Aerial	Underground	Equipment	Tools and Teams	Office Furniture and Fixtures	Total
$ 249,121.37	$ 224,881.96	$ 188,243.31			$ 618,356.64
92,311.16	30,111.42	78,154.56			102,777.14
89,288.91	3,043.17	24,847.64			117,179.72
75,806.10	21,411.41	117,902.68			215,120.01
14,301.88	4,783.53	80,691.87			143,481.88
97,742.29	248.29	28,091.54	$ 3,067.04		131,321.13
31,105.20	1,013.36	17,137.80	2,423.75		40,691.21
70,765.10	2,322.06	13,226.03	3,177.76		89,125.16
11,432.02	277.09	8,411.78	810.93		20,170.42
6,332.48	13.43	11,430.72	98.44	$ 677.42	4,552.48
1,149.12		784.84	103.11	25.72	911.65
$ 834,042.48	$ 287,710.91	$ 571,150.86	$ 9,831.03	$ 1,803.34	$ 2,102,371.68

2902

2933

"Exhibit Petrovich No 18"

S. 1401	Werne, Mrs. Rosa	1
S. 1687a	Wheat, Mrs. A. T.	1
W. 598A	White Mills Dist. Co.	1
M. 97	Williams, Jas. E.	1
S. 832A	Witherspoon Dr. E. O.	1
S. 1926y	Young, Mrs. John B.	1
M. 2138a	Strassel, J. L. E. R. Co.	2
S. 1926a	Thum, W. W.	1
M. 1490	White & Co., Allen G.	1
S. 1736a	Woodson, I. T. Sr.	1
S. 1692	Zorn, S.	1

(Here follow Exhibits Warren Nos. 15 to 18, marked pages 2929 to 2933.)

2934 WARREN EXHIBIT #19.

Report of conference held in office of Judge William L. Granbery, at Nashville, Tenn., June 7th, 1909, the following being present at said conference: Judge Henry Burnett, Master Commissioner; Mr. William L. Granbery, Mr. Clayton B. Blakey, Mr. George Wilkinson, Mr. Henry B. Warren.

Judge GRANBERY: My first proposition is, that I do not think any of the records, or copies of records, or figures from the company's books and records should be taken away by any of the expert accountants, but that all working papers and figures made, including memorandums of every kind, should, as soon as the report is made, be put under seal and turned over to the Master Commissioner to be used in this case. I object to any of the expert accountants taking away any copy or memorandums of any kind taken from the books and records of the Company.

I assume that after the report is made by the expert accountants that these papers can then be turned over to the Master Commissioner. What have you to say to that, Mr. Blakey?

Mr. BLAKEY: The accountants for the City are necessarily bound to take various figures from the books of the Company in order to make up a report to the Master Commissioner.

After they have taken these figures from the books they go to their private office and prepare their report. The only work the accountants are now doing on the books is work which accountants always do when they make an examination of any set of books, and it is work which it is customary for accountants to make in examining books, which is the examination of the books and making of such memorandums as they desire, from which memorandums they make up a report. If the report they make and the testimony which they give is questioned, they necessarily are bound
2935 to establish their conclusions. The verity of their reports and the verity of their figures which they swear to from the memorandums which they have taken from the books—as I understand the customary procedure in such cases such memorandums are the property of the accountants; though the accountants are perfectly willing to make up their report from these figures, deliver said figures and memorandums either to the Attorney for the City or to the Commissioner, or deposit them in any place that will, in their opinion, prevent any possible tampering with the figures so that they can say that these are the figures they made, and that the figures have been so preserved by them as to prevent their having been changed after they took them from the books. Is that about the situation, Mr. Warren?

Mr. WARREN: You understand I am not recognized as having any judiciary powers—Mr. Farnham has judiciary powers with the Company, and I believe his position in this matter is that all memorandums of any kind which we take off the books are the property of the Mutual Audit Company. We have never yet permitted any

of these papers to get out of our hands in any case, and when through with them we box and seal them up and store them away in our office.

Mr. BLAKEY: How long have you been connected with the accounting department of any concern in making examinations of books and papers of concerns such as this?

Mr. WARREN: About four years.

Mr. BLAKEY: What different public service corporations and railroads have you been engaged in examining and auditing?

Mr. WARREN: The Florida East Coast Railroad; the L. & N.; Chicago & Northwestern; Atlanta & St. Andrews Bay Railway; City of Jacksonville, Florida; City of Wilmington, Del. That is all the work I have been engaged in, I believe.

Mr. BLAKEY: What has been the custom of the Auditor in charge of the respective memorandums made by the accountants such as you are making here at the present time?

Mr. WARREN: Everything belongs to us.

2936 Mr. BLAKEY: Have you retained these memorandums yourself?

Mr. WARREN: Except in the case of Wilmington, Del., which papers were never shipped back to our office because of some internal political dissention in the City Government; and while we received our full remuneration for services on the city work, the job was never used and was practically turned down, you might say; the work was done and accepted and stored away.

Mr. BLAKEY: What is the character of the figures and memorandums that you are making at the present time?

Mr. WARREN: I don't believe I catch quite the sense of that question.

Mr. BLAKEY: I mean are you taking from the books a statement of what the books here show?

Mr. WARREN: We are only taking memorandums of such things as we wish to add to or deduct from the figures shown by the records. If we take any exception to the character of the entries, we make a memorandum. Then we will take the figures as shown in the exhibits of the Telephone Company and add to or deduct from these figures which we take off.

Mr. BLAKEY: Would it be possible for you to make a report to the Master unless you had these figures in your possession?

Mr. WARREN: Of course not.

Mr. BLAKEY: Would it be possible for you to verify any figures?

Mr. WARREN: It would not be possible for us to swear to the correctness of these figures.

Mr. GRANBERY: The agreement in this cause provides that the expert accountants selected by the Complainant and Defendant shall make a joint report as far as they can to the Master Commissioner. Of necessity that report will be made while the accountants have access to not only the memorandums made by them, but to all of the original records of the Company. My position was, and is, that when that report shall have been made, then the mem-

orandums taken by the expert accountants shall be sealed and delivered to the Master Commissioner, and not before.

2937 Mr. WILKINSON: Mr. Blakey asked Mr. Warren the last question, I think, what was the nature of the memorandums he was making—that he and his assistants are making from the books of the Company. Mr. Warren's answer was, that they were making such memorandums as would enable them to make deductions from or additions to the results shown by the books of the Company. I think either Mr. Warren did not understand the question in same way I understood it, or he has not made a complete answer, and I would like to have it noted that Mr. Warren's answer is not complete, and I would like to ask him to complete it. Mr. Warren and his associates have made a complete copy of the construction account of the Louisville Exchange of January 1, 1900—from January 1, 1900, to December 31, 1908, with all the voucher numbers and other references analyzed as shown in the books. Mr. Warren and his associates have, in addition to this, made a complete analysis of the toll messages going out of and coming into the Louisville Exchange over the toll lines of the Company. In addition to this, Mr. Warren and his associates have made certain memorandums and data in regard to the progress of their work as accountants usually do. If that is questioned, I would like to have the papers sent for, if you please, Mr. Granbery.

May I continue in regard to the other part of the question?

Mr. GRANBERY: Certainly.

Mr. WILKINSON: As to what the accountants have done, I assume that the remarks made by Mr. Blakey, City Attorney of Louisville, referred to the accountants representing his city. As I have not had a minute's conference with Mr. Blakey, he has, of course, had no opportunity of learning what papers I, a member of the firm of Wilkinson, Reckitt & Williams, public accountants, have. The question has been decided elsewhere, and in court, that Public Accountants are entitled to remove their working papers from the office of their client. In this case, however, the examination being made jointly by the Audit Company on behalf of the City, and a firm of Certified Public Accountants on behalf of the Tele-

2938 phone Company, other considerations arise. On behalf of the company, I do not need to refer further than I have already referred to the papers prepared by the Mutual Audit Company, as far as I know. On the other hand, I have accumulated a great many working papers with which the representatives of the Mutual Audit Company have as yet no knowledge whatever. I am ready to turn these papers over to them today, and unless they make copies of these papers for their own files, or excerpts therefrom, they will not be in the position that the City Attorney has indicated they should be in.

Judge BURNETT: That is, they could not make a full report of the condition of the Company without the aid of the memorandums you have made?

Mr. WILKINSON: Unless they duplicate the work I have done. If they are going to be here long enough to duplicate the work that I have done, they can get along very well without my papers, but

there would be little hope of our being able to get together and sign a joint report.

Mr. BLAKEY: You mean unless they accept your papers?

Mr. WILKINSON: Unless they take my papers and check them and make such modifications as they may find necessary, discussing such matters with me as they may disagree with me upon, and unless they do that, they must duplicate the work. If they duplicate the work, following along the lines that I have taken, or any other lines, there must, of necessity, be considerable divergence between our findings, and I say there would be little hope of our getting together in regard to our findings, unless we travel in a measure hand in hand.

Mr. Warren and his associates have taken some of my papers, and have checked them, and have agreed with my findings. They have not commented upon their not being right, or made any claims that the figures do not represent the true result as far as they have gone. It would be embarrassing to my firm to be asked a question in New York as to our report, the papers being in Louisville in the
2939 care of the Master, but if that is the order of the Master, I shall be glad to comply with it.

Mr. BLAKEY: Do I understand you to say that it is the custom, and, as you understand, has been so ruled by the courts, that the Audit Company making the examination is entitled to take the memorandums they make and use them in such way as they see fit in the case?

Mr. WILKINSON: Use them for the purpose of making up their report, and thereafter keep them in their own office.

Mr. GRANBERY: Mr. Warren, what is the purpose of making up a statement where every toll message out of Louisville went to, and whence every message came coming in to Louisville?

Mr. BLAKEY: Now, I do not think we ought to go into that. I don't think we ought to take up our time here in discussing why he is getting certain figures, whether the figures are pertinent or not—when the trial comes on, is another matter. I don't see why we should take up our time——

Judge BURNETT: The result of this conference here cannot be used as evidence on the trial of the case. This conference is for the purpose of arriving at some determination of the objection raised by the Company. I suppose it is more for the information and enlightenment of the Special Master than for any other purpose—in fact, that is the only purpose.

I think he may as well answer the question without going into any lengthy dissertation.

Mr. WARREN: Is it essential that I answer that question?

Judge BURNETT: No, I don't think it is essential, but I think it will enlighten the Special Master.

Mr. WARREN: We have a specific reason for going after
2940 that information. This information will be presented to Mr. Wilkinson at the proper time, and if he does not see it in the same light we do, we will make a special report.

Mr. WILKINSON: The last remark that Mr. Warren has made

has relieved my mind of a degree of uncertainty attached to the progress of their work, but I would like to have this point clearly defined. The order of court says that we are to make a joint report in so far as we may be able to make a joint report. On any matters in which we cannot agree, we shall make separate reports. It would, therefore, seem to me to be right and proper that each of us, the Mutual Audit Company on one hand, and Wilkinson, Reckitt and Williams on the other hand, should take each other into their confidence and show everything, and that we should have an opportunity to agree to or disagree to or with anything and everything that is to be contained not only in our joint report, but in our individual reports, should we have to make them. We may be able to get together on every question—I hope we may—but if we are not, we will then make separate reports, and I would like to have it ruled by the Master Commissioner that we are not at liberty to make any separate report in regard to any matter that has not been submitted to the accountant on the other side.

Mr. WARREN: I have always been absolutely honest and upright, and do not think——

Mr. BLAKEY: Is it your intention to discuss and take up your findings and discuss them fully and completely with Mr. Wilkinson?

Mr. WARREN: Not mine.

Mr. BLAKEY: Do you know whether that is the intention of the Mutual Audit Company?

2941 Mr. WARREN: I don't see why they should not.

Judge BURNETT: No special report is to be considered at all unless it first shall have been submitted to the other accountant and an honest effort made to come to an agreement, and then any special reports where different results have been arrived at ought to be accompanied by the reasons of each accountant.

Mr. GRANBERY: Mr. Commissioner, you certainly have a right to direct the scope of this investigation. I do not see the relevancy of finding out where every toll message came from and where every toll message went to—all that indicates to our rivals where we are doing the most of our business, and what territory is good and what is poor; that is our private property and does not belong to the public, and it was for that reason that I asked the question, because I could not see the relevancy of such information appearing in the report.

Mr. WARREN: We are taking off these toll reports relative to the City of Louisville only; we have nothing to do with any other office in the system of the Company, and so far as designating a good or a poor territory is concerned, that would apply only to the immediate vicinity of Louisville; long distance calls are very few from Louisville over the lines of the Cumberland Telephone Company, and we can assure Mr. Granbery that we have no desire to know anything about the business in Tennessee, Mississippi, Louisiana or Texas, and that in so far as the information about the poor territory or good territory even of the Louisville district is concerned, we do not care anything about it—we want to get the number of

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calls and the revenue portion of it. We do not care where the calls went to, or how many there were. We want a line on the toll line business, but as to location or territory, we do not care any-
2942 thing about it. We will rub it off of our sheets if you want us to. In figuring up toll messages, we have to figure Louisville to this point so many miles, and in order to compute the miles have to have the name of the town.

Mr. GRANBERY: If you have gotten that information, and you and Mr. Wilkinson have agreed on it, what use would you have for it in future?

Mr. WARREN: None at all.

Mr. GRANBERY: After you and Mr. Wilkinson have agreed on the figures, and made a joint report, would you have any use for that information? If these papers were then turned over to the Master Commissioner, to be kept by him until this law suit is finally ended, would you not think that would give you ample protection?

Mr. WARREN: Certainly. I wish to state that I am not endowed—Mr. Farnham——

Mr. GRANBERY: It is for him to express his opinion as to the privileges of the Mutual Audit Company.

Judge BURNETT: Well, I think I understand the situation.

Mr. BLAKEY: Here is the testimony of two accountants representing both sides, both of whom say it is the custom for the Auditor making the report to keep the memorandums from which he makes the report in his own possession—from figures he has gathered himself he is testifying—he is entitled to some protection, and I assume that it is customary in making an examination for the Auditor to retain his figures. There is no charge here against the Mutual Audit Company, and there is no intention upon their part to use this information only in this litigation.

Mr. GRANBERY: Here, we have experts representing both
2943 sides, making a joint report. If they make a joint report, there can never be any question of their protection, because it is assented to by both sides.

Mr. WILKINSON: The case I cited was in response to a question by Mr. Blakey. The question was, Was it customary for Auditors to retain their working papers, and I said it was where there is only one Auditor, but where there are two Auditors, representing two different concerns, where the accountants are unknown to each other when this examination began, I think it no more than right that these papers should be sealed and put in the possession of the Master Commissioner. If, at any time, anything comes up and it looks as though some of the Company's business secrets have been made public, it is then a matter of doubt as to which of the accountants engaged here, have given this information out, and I would think each of us, for our own protection, would feel better satisfied if the papers were sealed and delivered to the Master Commissioner.

Judge BURNETT: This is a peculiar case. This is not the case of a party litigant employing an expert accountant where there are two factions in the Company, nor is it a case where the verity of the report might possibly be impaired by the failure of the Auditors to

retain these papers. The Cumberland Telephone Company, as all of the courts show, are constantly in litigation, both with municipalities and with other rival companies. I recognize the fairness and justice of allowing the Auditors under ordinary circumstances, to retain their working papers, it is for their own protection; they may be called upon to support their report by facts and figures, and, in that case, their working papers would be essential, therefore, to enable them to do that, but this case seems to me peculiar. Here are two Auditors by agreement of parties allowed access to the books of the complainant company, and it is agreed that these Auditors, after a thorough examination of all the papers connected with the
2944 case, that they shall make a joint report so far as they may be able to agree upon any and every proposition. That report, so far as it is the joint report of the two Auditors, must be accepted by both litigants, by the Special Master and by the Court, as true, and I take it that no proof ought to be allowed from any extraneous source as to the correctness of that joint report.

Now, as to such matters as these two Auditors are unable to agree upon, the Court order is, that each Auditor shall then, as to such matters, make a separate report to the Master, and that separate report should contain the reasons in detail of each Auditor for his findings. Now, as to these separate reports, if there be any, certainly each party to the litigation would be not only permitted, but it would be their duty to produce other testimony, if accessible, so as to enable the Special Master and the Court to decide which of these special reports is true. Now the Complainant in this case has a vast amount of books, accounts and vouchers, and seriously objects to either of these auditors retaining as his property his working papers. I suppose, and in fact counsel has so stated—I don't suppose there is any suspicion that either of the parties might unlawfully use these working papers elsewhere against the interests of the Telephone Company—yet, out of that abundant precaution that each and every business man ought to observe, is unwilling for these papers to be held out. I think it is a reasonable objection, and suggestions made here by both Auditors in their answers justify the Master in ruling that after the Auditors shall have completed their report, that all of their memorandums and working papers shall be put in an orderly and systematic way, with any remarks or indices that they may see fit, so as to identify the papers hereafter, and that they be delivered to the Special Master, and that the Auditors shall sign a paper in delivering these papers to the Master Commissioner, said statement to be to the effect that they have not held out any memorandums or copy whatever of the books and records of the complainant company. I will state that the Special Master
2945 will carefully preserve these papers; that they shall be subject at all times to the examination and reference not only of the attorneys on both sides of the case, but of the Auditors themselves, or their representatives, and that such memorandum shall not pass out of the possession and control of the Special Master until this litigation shall have been finally concluded.

Now, I want, in order that there may be no sort of misunder-

standing between the Auditors when they go to make up their report, I want to insist that each of the Auditors shall submit one to the other the points, and that they shall submit the results of their examination and state frankly their reasons, one to the other, for any position that they take, in order that this report, when made, shall be, if possible, the joint result of the labors of the accountants, if such should be the case, that each accountant shall fully state therein his reasons for disagreement, and, furthermore, his reasons in support of his special report.

I think, gentlemen, that that ought to enable the accountants to expedite this work, and make an intelligent report so that it will eliminate a great deal of deposition taking in the future.

Mr. BLAKEY: I would like to except to so much of the Master's ruling as orders the accountants employed by the City to turn over their working papers and memorandums to the Master Commissioner.

Mr. CRANBERY: Point No. 2. It seems to me, Mr. Master Commissioner, that it might expedite matters and simplify the labors not only of the Master Commissioner, but of the accountants for the Master Commissioner to designate in writing the scope of the report, the points to be covered. We have a copy of the order of the Court appointing the Master Commissioner. Of necessity there are certain things in the instruction to the Master Commissioner which could not possibly be answered by the accountants, and for that reason it seems to me that it would probably help matters if
2946 the Master Commissioner would designate the scope of the report that he desires from the accountants, subject, of course, to a discussion with counsel as to what they think the scope should be. Mr. Wilkinson, have you not a copy of that?

Mr. WILKINSON: We have it.

Judge BURNETT: I do not feel disposed to interfere with the Auditors at this stage, except I want to insist upon working as expeditiously as possible, but I wish the Auditors to confine themselves to such matters as were embraced in the order appointing the Master. As a matter of course it was not intended that these Auditors should undertake to report on anything that did not properly come within the purview of an auditor. I am disposed to leave the matter there.

Mr. WILKINSON: Under date of May 4th, the day that I came here, or the day after, a letter was written to the Master Commissioner, in which I, on behalf of the complainant Company concurred, which letter was sent to the Master Commissioner, together with a memorandum calling attention briefly to the paragraphs of the order of the Court, and certain other paragraphs indicating the scope of the examination that we proposed to make, and we agreed to abide by that order of procedure, it being nothing more nor less than an agreement to define the scope of the examination. It seems to me that after several weeks' work we have done here that that memorandum did cover the scope of what, to my mind, would be a right and proper report for us to make on the examination that we are making of this Company's affairs, and it seems to me that other matters, with the exception of one or two things that have

arisen, are not germane to our report. If we could take that as a basis, you might see fit to define the scope of the examination as indicated by Mr. Granbery. We have that paper coming down now, Mr. Granbery.

Judge BURNETT: I was not aware that that agreement had been made.

2947 Mr. WILKINSON: I don't know what paper Mr. Farnham put in his envelope. It was our intention to send a copy of that to you, and it was my impression that I saw a letter from you acknowledging receipt of same. It was the basis of our understanding, so far as I know as to what the scope of this examination should be.

Judge BURNETT: I am not supposed to limit that.

Mr. GRANBERY: I didn't know that that agreement had been made. I don't want them to get into a wrangle about what the scope of the report should be.

Judge BURNETT: What I want is all the information that can be gotten for the dual purpose of enabling me to do my part intelligently, and, at the same time, to eliminate deposition-taking.

Mr. WILKINSON: Here is a copy of the memorandum in question, Mr. Commissioner. The object in making that memorandum was in no way to confine the scope of the examination, but it was drawn up when we first got here with the prime object of outlining the thing and determining whether one assistant would be enough.

Mr. GRANBERY: Point 3. What progress has been made, and when is this report likely to be made?

Judge BURNETT: I would like to hear from you gentlemen on that.

Mr. BLAKEY: Mr. Warren, suppose you state what you have done since you came here, what time you have devoted to this work, and when you think you will consummate the work.

Mr. WARREN: Aside from examining expense vouchers of the Louisville office, we have spent a great deal of time in going

2948 through these; the only thing we have done was to go through about four years of operating vouchers and ten years of the construction account. As to the time it has taken to consummate it, I would like to say something to you. Now, I want to say that we have never been refused anything that we asked for, but I will say this: there are things that we have asked for that we have been told did not exist, which, later on, we have found, and then the excuse has been made that they did not understand what I was after. I wish to cite an instance:

I asked for a recapitulation of exchanges by months, total of years, in order that I might see if their total figures agreed with mine. The existence of any such recapitulation sheet or record was denied, and because of the non-existence of this recapitulation sheet I was compelled to check back month by month and item by item in order to see in what respect my figures differed from those of the Cumberland Telephone Company. After I had balanced my accounts I found this recapitulation sheet exactly as I had asked for it.

Mr. GRANBERY: Who did you ask for that recapitulation book?
Mr. WARREN: Mr. Armstrong.
Mr. GRANBERY: Did you go to Mr. Smith?
Mr. WARREN: No, sir.
Mr. GRANBERY: Did you say anything to Mr. Wilkinson, the accountant employed by the Company?
Mr. WARREN: I don't recollect.
Mr. GRANBERY: Then you simply asked a clerk in the office?
2949 Mr. WARREN: Mr. Smith referred me to Mr. Armstrong as the man in charge of that line of work who would give me any information I might require.
Mr. GRANBERY: And you asked him and then went no further?
Mr. WARREN: I didn't go any further to Mr. Smith with it, of course not.
Mr. GRANBERY: You said nothing to Mr. Wilkinson about it?
Mr. WARREN: I don't know.
Mr. WILKINSON: I must take serious exception to what Mr. Warren has stated, not that I deny that he did as he says, but I desire to make it quite clear to your mind, Mr. Master Commissioner. The offices up stairs occupy two very large floors. There are, I think, seventy-five men engaged in work up there, and, necessarily, the work is split into very fine details, one man keeping one detail and another man keeping another detail, and there are very few men, perhaps not more than two, and in some instances only Mr. Smith himself, who knows just where everything is, and what man to go to for a certain thing. My experience has been almost parallel with what Mr. Warren has said. If you go to the wrong man and ask for the right thing, or if you go to the right man and ask for the wrong thing, he will tell you that what you want does not exist. If you went to Mr. Armstrong and asked him for a recapitulation of the expenses by exchanges by months, and he has been in the habit of recording the sheet you are describing as a "monthly recap," he will likely say that it does not exist, and that he has no such thing as you are asking about. Mr. Armstrong has from the very first been most obliging and has dropped his own work to do
2950 what we have asked him to do, and I know that Mr. Warren will not contradict me when I say that Mr. Armstrong has lent both of us a great deal of valuable assistance, and I am sure that Mr. Warren will agree with me when I say that if Mr. Armstrong told him that such paper did not exist it was because he misunderstood what Mr. Warren was asking for. Therefore, I contend that there is no weight at all in what Mr. Warren just put before the Master Commissioner in regard to the condition of affairs up stairs.
Judge BURNETT: I understood Mr. Warren was merely stating why it took more time to do certain work than it would have taken if he had been given the paper asked for.
Mr. WILKINSON: If he had asked Mr. Smith or me he would have gotten what he was looking for.
Mr. GRANBERY: Mr. Warren, have you discovered the slightest

intention or any disposition to suppress any facts or withhold any information?

Mr. BLAKEY: I object to that question.

Mr. GRANBERY: Mr. Master Commissioner, if there is anything of that kind going on I intend to see that it is stopped.

Judge BURNETT: Mr. Warren, he wants to know if you have been obstructed——

Mr. WARREN: It appeared to me to be an obstruction.

Mr. GRANBERY: Have you made any complaint to anybody about it?

Mr. WARREN: No, sir.

2951 Mr. GRANBERY: Did you go to the Auditor

Mr. WARREN: I went to the Auditor when I first came and he introduced me to the heads of the different departments. I went to the Auditor the other day and asked him where certain information was to be had, and he referred me to the gentleman in charge of the department where that information was kept; he spent a day and a half looking for the information that I wanted, and then said such documents were not in existence. We were told on Saturday that such records had been gone through.

Mr. GRANBERY: Did you go back to the Auditor?

Mr. WARREN: No sir, Mr. Farnham told me that Mr. Wilkinson had been through those records.

Mr. WILKINSON: I want to ask what Mr. Warren speaks of.

Mr. WARREN: When I ask for things I can't always call them by your title. I know what I want and explain to the people what information I desire, and of course it is up to them to get the paper or information regardless of what I ask for. I asked the gentleman for a statement. I drew up the form itself on a piece of paper—so many business telephones, so many residence telephones, so many 1, 2, 3 and 4 party line pay stations and extension sets for business, and some for residences—that is what is called classification of service and not of rates—he told me that he had a classification of rates, a daily report showing each put in and take out at Louisville, but that was not what I wanted. I wanted classification of service.

Mr. GRANBERY: Who was the man you asked for that?

2952 Mr. WARREN: Mr. Proctor.

Mr. WILKINSON: You have seen the papers——

Mr. WARREN: No, sir.

Mr. WILKINSON: Suppose the statement you wanted looked like that (indicating). That would not appeal to them—is the statement that you wanted described in these words, "A monthly statement of the number of instruments in use at Louisville, a monthly statement of the instruments in use, showing the price, monthly rental paid for, whether it is a business or residence telephone, and whether it is a party or a direct line?

Mr. WARREN: No, I don't think it shows the price.

Mr. WILKINSON: It shows the number of telephones in use, the number of stations in use?

Mr. WARREN: Yes, sir.

Mr. WILKINSON: Mr. Farnham has had that particular paper,

one of those forms, in his possession for two weeks, and I believe since we first came down here, and if Mr. Warren had asked Mr. Farnham for what he wanted he would have said "There it is on the shelf there." If my recollection is right, those forms are in the room where we are auditing these accounts. I have seen them there, and I have seen them in Mr. Farnham's hand, that particular form that he asked for.

Mr. WARREN: We have up there a classification of rates containing the number of phones. That is not what I want.

2953 Mr. WILKINSON: As to whether they are business, residence, direct lines or party lines, it is in blue pencil, and about this long (indicating), and about that wide (indicating). Here is a column, and here is a column, and here is the price, here are the direct lines and here the party lines. The Company keeps that form for that purpose.

Mr. WARREN: That is a classification of the rates. I want a classification of the service. I want to know how many residence 'phones, two-party, they have in Louisville—suppose they have 958, two-party residence phones, now I am going to get a classification of the rates and I will get the information I want.

Mr. GRANBERY: I think this has gone far enough—there is no just suspicion to be cast on the officials of this Company——

Mr. WARREN: I have a hard job making this gentleman understand.

Mr. GRANBERY: Why didn't you report to Mr. Wilkinson or the Auditor? You didn't expect a clerk to have all the knowledge of the office, did you?

Mr. WILKINSON: A clerk in a railroad office would not understand what a clerk in a telephone office asked for, because he would not describe it in the language he is used to. These clerks are all cheap men, they are paid minimum salaries, and it is not reasonable to suppose that they would understand exactly what you asked for—Mr. Warren asks for them as a railroad auditor, but they don't understand it.

Mr. GRANBERY: Mr. Wilkinson, have you refused to look for or ask for any paper that this gentleman wanted?

2954 Mr. WILKINSON: When he has asked me where such and such a paper was, I have had no hesitancy in dropping what I was doing and show him—I am always glad to help him in any way that I can.

Judge BURNETT: I think the trouble will be obviated by going to the Auditor, and then if you don't get satisfaction, take the matter up with Mr. Granbery.

Mr. GRANBERY: It has never come to my ear that they were not getting everything that they needed. I don't think that there ought to be any intimation that that is not being done when there has been no request. I want to know how long it is going to take to finish.

Mr. WARREN: I would not like to commit myself on that. I don't know anything about what Mr. Farnham's intentions are.

Mr. BLAKEY: How many men have you here?

Mr. WARREN: We have four here. We get to work between eight and eight thirty in the morning and quit between five and six in the evening, and we have done a great deal of work—these toll reports for instance, we take home at night and work on them.

Mr. GRANBERY: Mr. Wilkinson, Mr. Warren cannot give any indication of how long it will take to finish this work—what do you think about it?

Mr. WILKINSON: I could make my report up and deliver it into your hands on Wednesday morning. My findings, with the exception of a very few matters, are complete. I have prepared a paper showing the cost of the plant from January 1, 1900, up to the 31st day of December, 1908—that is compiled from copy that has
2955 been made, as I stated before, of the construction account, and shows separately the serial and underground construction and equipment for all of these eight years—that work having been completed on Friday—Mr. Farnham loaned me his sheet, and I took it and check it back with the statement made by my senior assistant—they agreed exactly with the figures Mr. Farnham showed me, except as to one amount, $4,700.00, which was a difference that we agreed ought to be added; that was the only difference between the statement that my assistant drew off and the statement that Mr. Farnham handed me. I have here in the same paper a statement which shows purchases of property and additions made to it, and that is final, because it has been agreed to by Mr. Farnham and myself. The amount of capital invested in the Louisville exchange, I have completed this statement except the amount of supplies that were stored at that point—I have all of the figures for 1908—I am short the figures for 1905-6 and 7, because the Supply Department has not yet sent me any data as to the inventory. I have drawn off the gross earnings by years, by months, and checked it back with the original data. A large portion of this work has been checked by Mr. Warren and his associates. The operating expenses we have drawn off by years, but I have yet to make certain deductions that are rightly claimed by the Mutual Audit Company on behalf of the City of Louisville, by which the operating expenses of the Louisville exchange will be reduced about $1,100.00. As to certain lines of expense involved, I have data ready to submit to Mr. Farnham and expect to submit that data to him this morning, being unaware that he would not be here. In regard to net earnings, it remains only to deduct the operating expenses and the other expenses from the gross earnings to arrive at the net earnings. I have drawn up also a detailed statement by years of the amount that should be charged in my opinion, against the earnings of the Louisville exchange with respect to depreciation; two other plans are submitted on the same memorandum, which show the claim the Company makes, and the amount that would be involved in that charge, based upon
2956 the findings of the Commission that examined the Chicago Telephone situation in 1907. This, for the purpose of information and comparison. Several separate questions involving a great deal of study are tabulated on separate memorandums, and are in the next room ready to be submitted to the Mutual Audit

Company. One of these is about a matter which has been checked and agreed to by Mr. Warren. We have not Mr. Farnham's O. K. on it yet, however. In regard to the amount paid to the Bell Telephone Company for what they call instrument expense, rental of instruments, that has been carefully drawn up and has involved much work, and that work has been compiled by months in order that it may be readily checked with the books of original entry, and in order that they may have no trouble in verifying it.

I have not begun to write any report, waiting for a conference with Mr. Farnham looking to that end, but I have drafted a memorandum telling the story in regard to these particular things; these are ready to be given over; one or two of them Mr. Farnham has already gone over, and designated that he concurs in same; he has marked on it, showing that he has been over all of this data, which, with the exception of possibly a day's work, is complete and ready to be checked. If Mr. Farnham would be willing to accept this data subject to checking;—if he will go over things with me, I see no reason why this whole examination cannot be reported on this week, but if Mr. Farnham's plan is to compile that data himself, I am frank to say that it is going to take two months to complete the examination. I simply wish to show Mr. Farnham exactly what I have done and the basis of compilation of every one of these statements, if he will go with me and go through them and say "I agree with you there, but totally disagree with you here," and agree then and there to modify the findings, I see no reason why that work cannot be accomplished this week. In this connection I wish to say that I have an office in New York City and also one in Philadelphia, and it is causing me a great deal of inconvenience to stay here so long. I was glad if I could come here for one week, and I found that I could do so. After remaining here a week I went back 2957 and was at home two weeks, and succeeded in arranging my affairs so I could come here and spend another week, and this morning, or tonight, it makes two weeks that I have been here, with sure prospects of being here for another week. If some limit is not put on the time we will be here, I must return to my work in New York and come back here later.

Judge BURNETT: You are both proceeding along the same lines, are you not?

Mr. WILKINSON: We are both proceeding under that order of Court as we interpret it. I have gone and secured my data and have arranged it so that there will be no hesitation in showing the representatives of the Mutual Audit Company where the information came from and all about it.

Mr. WARREN: I am not here to do anything except work for the Mutual Audit Company. I am not going to deefnd them in any way—they don't need me to defend them, but I wish to say that we reserve to ourselves the right to go at any work that we may have to do in any way that we see fit, and we do not accept totals as shown on books or records of any corporation, either daily, weekly, monthly or yearly totals. We do not just check them, but we go into absolute details that make up these totals. We have nothing to do or say as

to whether their books are properly kept. We reserve to ourselves the privilege to do that in our own way—we do not think that we should be called upon to accept totals as put in the books of the Cumberland Telephone Company, or any other Company.

Judge BURNETT: Does Mr. Farnham's absence interfere with the work that you are doing?

Mr. WARREN: Not in the least. He has given me instruc-
2958 tions as to what to do.

Judge BURNETT: Don't you think if he were here that by the 17th of this month the report could be made in ten days more?

Mr. WARREN: I, of course, do not care to commit myself on that.

Judge BURNETT: It is not my purpose to interfere with the proper discharge of your work, but it is very important to all concerned, and whenever the Court sees me he always wants to know whether I am doing anything. From Mr. Wilkinson's statement it looks like ten days ought to be sufficient for you all to get together, lay aside points that you can agree upon.

Mr. WARREN: We can audit the books in two or three weeks, but we are making an examination and that takes time—we go after an analytical examination.

Judge BURNETT: When do you look for Mr. Farnham back, to-night or to-morrow morning?

Mr. GRANBERY: If he is in his office, could you not call him up?

Mr. BLAKEY: We can telephone him to-night and ask him.

Mr. WILKINSON: Without wishing to anticipate your decision, may I ask to be considered in regard to the fixing of the date for finding this report? I can readily, and without serious loss to my firm, do one of two things: I can finish this report this week, or I can finish this report any time after two weeks, but it would be a very serious loss and inconvenience to me—being in charge of our two offices—to be compelled to stay here two weeks.

2958½ Mr. GRANBERY: How long have you been here?

Mr. WILKINSON: Two weeks to-morrow morning, and that is an exceptionally long time for me to be away. If these gentlemen are going to check my schedules I have prepared, if they are going to accept them subject to their check, it will be a simple matter, but if they are going behind everything I have there to look at the details and make an examination of the original papers, it is going to take some time.

Judge BURNETT: Have they not gone over that same work?

Mr. WILKINSON: No sir, if I understand correctly they have hardly looked at any of the things that I have handled, excepting vouchers of the operating expenses; they have been proceeding along separate lines. In some instances they claim that we have not gone into the details that compose the construction account. I have always assumed that they would be willing to accept our statements of earnings, expenses, etc., subject to clerical checking. That is the position we would occupy with them.

Judge BURNETT: It is clear to me that they having made a detailed examination, and you having accepted the totals in the books, that you ought to agree or disagree without any sort of trouble by a

mere inspection—you can see whether their results, after a special examination, agree with yours.

Mr. WILKINSON: Might I exhibit to you just one statement that would illuminate your mind?

Mr. BLAKEY: I want to ask Mr. Wilkinson a question: Were you ready to make a report after you came here and spent one week?

2959 Mr. WILKINSON: I left one of our accountants here—he was here three weeks—he would have been here to-day but he is to be married to-morrow. I telegraphed for another man to come and take his place—they were here two days together. The second man is here now, and he is as conversant with the details of the Company's books and the work that we have done as the senior accountant was when he came here.

Mr. BLAKEY: The order of the Court fixed the 8th day of May—were you ready on that date to report?

Mr. WILKINSON: On the 4th day of May a letter was written to the Master Commissioner by Mr. Farnham stating that it would take thirty days to make this report. That was done after discussing the matter very fully between Mr. Farnham and myself, and after drawing up this memorandum. In that letter I cheerfully concurred at the bottom of it—I wrote "On behalf of the complainant Company I concur in this letter." That is evidence that I knew it could not be concluded in less than thirty days, but I am ready to complete it now inside of three days. Is that responsive to your inquiry?

Mr. BLAKEY: I don't think so. I asked if you were ready to report on the 8th day of May.

Mr. WILKINSON: I have stated that I put it in writing that I was not.

Mr. BLAKEY: When did you first propose to Mr. Farnham that you were ready to make a joint report? How long ago did you say "Here's what I have found, and I suggest that we make a joint report"?

Mr. WILKINSON: I am waiting for Mr. Farnham now to tell him that. I have not been ready to make that report heretofore.

2960 Mr. BLAKEY: Do you know anything about that report, Mr. Warren?

Mr. WARREN: I am not in position to say.

Mr. BLAKEY: Mr. Farnham told me that Mr. Wilkinson was urging him to make a report.

Mr. WILKINSON: That is true. I was urging him to get things ready. It was the first of June that I said to Mr. Farnham: "We have just a week to finish it." He says, "We have all the time we want." I told him we asked for thirty days. His reply was, that the time limit had been removed altogether. I said, "That is news to me."

Judge BURNETT: That is correct—I removed the time limit, but I didn't so notify all of the parties.

Mr. WILKINSON: I never received any notification of that.

Judge BURNETT: Well, I don't think anybody can tell just when this is going to be finished, but it does look to me like—that is the

reason I am so anxious to see Mr. Farnham—it looks to me like this ought to be done in two more weeks.

Mr. BLAKEY: I think we can see from what Mr. Warren says,—we have four men at it, and could have had only one man under the order. I don't see how anybody can say we have not been diligent—if they want to make an examination in their way, why, they ought to be permitted to do so.

Judge BURNETT: It seems to me that there ought to be a
2961 more united effort between the accountants; they don't seem to be looking at or using each other's data.

Mr. BLAKEY: I think the reason is, that the Mutual Audit Company is examining the items from which the books are compiled, and Mr. Wilkinson is examining the books. I don't see how you are any better off after examining the books than after taking Mr. H. Blair Smith's deposition.

Mr. WARREN: If we are expected to go over—it took twenty-five men upward of four years to do that work—we have been expected to cover these four years' work in thirty days.

Judge BURNETT: It is the opinion of the Special Master that for the purpose of making up their reports that the Accountants shall have absolute control of every memorandum that they have made, but when their report shall have been made and delivered to the Master at the same time, the memorandums must be delivered, properly indexed, to the Master; and the Accountants will be expected to make affidavit to the effect that they have not made any copies of any part of the books of the Cumberland Telephone & Telegraph Company, or their papers or their records.

Mr. WARREN: You said at first that the papers, having been properly delivered into your hands, they were at the disposal of counsel for either party or of the Accountants. Do you mean that the papers will be at the disposal of Mr. Granbery and Mr. Blakey both?

Judge BURNETT: Yes, sir.

(Here follows Exhibit Warren No. 20, marked page 2962.)

Cumberland Telephone

Percent of

	1908	Main Exchange	East Exchange
1	Assessed Value	$ 42,000.00	$ 7,200.00
2	Ledger Value	102,418.20	17,134.11
3	Value on which question is based	102,418.20	10,600.00
4	Rental Charged	8,440.00	1,506.00
5	Insurance Charged on Buildings	72.60	78.00
6	Taxes Charged	1,077.72	233.25
7	Percentage of Rental Revenue on which question is based	8.24%	14.296%
8	Percentage of Insurance Revenue on value on which question is based	.1249%	.7428%
9	Percentage of Tax Revenue on Value on which question is based.	1.0522%	2.2214%
10	Percentage on Total Earnings on Value on which question is based	10.0231%	17.1999%
4	Percentage of Rental Revenue of taxes and Insurance were paid by C. T. and T. Co. make and if by Louisville Exchange	4.4189%	4.12150%

Exhibit No 30

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Cumberland Telephone and Telegraph Co.

Percent of Revenue Derived from Louisville Real Estate

	Main Exchange	East Exchange	South Exchange	West Exchange	Stella	All Property
	$ 42,000.00	$ 7,250.00	$ 8,500.00	$ 9,250.00	$ 400.00	$ 69,600.00
	102,418.20	12,134.11	15,185.00	15,814.00	1,503.17	152,914.15
	102,418.20	10,600.00	11,600.00	10,200.00	1,503.74	136,422.79
	8,440.00	1,506.00	900.00	1,320.00	320.00	12,480.00
	742.60	72.00	141.30	82.70	21.50	1,097.00
	1,077.72	233.25	218.11	237.35	24.13	1 771.64
	8.24%	14.28%	8.1918%	12.944%	21.280%	1.2017%
	.7249%	.7428%	1.2843%	.2048%	1.9218%	.8085%
	1.0522%	2.2214%	1.7828%	2.3270%	1.4379%	1.3264%
	10.0231%	17.1933%	11.9411%	14.1715%	24.3471%	11.3313%
	4.4189%	11.1215%	7.9145%	9.7053%	18.2123%	7.0725%

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The Mutual Audit Company,
Incorporated,
Accountants-Auditors,
Paul Jones Building,
Louisville, Ky.

Cable Address
Muauco.

E. W. Farnham, Representing Defendants.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY
vs.
CITY OF LOUISVILLE, KENTUCKY.

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The Mutual Audit Company,
Incorporated,
Accountants-Auditors,
Paul Jones Building,

Cable Address
Muauco.

LOUISVILLE, KY., *July 26th*, 1909.

United States Circuit Court, Western District of Kentucky.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
THE CITY OF LOUISVILLE, KY., Defendant.

The Mutual Audit Company, E. W. Farnham, Representing Defendant. Wilkinson, Reckitt, Williams & Co., Geo. Wilkinson, Representing Complainant.

To the Honorable Henry Burnett, Special Master:

In compliance with your instructions, and as contemplated by the joint report heretofore filed with you by the undersigned special accountant, representing the City of Louisville, Defendant, and Geo. Wilkinson, representing the Cumberland Telephone & Telegraph Company, complainant in the above styled cause, the undersigned respectfully submits the following as his separate report, together with the several Exhibits referred to and made a part of this report, upon the questions submitted for consideration by the Court's order and your special written instructions referred to.

2966 We deem it unnecessary to cumber this report with a recitation of the difficulties under which we have labored on account of the lack of time and failure in our efforts to obtain full access to complainant's records which we deemed requisite to a complete analysis and full report upon the various questions under consideration.

When we began the work we assumed that complainants' accounts and records had been kept up to the standard of other public service corporations. In this we were in error as was demonstrated during the progress of the work, as our requests for certain books and accounts was met with the statement that they were not kept. However, from such information as we were able to gather from the records so furnished, we submit the facts herewith as we find them, together with our conclusions and analysis of the same, confining ourselves to your instructions, to-wit:

"Your investigations are to be confined to the matters and things suggested in the order of reference made by the United States Circuit Court at Louisville, and it will not be your duty to investigate any matter or thing not embraced in such order of reference unless same be clearly pertinent thereto."

Paragraph- 1 and 2 of the court's order read as follows:—

1. The cost to the complainant of its plant and property in the

City of Louisville, Kentucky, and in doing this he will state generally the basis of his estimate thereof.

2. The fair valuation of the plant and property of the complainant, employed in its business in said City as of March 6th, 1909, and also its value at the date upon which he may file his report herein. In doing this he will state generally the basis of his estimates.

2967 In order to determine the cost to complainant of its plant and property in the City of Louisville, Kentucky, and to further determine the fair valuation of that plant and property as of date March 6th, 1909, we deemed it necessary to obtain a true statement of the complainant's capital account as well as that of the Ohio Valley Telephone Co., and that of the Great Southern Telephone & Telegraph Co., which two latter companies were consolidated with complainant, the former on the 27th day of January, 1900, and the latter on the 4th day of March, 1898, these consolidations having been effected by an exchange of the capital stock at par of the respective companies. We were engaged upon an analysis of these several accounts and had obtained partial information with respect thereto, when complainant objected to our further investigating the same, which objection, upon submission to your Honor, was sustained, and thereupon further access to these accounts was denied us by complainant. However, we deem it our duty to submit for your consideration the information obtained by us before these records were denied us.

The original Cumberland Telephone & Telegraph Co., was incorporated under the laws of the State of Kentucky on the 8th day of June 1883, with an authorized capital of $400,000.00.

On December 21st, 1883, this company's charter was amended and its authorized capital increased to $2,700,000.00.

The Great Southern Telephone & Telegraph Co., was incorporated under the laws of the State of Kentucky on the 8th day of June, 1883, with an authorized capital of $700,000.00.

This charter was amended December 21st, 1883, and its capitalization increased to an authorized capital of $2,000,000.00.

The Ohio Valley Telephone Company was incorporated under the laws of the State of Kentucky on the 3rd day of April, 1886,
2968 with an authorized capital of $500,000.00, with the right to increase to $1,000,000.00.

On the 4th day of March 1898, there was a consolidation of the Cumberland Telephone & Telegraph Co., and the Great Southern Telephone & Telegraph Co. By the terms of the articles of consolidation, the two companies became one corporation under and by the name of "The Cumberland Telephone & Telegraph Company."

The capital stock of the consolidated company was fixed at $3,000,000.00, divided into 30,000 shares of $100 each and it was stipulated and agreed that the stockholders of the two consolidating companies should be the stockholders of the consolidated company; and that their respective interests and holdings should be as follows: "For each and every share (which shares are now $100

each) of and in the Cumberland Telephone & Telegraph Co., now issued and outstanding, and which aggregates 16,957 shares or $1,695,700, the owners and holders thereof shall be entitled to, and receive, one share of and in the capital stock of this Company, and in the aggregate 16,957 shares, amounting to $1,695,700; and for every two shares (which shares are now $100 each) in and of the Great Southern Telephone & Telegraph Co., now issued and outstanding, and which aggregates 18,917 shares, amounting to $1,891,700, the owners, as holders thereof, shall be entitled to, and shall receive, one share in and of the capital stock of this company, or 9,458½ shares of the stock of this consolidated company, amounting to $945,850.00. Certificates in due and proper form shall be issued and delivered upon the surrender and delivery up for cancellation of the old or outstanding certificates. It was further provided that the holders of said 9,458½ shares of the stock of said Great Southern Telephone & Telegraph Co., should, in the event of an adverse decision in certain law-suits pending in the State
2969 of Louisiana for the recovery of back taxes against the Great Southern Telephone & Telegraph Company, not be entitled to any dividends which may be declared by the consolidated company at or for any of the four quarters next in order following the determination of the liability aforesaid, and that such dividends shall be and become the property of said consolidated company."

On the 3d day of March, 1899, the Articles of Incorporation of the Cumberland Telephone & Telegraph Company, that is, the consolidated company, were amended and its capital stock increased to $6,000,000.00, that is sixty thousand shares of the par value of $100.00 each.

On the 27th day of January, 1900, there was a consolidation of the aforesaid consolidated company, to-wit, the Cumberland Telephone & Telegraph Company with the Ohio Valley Telephone Company. By the terms of the articles of this consolidation, the two companies became one corporation under and by the name of "The Cumberland Telephone & Telegraph Company" and the capital stock of the consolidated company was increased to $10,000,000.00 divided into 100,000 shares of $100.00 each and it was provided that the stockholders of the two consolidating companies should be stockholders in the consolidated company to the extent of their respective interests and holdings therein as follows: "For each and every share (now $100 each) of, and in, the Cumberland Telephone & Telegraph Company, now issued and outstanding, the owners and the holders thereof shall be entitled to, and shall receive, one share of, and in, the capital stock of this company; and for each and every share (now $100 each) of, and in, the Ohio Valley Telephone Company, now issued and outstanding, the owners and holders thereof shall be entitled to, and shall receive one share of,
2970 and in, the capital stock of this company. Certificates in due and proper form shall be issued and delivered to them upon the surrender and delivery up for cancellation of the old, or outstanding, certificates now held by the said shareholders of the consolidating companies. The remainder of the shares of, and in, the said capital stock of the consolidated companies, shall be held,

to be disposed of as required by law, for the use and benefit of this company."

It will thus be seen that the purchase price paid, for each of the 5,494 total shares of outstanding stock of the Ohio Valley Telephone Company at the par value of $100.00 per share, aggregating $549,400.00 by the Cumberland Telephone & Telegraph Company, was the same number of shares of the latter consolidated company's capital stock, to-wit, 5,494 shares of the par value of $100 each, aggregating $549,400.00, and in consideration thereof the consolidated company, to-wit, the Cumberland Telephone & Telegraph Company became the owner of all the property and assets of the Ohio Valley Telephone Company, including its exchange and plant in the City of Louisville, Kentucky, and connected towns and cities, toll-lines traversing the States of Kentucky and Indiana and elsewhere; as also its real estate wherever situated.

Afterwards, to-wit: On the 9th day of January, 1903 the articles of incorporation of the consolidated company were amended and its authorized capital stock increased to $20,000,000.00 being 200,000 shares at the par value of $100 each.

For what purpose these various increases in the capital stock of these several separate companies was made, and as to what disposition was made of this stock, other than the exchange at par in the consolidation of the three companies as above recited, and
2971 as to what amount of money was realized from the sale of this increased stock issue, and what disposition was made of the money, we were forbidden by Your Honor's order, and the refusal of the complainant to supply any information, to make any investigations of the books and records of these several companies and are for this reason unable to throw any light upon that subject.

Section #1.

Cost to Complainant.

If the value of the original property acquired by The Cumberland Telephone & Telegraph Company from the Ohio Valley Telephone Company is to be measured by the appraisal value fixed thereon by the two consolidating companies, as stated below, the problem is easily solved.

If its value is to be fixed upon the basis of the exchange of stocks at $100 per share as agreed upon by the parties to the consolidation, the solution is not very difficult; but, if its value is to be measured by the manipulation of, and sundry increases in the capitalization and exchanges of stock so increased of the consolidating companies and the questionable bookkeeping, then nothing short of a full showing and analysis of the respective stock accounts will throw any light upon the subject. This showing can be made by the complainants, but for the reasons above stated, it was refused to us.

Ohio Valley Telephone Company.

Cost Account.

It appears from the original books of entry that when the consolidation of the Ohio Valley Telephone Company with the Cumberland Telephone & Telegraph Company was consummated that there was an agreed appraisal of the physical properties of the Ohio Valley Telephone Company acquired by the Cumberland Tele-
2972 phone & Telegraph Company as between the parties to the consolidation. Under this consolidation the appraisal shows the valuation fixed upon this property by the consolidating companies on that date as follows:

Balance of Cost on the Books of the Ohio Valley Telephone Co.

December 31, 1899.

Aerial construction	149,740.64	
Underground conduits	108,313.16	
Underground cables	126,512.24	
Equipment	128,223.45	
Toll lines construction	125,406.80	
		638,196.74

From this it will be seen that the valuation of the entire physical property of the Ohio Valley Telephone Company was fixed by the consolidating companies as $638,106.74. Included in this is the cost of toll lines construction outside of the city of Louisville and other cities having exchanges, amounting to $125,406.80 which deducted from the total valuation as above indicated, leaves $512,789.94 as the valuation of the physical properties in the city of Louisville and other city exchanges.

Dividing this upon the basis indicated by the Cumberland Telephone & Telegraph Company 80.4 per cent. would be allotted to Louisville, thus making the value of the physical properties in the city of Louisville the aggregate sum of $412,283.11.

If, however, we assume that the price of the stock was at a premium of $40 and $41 per share for that portion of the stock purchased prior to the consolidation and take into consideration the outside liabilities of the Ohio Valley Telephone Company, assumed by the Cumberland Telephone & Telegraph Company, we have the results shown by Exhibit No. 1, from which we determine the value of the Louisville plant at the time of purchase to have been
2973 $487,900.86.

Analysis of the Final Entry of the Cost of the Ohio Valley Telephone Company's Property upon the Books of the Cumberland Telephone & Telegraph Company.

See Exhibit No. 2.

In the consolidation of the Ohio Valley Telephone Co., with the Cumberland Telephone & Telegraph Co., we find as shown by Exhibit No. 1, the value of the Ohio Valley Telephone Co., properties to be:

Physical property, Telephone plant...	638,196.74	
Real estate	115,765.46	
Franchise	100,000.00	
Unearned rentals	1,558.29	
Board of Trade stock	10.00	
Supplies	37,299.59	
Cash	288.81	
Other miscel.	39,413.19	
		932,532.08
For which the C. T. & T. Co. paid 3557 shares stock @ $140.00 and $141.00	500,835.00	
Bought 1937 shares stock @ $100 exchanged	193,700.00	
Assumed—O. V. T. Co. bonds outstand'g	16,000.00	
Surplus Acc't	12,322.08	
Various reserve acc'ts	70,049.75	
Bills Payable	221,005.09	
Other miscel. liabilities	63,755.16	
		1,077,667.08
Or a cost to the C. T. & T. Co. in excess of the O. V. T. Co. book value of		145,135.00

To arrive at the correct value to the C. T. & T. Co. of the acquired properties, it would be proper to add to the O. V. T. Co.'s book values, the excess cost of $145,135.00; adding same to the tangible properties—physical plant, real estate and supplies—in the proper proportion that each bears to the sum of the three.

Instead of doing this the C. T. & T. Co. has taken the value of the
2974 physical property 638,196.74
and added thereto the following, to-wit:

Amount of reserve charged out of earnings for deferred maintenance by the O. V. T. Co. during the previous nine years	135,505.70	
Amount of excess cost of the O. V. T. Co.'s entire property by reason of purchase of 3557 shares of O. V. T. Co.'s stock at a premium of	145,135.00	
An approximate premium on 1937 shares of C. T. & T. stock exchanged for O. V. T. Co. stock, share for share at $100 each	79,979.91	
Making a fictitious value of the physical property		998,817.35
Of this amount $799,053.88 was prorated on the basis of subscribers, to the nine exchanges maintained by the O. V. T. Co. and the balance $199,763.47 set off as against Toll lines.		
The amount divided on an arbitrary basis assumed by the C. T. & T. Co. between the various exchanges gave to Louisville	678,622.46	
as its cost which was afterwards changed on account of an error to	678,354.69	
The result of increasing the value of the physical properties acquired from $638,196.74 to $998,817.35 was to acquire the real estate over and above any payment therefor, and to wipe off from the records, the franchise, Unearned Rentals, and Stocks in the Board of Trade; the real estate (carried as an outside investment), and the other assets (Franchise, Unearned Rentals, and Board of Trade stock) disappearing entirely.		
This procedure places a burden upon the physical property to the extent that it is expected to earn a dividend on a fictitious valuation of	998,817.35	
2975 Forward	998,817.35	
instead of an actual valuation of	638,196.74	
or upon an increased valuation of	360,620.61	
However, from this amount	360,620.61	
should be deducted, as hereinbefore stated, a proper proportion of the actual excess cost of $145,135.00 which will be shown in Exhibit No. 3.		

In support of our contention in respect of acquiring the real estate etc. we direct your attention to the following:			
Cost to C. T. & T. Co. of O. V. T. Co. property			1,077,667.08
O. V. T. Co.'s value of entire property		932,532.08	
Less Real estate	115,765.46		
Franchise	100,000.00		
Unearned Rentals	1,558.29		
Board of Trade stock	10.00	217,333.75	715,198.33
Excess cost of plant			362,468.75
Less excess cost of stock allowed		145,135.00	
Less reserve accounts charged against profits of O. V. T. Co. during 9 years previous to consolidation		135,505.70	
Approximate premium on 1937 shares of stock exchanged—share for share		79,979.91	360,620.61
Leaving a balance unaccounted for which the records, so far as examined, fail to reveal			1,848.14

It would therefore appear that the method adopted by the Cumberland Telephone & Telegraph Co. in raising the value of the physical properties, was resorted to for the purpose of acquiring the Real Estate, Franchise, etc. free of any expense to the General Company, and in so doing it inflicted upon the nine exchanges absorbed, the burden of the cost of all the Ohio Valley Telephone Company's properties, a further burden of rentals, and the burden of greatly increased earnings to pay dividends upon an inflated valuation thereof.

2976 If we assume that the manipulated figures as set up by the Cumberland Telephone & Telegraph Co., which show an aggregate of $998,817.35 to be the total cost of the property, then we will have results as shown by Exhibit No. 3 which shows the total value of the Exchanges located in Louisville and other points where maintained by the Ohio Valley Telephone Co., to be $606,562.72, of which, upon the basis of division adopted by the Cumberland Telephone & Telegraph Co., would make the cost of the Louisville Plant, (not including Real Estate), to have been the sum of $487,676.42, practically the same as shown in Exhibit No. 1, which was arrived at from the original figures of entry and without manipulation thereof, and was set up as the cost of the property at that time and without charging back against the property any of the money set aside prior to the consolidation for the deferred maintenance and used for that purpose, as shown hereinbefore; therefore, It resolves itself into the fact that the Louisville plant at the time of the consolidation had a cost value of the sum of $487,900.86 and no more,

based upon the cost thereof to the Cumberland Telephone & Telegraph Company.

As a matter of information we append the following data regarding the Ohio Valley Telephone Co.'s record and subsequent manipulation of cost figures, and the result of correct and proper allocation.

Ohio Valley Telephone Company Data.

During the year ending December 31st, 1891, the Ohio Valley Telephone Co. wrote off against profits of the business from franchise			7,500.00
Year ending Dec. 31st, 1892, from franchise			5,000.00
Total			12,500.00
Year ending Dec. 31st, 1891 from Aerial		7,500.00	
Dec. 31st, 1892 " "		15,000.00	
Dec. 31st, 1893 " "		25,000.00	
2977 Dec. 31st, 1894 " "		14,885.99	
Dec. 31st, 1895 " "		12,000.	
Dec. 31st, 1897 " "		9,000.	
Dec. 31st, 1898 " "		6,000.	
			41,885.99
Total Aerial			89,385.99
Dec. 31st, 1892 from Equipment		5,000.	
Dec. 31st, 1896 " "		14,000.	
Total Equipment			19,000.00
Dec. 31st, 1894 Underground Cables			14,619.70
Making a total of			135,505.70

for the seven years, or an average of $19,356.24 per year. This amount, as an average on the book value of the plant as of Dec. 31st, 1899, aggregate 3.77%—approximately 4% upon the full book value of the operating properties, including Toll lines, which, at that time must have been considered adequate to maintain the property or rebuild same at the end of its normal life.

The cost to the Ohio Valley Telephone Company, standing upon the books of that company Dec. 31st, 1899, shows as below:

Aerial Construction	149,740.64
Underground Conduits	108,313.61
Underground Cables	126,512.24
Equipment	128,223.45
Toll lines construction	125,406.80
Total	638,196.74

Subsequent to the consolidation of the two companies the Reserve accounts aggregating $135,505.70, as above explained, and which had been written off against the profits, were written back against the cost of the property, by the Cumberland Telephone & Telegraph Company, and added thereto to make a total cost of $773,-702.44, which was subsequently prorated to the different exchanges at a cost of $799,053.88, of which Louisville was given $678,354.69 or 84.92% of the total charged to exchanges, whereas upon the basis of division of value of the exchanges, adopted by the com-
2978 plainant, the percentage would be 80.4%, making the total cost chargeable to Louisville $642,439.32, or $35,915.37 less than claimed by the complainant.

The records of the company show that after making the consolidation with the Ohio Valley Telephone Company, the cost of the Louisville plant, prorated as above explained, was taken onto the books of the Cumberland Telephone & Telegraph Company at the gross sum of $678,354.69, to which by subsequent addition as charged to construction, this amount was increased to the sum of $1,702,391.68 as of record March 6th, 1909.

The records of the Ohio Valley Telephone Company show that on December 31, 1899 the total cost of record charged to construction account for the entire system aggregated $638,196.74.

The cost of Real Estate was given at $115,765.46. Franchise $100,000.00. Supplies on hand, $37,299.59, and other miscellaneous assets, $41,270.29, making a total of $932,532.08 as shown by Exhibit No. 1, and as taken from the records of the Ohio Valley Telephone Company and, placed to the credit of the Cumberland Telephone & Telegraph Company. As against this credit (also shown in Exhibit No. 1) we find various liabilities to the amount of $383,132.08. Adding to the liabilities the cost of the stock issued in exchange for the Ohio Valley at the price claimed, $694,535.00, we have an aggregate of $1,077,667.08. Deducting from this amount the sum total of the property not belonging to exchanges—$470,-825.22, we have the cost of the plants in Louisville and all other points where maintained by the Ohio Valley Telephone Company, —to-wit: $606,841.86. Dividing this to the various exchanges upon the basis adopted by the Cumberland Telephone & Telegraph Company, to-wit: twice the number of stations at Louisville as against the actual number of stations at other exchanges, as respect-
2979 ive ratio, Louisville aggregates 80.4% or $487,900.86, as a more proper charge against Louisville Exchange property and equipment. This taken as the nucleus, to which, by adding subsequent sums charged against Louisville for construction, less reconstruction, the total cost to March 6th, 1909, aggregates $1,317,671.26 as shown by Exhibit No. 4.

Rebuilding Louisville Exchange.

It will be noted by reference to exhibits, notwithstanding the fact that $678,354.69 was charged for the Louisville portion of the property of the Ohio Valley Telephone Company on the first of January,

1900; that during the years 1900, 1901, 1902 and 1903 there was charged against Louisville the sum of $725,939.26 for reconstruction and construction of the Louisville plant, or $47,584.57 more than originally charged to Louisville as the first cost of a plant which had then been in operation for nearly 14 years.

Our examination developed the fact that the vouchers of the company and other evidences of expenditures as charged to construction, do not show distinctively that the money so charged was expended upon the Louisville plant, and from the fact that numerous items of expense shown by vouchers and payrolls, and charged against the construction and operation of the Louisville plant, have been found by us to be directly chargeable to District—that is—expenses incurred upon toll lines and at exchanges other than at Louisville, and such exceptions by us have been accepted by the special accountant for the complainant and deducted from the expenses of Louisville proper, as shown by Exhibit No. 5, it is possible that more or less of the expenses charged to construction account as being local to Louisville, should more properly be charged to outside construction, reconstruction or maintenance; chargeable quite proba-
2980 ble through the fact that Louisville is, as before stated, a clearing house for the payment of accounts of the company for a large portion of its Kentucky and Indiana territory.

It should be noted that this same construction account contains the cost of equipping the toll department, and the cost of erecting toll lines within the city and various incidental expenses for labor, material and equipment, all classed as local exchange, whereas, the toll department is operated as an outside financial operation in so far as the earnings to the Exchange proper is only a commission allowance upon the tolls collected as compensation for the use of and maintenance of its equipment, office room, salaries, wages and all other expenses appertaining thereto.

Reconstruction Account.

Prior to 1905 no separate account was kept of reconstruction expenses, and as the original plant purchased from the Ohio Valley Telephone Co., had been in use for practically 14 years or a greater portion thereof, it is only reasonable to believe that some reconstruction was necessary, and in fact the Ohio Valley Telephone Co., had set aside certain sums, as has already been shown, for such purposes, therefore we can only conclude that all such expense was charged direct to construction account and thence against the cost of the plant, thereby greatly increasing the cost shown of record, whereas a certain portion should have been charged against the earnings each year for reconstruction.

During the years 1905 to 1908 the complainant company charged to reconstruction out of earnings, entering the various amounts as an operating expense, the gross sum of $155,022.26 or an average of $38,755.56 per annum. From the fact that the sum expended each year for reconstruction, during the four years named did not
2981 vary materially it is quite evident that the sum was found to be adequate, therefore we have set up the construction account,

charging to reserve for reconstruction the sum of $38,755.00 each year from 1900 to 1904 inclusive with the result shown in Exhibit No. 4.

Using the original cost valuation of the plant purchased from the Ohio Valley Company, as set up by us and which shows the total cost of the plant $487,900.86 and without taking into account any diminution value of the property each year for what is termed silent decay, we show the amount expended for construction to be $1,317,671.20 and which is more approximately the total expended as the cost of the plant to March 6th, 1909, than are the figures set up by the complainant company.

Present Value of Louisville Plant.

As the Court's order calls for a valuation of the complainant's plant and equipment employed in its business in the city of Louisville as of March 6th, 1909, the subject was discussed to a considerable extent between the Special Accountant for the complainant and the undersigned, resulting in a general understanding that "a fair valuation of the plant and property can only be arrived at by a detailed physical appraisal of the said property."

In the joint report made to Your Honor, it is stated: "We have discussed the method to be followed in arriving at an estimate of the present value of the telephone plant of the complainant in the city of Louisville and we find that we cannot agree as to said method."

Notwithstanding this conclusion and mutual concurrence that it was a question that should be left to the court to decide after an appraisal have been made, it may be well to state that the
2982 Special Accountant for the complainant contended that the basis of diminution in value should be at the rate of ten per cent per annum, figuring the same upon the book record of the cost on the 1st day of January, plus the average of construction expenses during the year, which would be practically 50% of the gross amount charged against construction for the entire year, figuring upon this the sum of 10% to be deducted from the book record of value as of the 1st of January of that year, the balance to represent the then diminished value of the property for the first day of the following January, which process would be repeated each year.

We believe that this basis is entirely wrong; that is, to diminish the value of the property by an arbitrary 10% per annum and would be unfair to the complainant and not a logical method of arriving at how much the property might depreciate in value per year or during a series of years. On this account we still believe that it is a question that should be decided by an appraisal of the physical property rather than otherwise.

Gross Earnings—Net Earnings.

SECTION 3. The gross earnings and the net earnings of the complainant upon its plant and property employed in its business in said city for the years 1905, 1906, 1907 and 1908, stating separately as to each of said years, and giving the percentage of net income in each year and whether said percentage is inclusive or exclusive of any allowance for depreciation of property and plant or claims for damages for personal or other injuries.

As previously stated, the toll department of the Louisville exchange is operated as an outside "financial operation" so far as earnings are concerned and is explained as follows:

2983 By reference to Exhibit No. 6, which is set up as per complainant's records and methods it will be noted that the gross earnings to the Louisville exchange for the respective years are claimed as follows:

	1905.	1906.	1907.	1908.
1. Toll Commissions	$10,267.23	$11,304.40	$12,663.47	$11,562.78
2. Direct Exchange Earnings	264,675.13	280,076.12	297,501.14	307,431.85
3. Other Exchange Earnings	5,247.44	7,348.50	11,644.67	9,956.89
4. Total as set up by complainant ..	280,189.80	298,729.02	321,809.28	328,951.52
5. Deduct Bad Debts	10,366.42	4,230.78	2,050.77	3,113.22
6. Leaving as Earnings claimed by complainant ..	$269,823.38	294,498.44	319,758.51	325,838.30

Considering the toll department as separate and distinct from the Exchange we have set up the account accordingly as shown by Exhibit No. 7, to which attention is called. This Exhibit shows the earnings of the Exchange proper for the respective years as below.

7. Exchange Revenue	$259,556.15	$283,194.04	$307,095.04	$314,275.52
8. Toll Dept. Earnings	52,870.28	57,805.60	65,175.80	55,464.49

Analysis.

1. Commission Allowed on Toll Collections.

This represents an arbitrary percentage of the gross Toll Collections at the Louisville Exchange on basis of 15% after making all proper deductions for refunds, uncollectible, etc. and is an arbitrary basis which we show is not commensurate for the services performed.

2. Exchange Revenue.

2984 These amounts represent the Gross Earnings from rentals in the City of Louisville during the respective years, from which must be deducted the amount shown in entry No. 5 as Bad Debts, uncollectable, etc.

3. Revenue from Telegraph Companies, Private Line Rentals, Pole Service and Attachments, List Advertisements, Telegraph Drops, Removals & Miscellaneous.

The revenue from Telegraph Companies is for the use of Telephones in the offices of the Telegraph Companies, used for the transmission of telegrams to and from the offices, and are paid for at an agreed rate per message,—a direct Exchange earning.

The revenue from Private Line rentals is purely an Exchange earning, being for Phones and other operating outfits, the property of the Telephone Company, but which is used without connection with the Exchange, in other words, for purely local business of the renter.

The revenue from Pole service is purely an Exchange earning, being a revenue for pole space and attachments.

The revenue from List Advertisements is purely an Exchange earning, being revenue from Directory advertisements and other special reference for space sold to subscribers and others and as the expense is borne entirely by the Exchange, the income therefrom is an Exchange earning.

The revenue from Telegraph Drops is an Exchange earning, being for telegraph service attachments to the telephone line for private telegraphic purposes.

The revenue from removals and Miscellaneous is also an Exchange earning, being charges made for moving phones, changing of wiring, etc. for subscribers, and other miscellaneous service.

2985 4. Commission from American Telephone & Telegraph Company.

This item, which is placed to the credit of Toll Earnings in our exhibit, represents a commission paid to the Cumberland Telephone & Telegraph Company by the American Telephone & Telegraph Company, of 10.21¢ per message, for all messages originated by the C. T. & T. for points on lines of the A. T. & T. Co. and belongs, strictly speaking, to the Toll Department.

5. Messengers' Fees.

This earning belongs to the Toll Department, being a revenue derived from handling long-distance phone messages and call service, and is so treated by us.

Exhibit No. 7.

In this exhibit we have set up the accounts separate and distinct, showing all of the earnings of the Exchange proper and all collec-

tions of the Toll Department separately. As against these respective earnings we have also set up expenses of operation which is shown in Exhibit No. 8.

Particular attention is called to Exhibit No. 8, showing basis o cost in handling the Total business at Louisville, as excerpted from the Pay-rolls of the C. T. & T. Co. on file in the office of the company and which show distinctively the charge belonging direct t that service and which, for Salaries and Wages alone show as below for the respective years:

	1905.	1906.	1907.	1908
Gross amount allowed Louisville exchange as commission earnings upon toll collections	$10,267.23	11,304.40	12,663.47	11,562.7
Salaries and Wages chargeable direct to operation of Toll department as shown by office Poy-rolls	13,269.95	15,472.43	15,041.28	11,590.1
2986				
Loss to the Exchange on Salaries and Wages alone.....	3,002.72	5,831.97	2,277.81	27.3

NOTE.—In 1908 many changes were made in the methods of a counting under which many of the charges which prior thereto we charged to Exchange Operating Expenses, were charged direct the department where they more properly belonged, thus reduci the amount to be excerpted by us.

There are many charges, however, against the cost of handli this Toll business which must be considered, and which busin when handled upon a commission basis only is at the expense and loss to the local Exchange, greatly reducing the average ea ings upon local rental charges, and as this question under conside tion is wholly one of "Confiscatory Legislation" this feature is desideratum and therefore this particular drain should be fully a clearly understood, more especially when it is known that 85% the toll collections goes direct to Surplus Account of the Compa as a general earning thereto. It should be borne in mind t while the balance of the Toll earnings represents a greater porti of the gross collections thereupon at the Louisville office, no cons eration is given for the service performed upon the In calls, which payment is made at the other or receiving Exchange.

These balances for the four years under review are as follows

1905	$42,603.05 or 80.68%
1906	46,501.20 or 80.44%
1907	52,512.33 or 77.40%
1908	43,901.71 or 79.15%

Exhibit No. 9 shows the result of operation of the Toll department independently, allowing the entire Toll Earnings as a separate financial operation and charging to it a just proportion of the expenses of operation of the Louisville Exchange, all of which is set forth in full detail. This exhibit also shows a more proper
2987 proportion of the charges for operating the Exchange proper, by charging to other departments their respective percentages of the expenses as heretofore charged to the Exchange and very conclusively shows that when the operating charges are properly made and allocated, the Exchange will show its proper earnings as a local operation and that same is very profitable, whereas, as heretofore set up, the showing is entirely fictitious, as applied locally, but not so in the general round-up of accounts for the company's entire business. The general results of the company's operation is not affected by this proper charging off of expenses, and justice is done the local Exchange, which should not be taxed to the extent of the loss shown, in handling the Toll business.

Operating Expenses.

Exhibit No. 8 shows, "First." Under the general classification of accounts as found upon the books of the complainant, the exact figures appearing thereupon;

Second. The amounts excerpted by the Special Accountant for the defendant and set opposite each respective classification shown in red.

These latter amounts represent charges erroneously made in the accounts through improper distribution thereof, by allowing all the charges to be set up as against the local Exchange whereas they are chargeable to other accounts; the figures in black in the same column, represent errors and omissions which are added. All of these charges, including Salaries and Wages, shown in red, were charged against the local Exchange whereas they should have been
2988 charged against outside Toll lines and Exchanges, and therefore were excerpted by us and the excerptions accepted by the accountant for the complainant, in arriving at the figures shown in the joint report of comparison, and which agrees with the amounts set in Column Three.

Third. This column shows the respective figures covered in the joint report as subject to further analysis by the Special Accountant for the defendant and which analysis is set up in Exhibit No. 9, in which the Real Estate is charged with its proper proportion of the Taxes and Insurance. The Supply Department—which is maintained for the benefit of the district—is also charged with its proper proportion of Taxes and Insurance. The Toll Department is charged with its propor proportion of all Office Expenses from which it derives a direct benefit, the latter charges being pro-rated

as between the Exchange proper and the Toll Department upon the basis of percentage the Toll collections each year bears to the total collections of the office, after all proper deductions shall have been made for bad debts, uncollectible accounts, etc.

For the year 1908 this division was made upon the following basis:

Exchange, total earnings	$314,275.52
Net Toll collections	55,464.49
Total	$396,640.01

of which toll aggregates 15%, upon which percentage basis the items last above mentioned, are charged as against the Toll Department, and show the following aggregates:

2989 *Earnings and Expenses Toll Department and Exchange as Set Up Separately by the Mutual Audit Company.*

Year.	Gross toll collections.	Toll department expenses.	Per cent. cost to earnings.
1905	52,870.28	23,536.25	44.51%
		Profit 29,334.03	55.495
1906	57,805.60	24,671.90	42.68%
		Profit 33,134.57	57.32%
1907	65,175.80	24,478.86	37.55%
		Profit 40,696.94	62.45%
1908	55,464.49	20,239.65	36.49%
		Profit 35,224.84	63.51%

Year.	Exchange earnings.	Exchange expenses.	Per cent. cost to earnings.
1905	259,556.15	158,545.35	60.08%
		Profit 101,010.80	38.92%
1906	283,194.04	164,476.09	58.08%
		Profit 118,717.95	42.92%
1907	307,095.04	177,082.46	57.66%
		Profit 130,012.58	42.34%
1908	314,275.52	162,662.78	51.76%
		Profit 151,612.74	48.24%

It is conclusive that the commission allowed to the Louisville exchange for handling the toll business with its attending expenses, is commensurate for the services performed and which is clearly shown by the exhibit referred to, in which we charge
2990 to that department only its proportion of the cost of handling the business at the Main Office of the Company in the City of Louisville, and then only such as are clearly defined, no branch exchange being taken into consideration. Under this classification we have charged to the toll department items of Salaries and Wages which are distinctly shown on the Pay-rolls of the office, as being

directly chargeable to toll service. In other cases the salaries of joint employés are divided according to the labor performed, and other properly divisible charges are pro-rated upon the basis of the respective collections as hereinbefore explained. All maintenance repair charges other than the items of Traveling expenses and Insurance are charged to the exchange exclusively, because of the fact that at this late date there is no possible means of segregating such expenses, notwithstanding we believe there should be a proportionate charge against the toll department for this service also.

That we are justified in setting up the account in this manner is illustrated in Exhibit No. 10, showing the total number of Toll calls reported by the Louisville office during the period covered, together with the total charges accruing thereon as taken from the original reports, without detail auditing references. This exhibit shows as follows:

In 1906, the earnings upon the Toll calls reported averaged 31.98¢ per Toll call.

In 1907, the earnings upon the Toll calls reported averaged 40.94¢ per Toll call.

In 1908, the earnings upon the Toll calls reported averaged 44.16¢ per Toll call.

which at 15% commission would aggregate 6¢ to 6-6/10¢ per call or message, while under the contract with the American Telephone & Telegraph Company the toll department receives 10.21¢ per message for all messages originating upon the lines of the complainant in the city of Louisville for points upon the lines of the A. T. & T. Co. and the latter transacts all the service after the local switchboard shall have answered the call from the local phone and
2991 connection shall have been made with the office of the latter company by trunk-line connection between the two offices in the City of Louisville.

Charges to Real Estate.

By reference to Exhibit No. 11, it will be noted that the Real Estate of the C. T. & T. Co., in the City of Louisville, for which the Exchanges are charged a rental as an operating expense, earned in 1908, an average of 8.324% upon the value of the property, as the attending expenses are charged by the complainant company; and an average of 6.418% thereupon after charging against same its proper proportion of the Taxes and Insurance. The ordinary maintenance of the Buildings is charged to operating expense of the Exchange, and is not shown in such a manner as to enable the segregation thereof; but the expense of general overhauling and remodeling is charged against Real Estate and the rentals fixed upon the then book record of value. This account is carried by the company as an outside operation and not as a part of the Exchange.

The total taxes against the property and divisions thereof is shown by Exhibit No. 12; and the Insurance and divisions thereof by Exhibit No. 13.

Reserve Account for Reconstruction.

As this is an account which contemplates a "Reserve" to be set aside each year from the net earnings for the reconstruction of the physical properties, as same may be required, it should be treated only in connection with earnings account.

We call attention to page 17 of this report under the heading; "Reconstruction Account," from which it will be noted that during the years 1905, 1906, 1907 & 1908, the complainant company charged to reconstruction the sum of $155,022.26, or an average of $38,755.56 per annum, charging the expenditure direct to
2992 operating expenses of the local plant at Louisville, whereas it should have been charged against the "Reserve."

In line with the above contention we have deducted the amount so charged each year, from the operating expenses as charged by complainant, in order that the item may be considered in its proper manner against earnings, thus showing the operating expenses as they should be.

As the amount so expended, averaging from $38,000.00 to $41,000.00 per annum, was doubtless found to be adequate, no greater amount should be provided for future Reconstruction Reserve as against net earnings of the exchange.

Telephone Service.

Particular attention is called to Exhibit No. 14 which is a segregation of the telephone service reports of the Louisville office for the years mentioned. This illustrates the increase and decrease in the number of phones in use in the city of Louisville month by month. It also shows the total number of phones connected by private board exchanges,—extension sets,—pay stations and free phones, and the number of Actual subscribers.

It will be noted by this exhibit that the average earnings per phone from Actual subscribers, not including the above-mentioned cheap-rate phones, has increased each year as shown below:

	1905.	1906.	1907.	1908.
Average for all phones.....	2.54	2.38	2.23	2.50
Average for private S-board exchanges, pay stations, extension sets and D/H.....	.693	.615	.555	.622
Average for actual subscribers....	3.49	3.53	3.73	4.23

Probable Earnings in 1910.

As stated in the joint report, based upon the Month therein designated, with reference to the gross earnings under the
2993 rates as now established and the earnings as they would be under the new ordinance, amounting thereunder to $4,143.48, it was agreed between the accountants that the lowering of the rates would increase the number of subscribers and, therefore, increase the gross earnings, hence the gross earnings would

not be diminished to the extent above mentioned, the actual decrease depending largely upon the number of new subscribers, which the reduction would produce, and the regaining of those lost by virtue of the increase in rates in April 1907, plus the percentage of normal, healthy increment prior to such increase in rates. To illustrate:

The normal increase in the average monthly subscribers in 1906 over 1905 was 2.17%. Upon this basis the normal growth would have been as below.

Average Actual Year Subscribers.

1906	5956	2.17%=129	6085
1907	6085	2.17%=132	6219
1908	6217	2.17% 135	6352
1909	6352	2.17% 138	6490
1910	6490	2.17% 141	6631
Average telephones 1908			5158
Total increase as of 1910			1473

at the normal growth only, without reference to the number lost by virtue of increased rates.

These 1473 phones, taken at the average of $3.66 per month, new rate basis, as against $4.23 average for 1908, would show an earning of $64,694.16 per annum, less alleged loss by reduction in rates to wit 49,721.76 leaves an aggregate increased in the earnings of $14,972.40 for the year 1910, which would be increased by additional phones in 1911 on the same basis to $21,441.82, so that the net earnings for the latter year should aggregate approximately $173,054.56.

2994 It is claimed that an increase in the number of subscribers, increases the cost per subscriber.

This rule applies where, by increasing the number of subscribers, the limit of operation is increased, but not so where the increase in number occurs within the established limit, except to the extent of one item only of operating expenses,—that of salaries and wages, of operators, and main office clerks, which is a very small percentage of the gross operating expenses.

New Construction Paid for Out of Earnings.

From the records to which we were given access and as these records are kept, it was impossible to determine what portion of the earnings from operation of the C. T. & T. Co., were expended for new construction and reconstruction, especially in view of the fact that these earnings are turned into the company's treasury in common with earnings from all other sources, including proceeds from sale of its Capital Stock, and such disbursements for construction and reconstruction are paid out of this general fund indis-

criminately, so far as we were able to ascertain from the books and records as kept by that company and disclosed to us.

All of which is respectfully submitted.

E. W. FARNHAM,
Special Accountant for Defendant.

General Manager The Mutual Audit Company.

2995 *Index to Exhibits.*

No. 1. Ohio Valley Telephone Co.'s Assets and Liabilities.
a. Cost of Ohio Valley Telephone Co.'s plant to the Cumberland Telephone and Telegraph Co.
b. Value of Louisville Exchange Jan. 1, 1900.
No. 2. Cost of Ohio Valley Telephone Co.'s plant to the Cumberland Telephone and Telegraph Co.
a. Cost of Ohio Valley Telephone Co.'s physical property as increased by the Cumberland Tel. & Tel. Co.
b. Cost of Louisville Exchange as set up by the C. T. & T. Co.
c. Results obtained because of increased cost of physical property as set up by C. T. & T. Co.
No. 3. Cost of Exchanges as set up by C. T. & T. Co.
a. Value of property acquired after adding proportionately excess cost of $145,135.00.
b. Value of physical property after adding proportionately excess cost of $145,135.00.
No. 4. Cost to complainant of Louisville Exchange as set up by The Mutual Audit Company.
No. 5. Value of Louisville Exchange to January 1st, 1909, per records C. T. & T. Co. (Construction Account).
a. Mutual Audit Company's excerpts from Construction Account.
b. Corrected value of Louisville Exchange to January 1, 1909, with additions to March 6, 1909.
No. 6. Gross Earnings of Louisville Plant—Exchange.
Gross Earnings of Louisville Plant—Allotted to Toll.
1905, 1906, 1907 and 1908.
No. 7. Gross Toll Earnings allotted Louisville and Gross Toll Collection 1905, 1906, 1907 and 1908.
2996 No. 8. Gross Expenses as per records of C. T. & T. Co. Accountants' additions and excerpts.
Gross Expenses corrected.
1905, 1906, 1907 and 1908.
No. 9. Gross corrected expenses analyzed as between Exchange Toll, etc.
1905, 1906, 1907 and 1908.
No. 10. Summary of Toll Service in and out of Louisville.
1906, 1907 and 1908.
No. 11. Per cent of Revenue derived from Louisville Real Estate because of rentals, taxes and insurance.
a. Rentals charged Louisville Exchange.

b. Value of Louisville Real Estate.
1905, 1906, 1907 and 1908.

No. 12. Taxes paid by Louisville Exchange.

a. Taxes chargeable to Real Estate.
1905, 1906, 1907 and 1908.

No. 13. Insurance on Louisville Exchange.
1905, 1906, 1907 and 1908.

No. 14. Classified Telephone Service. Louisville Exchange.
1905, 1906, 1907 and 1908.

No. 15. Net Revenue Louisville Exchange.

a. Net Revenue Louisville Exchange—Toll Service.
1905, 1906, 1907 and 1908.

No. 16. Excerpts from Pay Rolls—1905, 1906, 1907 and 1908.

No. 17. Detailed Statement of Instruments in use at Louisville Exchange by months, January 1st, 1900, to May 1st, 1909 inclusive.

No. 18. Excerpts from Exchange Expenses in respect of Damage and Compensation.

No. 19. Excerpts from and Additions to Exchange Expenses in respect of Insurance.

No. 20. Derivations of Percentages on which Toll Expenses are computed.

EXHIBIT No. 1.

Ohio Valley Telephone Company.

Assets and Liabilities January 1, 1900, *as per Records of Ohio Valley Telephone Company.*

Assets.			Liabilities.		
Exchange Construction:					
Aerial	$149,740.64		Capital Stock,5494 Shares		$549,400.00
Equipment	127,523.45		Bonds Outstanding		16,000.00
Underground Conduit	108,313.61		Surplus Account		12,322.08
" Cable..	126,512.24		Reserve for Taxes	$4,000.00	
Office Furniture and Fixtures	700.00		" " Interest	7,770.00	
Toll Line Construction	125,406.80		" " S. B. Royalty	2,404.59	
		$638,196.74	" " Depreciation .	8,000.00	
Real Estate		115,765.46	" " Toll Line Reconstruction.	9,000.00	
Franchise		100,000.00	" Special Account	38,875.16	
Supply Account		37,299.59			70,049.75
Cash		288.81	L. C. Maddox	139.68	139.68
Unearned Rentals		1,558.29	Agents Toll Accounts	1.35	1.35
Board of Trade Stock		10.00	Cumb. Tel. & Telg. Co.	21,997.93	21,997.93
Amount Due from Auditor		30,215.18	Bills payable	221,005.09	221,005.09
Agents Toll Accounts		715.42	Exchange Subscribers	2,059.93	2,059.93
American Telephone & Telegraph Co.		869.45	American Bell Telephone Co.	14,197.91	14,197.91
Cumberland " " " " Toll Account		143.84	West. Electric Co.	23,950.21	23,950.21
Central Union Telephone Co.		118.19	Other Line Accounts	1,408.15	1,408.15
East Tennessee " "		644.40			
Louisville Railroad Co.		2,233.40			
Sundry Small Accounts		351.17			
H. H. Brown, Foreman		300.00			
Sundry Manager's Account		3,822.14			
		$932,532.08			$932,532.08

EXHIBIT No. 1-A.

Ohio Valley Telephone Company.

Cost of Entire Plant to the Cumberland Telephone & Telegraph Co.

	Debtor.	Creditor.	
Aerial	.....	$149,740.64	
Underground Conduit	.....	108,313.61	
" Cables	.....	126,512.24	
Equipment	.....	127,523.45	
Office Furniture and Fixtures	.....	700.00	
Toll Lines	.....	125,406.80	
			$638,196.74
Real Estate:			
Main Office, Louisville	.....	100,000.00	
Ormsby Ave. " Lots	.....	4,500.00	
Green St. " "	.....	3,534.50	
New Albany, Ind.	.....	7,730.96	
			115,765.46
			100,000.00
Franchise	.....	37,299.59	
Supplies on hand	.....	288.81	
Cash	.....	10.00	
Stock in Board of Trade, Rentals paid in but unearned	.....	1,558.29	
Miscellaneous other assets	.....	39,413.19	
			78,569.88
Total Valuation, All Property	.....		$932,532.08

Bonds Outstanding	$16,000.00		
Various Reserve Accounts	70,049.75		
Surplus Account	12,322.08		
Bills Payable assumed	221,005.09		
Miscellaneous other Liabilities	63,755.16		
		$383,132.08	
702 Shares C. T. & T. Co. Stock, $140	}		
2855 " " " " " " " 141	} 500,835.00		
1937 " " " " " " "			
share for share 100	193,700.00		
		694,535.00	
			$1,077,677.08
			$145,135.00

2999

EXHIBIT No. 1-B.

Cumberland Telephone and Telegraph Company.

Value of Louisville Exchange, January 1, 1900.

Value of Stock and Liabilities			$1,077,667.08
Less Real Estate	$115,765.46		
" " 14.63% of $145,135.00	21,233.25		
		$136,998.71	
Franchise		100,000.00	
Toll Lines	$125,406.80		
" " 19.65% of $145,135.00	22,999.46		
		148,406.26	
Supplies	$37,299.59		
" 4.72% of $145,135.00	6,850.37		
		44,149.96	
Cash		288.81	
Board of Trade Stock		10.00	
Unearned Rentals		1,558.29	
Other Assets		39,413.19	
			470,825.22
			$606,841.86
Louisville Plant, 80.4%			$487,900.86
Others, 19.6%			118,941.00

3000

EXHIBIT No. 2.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Balance Sheet Showing Excess Cost of Ohio Valley Telephone Co.'s Plant.

Assets.		Liabilities.	
		Capital Stock:	
1. Physical Property—exchanges and toll	$638,196.74	702 Shares bought @ $140.00	
2. Real Estate	115,765.46	2,855 " " @ 141.00	$500,835.00
3. Franchise	100,000.00	1,937 " Exchanged @ $100.00	193,700.00
4. Unearned Rentals	1,558.29	Bonds	16,000.00
5. Board of Trade Stock	10.00	Surplus Account	12,322.08
6. Supplies	37,299.59	Various Reserve Accounts	70,049.75
7. Cash	288.81	Bills Payable	221,005.09
8. Other Miscellaneous Assets	39,413.19	Other Miscellaneous Liabilities	63,755.16
	$932,532.08		$1,077,667.08
An Excess of	145,135.00		.....
	$1,077,667.08		$1,077,667.08

3001

EXHIBIT No. 2-A.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Exhibit Showing the Cost of the Physical Property as Increased by the Cumberland Telephone & Telegraph Company.

1. Physical Plants—Per Assets Exhibit No. —	$638,196.74
2. Add amount of reserve charged out of Earnings, for deferred maintenance, by the Ohio Valley Telephone Co. during the previous nine years	135,505.70
3. Add Excess cost of 3,557 Shares of Ohio Valley Telephone Co.'s Stock bought at a premium	145,135.00
4. Add approximate premium on 1,937 Shares of the Cumberland Telephone & Telegraph Co.'s Stock exchanged for Ohio Valley Telephone Co.'s Stock @ $100.00—Share for Share	79,979.91
5. Fictitious Value of Physical Property	$998,817.35
6. Or an Increase of	$360,620.61

3002

EXHIBIT No. 2-B.

Cumberland Telephone and Telegraph Company.

Cost of Physical Property as Set Up by C. T. & T. Co. and Portion Allotted as Cost of Louisville Exchange.

1. Aerial Construction	$149,740.64	Aerial	$264,127.37
2. Underground Conduit	108,313.61	Equipment	189,245.37
3. " Cables	126,512.24	Underground	224,981.95
4. Equipment	128,223.45		
5. Toll Line Construction	125,406.80	Value of Physical Property allotted to Louisville by C. T. & T. Co.	$678,354.69
6. Value of Physical Property per books of Ohio Valley Telephone Co.	$638,196.74		
Additions:			
7. Reserve charged out of Earnings for deferred Maintenance during 9 years previous to consolidation	135,505.70		
8. Excess Cost of 3557 Shares O. V. T. Co. Stock bought at a premium	145,135.00		
9. Approximate Premium of 1937 Shares of C. T. & T. Co. Stock Exchanged for O. V. T. Co. Stock at $100.00—Share for Share	79,979.91		
10. Value of Physical Property as set up by Cumberland Telephone & Telegraph Co.	$998,817.35		

EXHIBIT No. 2-C.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Exhibit Showing that the Cost of the Physical Property, as Increased by the Cumberland Telephone & Telegraph Co., Gives the Company Free Possession of the Real Estate and Wipes Out the Franchise, Unearned Rentals, and Board of Trade Stock.

1.	Cost of O. V. T. Co.'s Plant to C. T. & T. Co			$1,077,667.08
2.	Value of O. V. T. Co.'s Plant		$932,532.08	
3.	Less—Real Estate	$115,765.46		
4.	Franchise	100,000.00		
5.	Unearned Rentals	1,558.29		
6.	Board of Trade Stock	10.00		
			217,333.75	715,198.33
7.	An Excess Cost—not including above assets			$362,468.75
8.	Increased Cost of Physical Property			360,620.61
9.	Difference Unaccounted for			$1,848.14

Showing that the increased cost of the Physical Property wiped out the Real Estate, Franchise, etc., with the exception of $1,848.14.

EXHIBIT No. 2-C.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Exhibit Showing that the Cost of the Physical Property, as Increased by the Cumberland Telephone & Telegraph Co., Gives the Company Free Possession of the Real Estate and Wipes Out the Franchise, Unearned Rentals, and Board of Trade Stock.

1. Increase- cost of Physical Property on account of Excess Cost of Stock	$145,135.00	
2. Real Estate	115,765.46	
3. Franchise	100,000.00	
4. Unearned Rentals	1,558.29	
5. Board of Trade Stock	10.00	
		$362,468.75
6. Less—Increased valuation of Physical Property as charged		360,620.61
7. An unaccounted for difference of		$1,848.14

3005

EXHIBIT No. 2-C.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Exhibit Showing that the Cost of the Physical Property, as Increased by the Cumberland Telephone & Telegraph Co., Gives the Company Free Possession of the Real Estate and Wipes Out the Franchise, Unearned Rentals, and Board of Trade Stock.

1.	Disregarding the excess cost of stock bought $145,135.00 which is a proper charge to the value of the various properties, we have—		
2.	Real Estate	$115,765.46	
3.	Franchise	100,000.00	
4.	Unearned Rentals	1,558.29	
5.	Board of Trade Stock	10.00	
			$217,333.75
6.	Less—Reserve Accounts written off the previous nine years	135,505.70	
7.	Approximate premium on 1937 Shares of Stock exchanged—share for share.	79,979.91	
			215,485.61
8.	An unaccounted for difference of		$1,848.14

EXHIBIT No. 3.

Ohio Valley Telephone Company.

Cost of Entire Plant to the Cumberland Telephone and Telegraph Company, as Set Up by the Cumberland Telephone and Telegraph Company, Proportion of Excess Cost of $145,135.00 *Being Added Thereto.*

Total shown by Cumberland Telephone & Telegraph Co.		$998,817.35
Deduct:		
Real Estate	$115,765.46	
Toll Lines	125,406.80	
Franchise	100,000.00	
Percentage of Excess Cost of Stock, charged to Real Estate and Toll Lines	51,083.37	
		392,255.63
Total Cost of all Exchanges		$606,562.72
Prorated to Exchanges:		
Louisville 80.4%		$487,676.42
Others 19.6%		

EXHIBIT No. 3-A.

Cumberland Telephone and Telegraph Company.

Value of the Ohio Valley Telephone Co.'s Property After Prorating to the Tangible Assets the Excess Cost to the Cumberland Co. of $145,135.00.

	Percent.	O. V. T. Co. value.	Portion to add.	Total.
Value of Physical Property	80.65	638,196.74	117,051.38	755,248.12
Real Estate	14.63	115,765.46	21,233.25	136,998.71
Supplies	4.72	37,299.59	6,850.37	44,149.96
Franchise				100,000.00
Cash				288.81
Board of Trade Stock				10.00
Other Assets				39,413.19
Unearned Rentals				1,558.29
Cost to the Cumberland Telephone & Telegraph Co.				$1,077,667.08

EXHIBIT No. 3-B.

Cumberland Telephone and Telegraph Company.

Value of Physical Property Acquired, with Excess Cost of $145,135.00 *Proportioned to the Various Items of Construction.*

	As shown by books of O. V. T. Co.	Percent.	Portion to be added.	Value to the C. T. & T. Co.	
Value of Physical Property					755,248.12
Aerial	149,740.64	23.47	27,516.09	177,256.73	
Underground	234,825.85	36.79	43,029.93	277,855.78	
Equipment	127,523.45	19.19	23,375.12	150,898.57	
Office Furn. & Fixtures	700.00	.11	130.78	830.78	
Toll Lines	125,406.80	19.65	22,999.46	148,406.26	755,248.12
Totals	638,196.74	100.00	117,051.38	755,248.12	755,248.12

EXHIBIT No. 4.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Cost to Complainant of Its Property and Plant in the City of Louisville, Ky., March 6th, 1909.

Total allowed as cost of plant at Louisville, as shown by Exhibit No. 1 ..... $487,900.86

	Construction account.	Less charged to reconstruction.	Total added to construction.	
1900	$166,775.23	$38,755.00	$128,020.23	
1901	178,549.14	38,755.00	139,794.14	
1902	217,128.05	38,755.00	178,373.05	
1903	163,486.84	38,755.00	124,731.84	
1904	131,371.13	38,755.00	92,616.13	
	857,310.39*		663,535.39*	
1905	60,691.21	.....	60,691.21	
1906	89,125.15	.....	89,125.15	
1907	20,770.42	.....	20,770.42	
1908	4,351.83	.....	4,351.83	
Total added				829,770.34
Total Cost to March 6, 1909				$1,317,671.20
Including charges added in 1909, $491,65				491.65
				$1,318,162.85

[*In pencil in copy.]

(Here follows Exhibit No. 5, marked page 3010.)

Construction Account Being Cost of Louisville Ex

Year.		Aerial.	Undergr
1900	Purchase	$264,127.37	$224,981
1900		93,074.85	30,109
1901		99,591.16	3,013
1902		76,856.13	21,418
1903		74,301.44	4,493
1904		98,126.79	268
1905		38,318.95	1,019
1906		70,559.20	2,322
1907		12,076.06	277
1908		5,332.48	15
	Totals	$832,364.43	$287,918.

Aerial	$832,364.
Underground	287,918.
Equipment	572,935.
Tools and Teams	9,753.
Office Furniture and Fixtures	1,779.
Total as per exhibit of C. T. & T. Co.	
Difference	

EXHIBIT No. 5.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Louisville Exchange as Shown by the Records of the Cumberland Telephone & Telegraph Company.

Underground.	Equipment.	Tools and teams.	Office furniture & fixtures.	Total.	Cost of plant at end of each year.
				$678,354.69	.....
$224,981.95	$189,245.37	.....	.....	166,939.03	$845,293.72
30,109.22	43,754.96	.....	.....	178,851.39	1,024,145.11
3,013.17	76,247.06	.....	.....	218,177.48	1,242,322.59
21,418.66	119,902.69	.....	.....	163,486.84	1,405,809.43
4,493.53	84,691.87	.....	.....	131,555.63	1,537,365.06
268.24	28,091.54	$5,069.06	.....	60,966.01	1,598,331.07
1,019.36	19,198.95	2,428.75	.....	89,281.50	1,687,612.57
2,322.06	13,225.28	3,174.96	.....	21,491.68	1,709,104.25
277.09	10,008.96	870.43	.....		
15.43	11,430.72	48.44	$1,779.42	4,351.83	1,704,752.42
$287,918.71	*572,935.96	$9,753.90	$1,779.42	$1,704,752.42	

	$832,364.43
...	287,918.71
...	572,935.96
...	9,753.90
...	1,779.42
	$1,704,752.42
	1,700,045.26
...	*$4,707.16
...	

*Equipment	$572,935.96
Per Exhibit of C. T. & T. Co.	568,228.80
Difference	*$4,707.16

This amount in voucher #2588—April, 1902, charged by C. T. & T. Co., on their records to Nashville, Tenn., should have been charged to Louisville, Ky.

3011

EXHIBIT No. 5-A.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Excerpts from Construction Account.

	Aerial.	Underground.	Equipment.	Total.
1901	302.25	$7.80	.....	$163.80
1900	$156.00	....	.....	302.25
1902	1,049.43	....	.....	1,049.43
1904	184.50	....	.....	184.50
1905	213.75	....	$61.05	274.80
1906	156.10	....	.25	156.35
1907	384.04	....	337.22	721.26
Totals	$2,446.07	$7.80	$398.52	$2,852.39

EXHIBIT No. 5-B.

Construction Account as Corrected.

	Aerial.	Underground.	Equipment.	Tools and teams.	Office furniture and fixtures.	Total.
Cost of Ohio Valley Telephone Co.	$264,127.37	$224,981.95	$189,245.37	.....	.....	$678,354.69
1900	92,918.85	30,101.42	43,754.96	.....	.....	166,775.23
1901	99,288.91	3,013.17	76,247.06	.....	.....	178,549.14
1902	75,806.70	21,418.66	119,902.69	.....	.....	217,128.05
1903	74,301.44	4,493.53	84,691.87	.....	.....	163,486.84
1904	97,942.29	268.24	28,091.54	5,069.06	.....	131,371.13
1905	38,105.20	1,019.36	19,137.90	2,428.75	.....	60,691.21
1906	70,403.10	2,322.06	13,225.03	3,174.96	.....	89,125.15
1907	11,692.02	277.09	9,671.74	870.43	.....	20,770.42
1908	5,332.48	15.43	11,430.72	48.44	1,779.42	4,351.83
Up to March 6th, 1909	1,149.12	.....	786.58	103.19	25.92	491.65
Cost of Louisville plant to March 6th, 1909, and classification thereof	$831,067.48	$287,910.91	$571,750.86	$9,857.09	$1,805.34	$1,702,391.68

EXHIBIT No. 6.

Cumberland Telephone and Telegraph Company.
Louisville, Ky.

Earnings for Year 1905.

	Total.	Exchange.	Earnings from toll as credited Louisville exchange.
1. Exchange Earnings	$264,675.13	$264,675.13	.....
2. Proportion of Toll Earnings being 15% on all outgoing messages	6,759.00	.....	$6,759.00
3. Originating Commissions on A. T. & T. Messages	2,865.29	.....	2,865.29
4. Earnings from Telegraph Companies for Telephone service	983.88	983.88	.....
5. Message Fees:			
C. T. & T. Co.	805.02	.....	805.02
A. T. & T. Co.	57.00	.....	57.00
6. Pole Service and Attachments	953.11	953.11	.....
7. Private Lines	1,342.01	1,342.01	.....
8. List Advertisements	751.83	751.83	.....
9. Removals and Miscellaneous	1,001.12	1,001.12	.....
10. Telegraph Drops	215.49	215.49	.....
11. Bad Debts:			
Exchange $10,366.42	.....	10,366.42	.....
Toll 219.08	.....	.....	219.08
	10,585.50	.....	.....
12. Total Revenue	$269,823.38	.....	.....
13. " "	.....	$259,556.15	$10,267.23

EXHIBIT No. 6.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Earnings for Year 1906.

		Total.	Exchange.	Earnings from toll as credited Louisville exchange.
1. Exchange Earnings		$280,076.12	$280,076.12	.....
2. Proportion of Toll Earnings being 15% on all outgoing toll messages		7,170.29	.....	$7,170.29
3. Originating Commissions on A. T. & T. Co. Messages		3,427.09	.....	3,427.09
4. Earnings from Telegraph Companies for Telephone service		1,018.12	1,018.12	.....
5. Messangers' Fees:				
C. T. & T. Co		767.95	.....	767.95
A. T. & T. Co		44.45	.....	44.45
6. Pole Service and Attachments		1,096.28	1,096.28	.....
7. Private Lines		1,079.92	1,079.92	.....
8. List Advertisements		2,497.25	2,497.25	.....
9. Removals and Miscellaneous		680.53	680.53	.....
10. Telegraph Drops		976.40	976.40	.....
11. Bad Debts:				
Exchange	$4,230.58	.....	4,230.58	.....
Toll	105.38	.....	.....	105.38
		4,335.96	.....	.....
12. Total Revenue		$294,498.44	$283,194.04	$11,304.40

EXHIBIT No. 6.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Earnings for Year 1907.

		Total.	Exchange.	Earnings from toll as credited Louisville exchange.
1. Exchange Earnings		$297,501.14	$297,501.14	.....
2. Proportion of Toll Earnings being 15% on all outgoing messages		8,116.85	.....	$8,116.85
3. Originating Commissions on A. T. & T. Co. Messages		3,864.17	.....	3,864.17
4. Earnings from Telegraph Companies for Telephone service		939.48	939.48	.....
5. Messanger Fees:				
C. T. & T. Co		732.45	.....	732.45
A. T. & T. Co		36.70	.....	36.70
6. Pole Service and Attachments		1,177.75	1,177.75	.....
7. Private Lines		1,153.91	1,153.91	.....
8. List Advertisements		2,984.22	2,984.22	.....
9. Renewals and Miscellaneous		3,278.70	3,278.70	.....
10. Telegraph Drops		2,110.61	2,110.61	.....
11. Bad Debts:				
Exchange	$2,050.77	.....	2,050.77	.....
Toll	86.70	.....	.....	86.70
		2,137.47	.....	.....
12. Total Revenue		$319,758.51	.....	.....
13. " "		.....	$307,095.04	$12,663.47

EXHIBIT No. 7.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Memoranda of Toll Earnings and Toll Collections for 1905.

1.	Gross Toll Collections	.....	$52,327.01
2.	A. T. & T. Co., Originating Commissions	.....	2,865.29
3.	C. T. & T. Co., Messenger Fees	.....	805.02
4.	A. T. & T. Co. " "	.....	57.00
5.	Total		$56,054.32
6.	Less Discount on Coupons	$1,723.52	.....
7.	Bad Debts	219.08	.....
8.	Bad Toll Accounts	1,241.44	3,184.04
9.	Gross Toll Revenue Earned at Louisville Exchange		$52,870.28
10.	Toll Revenue Earned at Louisville Exchange	$52,870.28	
11.	Toll Revenue Credited to Louisville Exchange	10,267.23	
12.	Toll Revenue Earned at Louisville but not credited to Louisville	$42,603.05	

EXHIBIT No. 7.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Memoranda of Toll Earnings and Toll Collections for 1906.

1. Gross Toll Collections	.....	.....	$56,402.72
2. A. T. & T. Co., Originating Commissions	.....	.....	3,427.09
3. C. T. & T. Co., Messenger Fees	.....	.....	767.95
4. A. T. & T. Co. " "	.....	.....	44.45
5. Total	.....		$60,642.21
6. Less Discount on Coupons	.....	$2,134.06	.....
7. Bad Debts	.....	105.38	.....
8. Bad Toll Accounts	.....	597.17	.....
			2,836.61
9. Gross Toll Revenue Earned at Louisville Exchange	.....		$57,805.60
10. Toll Revenue Earned at Louisville Exchange	.....	$57,805.60	
11. Toll Revenue Credited to Louisville Exchange	.....	11,304.40	
12. Toll Revenue Earned at Louisville but not credited to Louisville	.....	$46,501.20	

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EXHIBIT No. 7.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Memoranda of Toll Earnings and Toll Collections for 1907.

1. Gross Toll Collections	.....	.....	$63,205.29
2. A. T. & T. Co., Originating Commissions	.....	.....	3,864.17
3. C. T. & T. Co., Messenger Fees	.....	.....	732.45
4. A. T. & T. Co. " "	.....	.....	36.70
5. Total	.....		$67,838.61
6. Less Discount on Coupons	.....	$2,084.84	.....
7. Bad Debts	.....	86.70	.....
8. Bad Toll Accounts	.....	491.27	.....
			2,662.81
9. Gross Toll Revenue Earned at Louisville Exchange	.....		$65,175.80
10. Toll Revenue Earned at Louisville Exchange	.....	$65,175.80	
11. Toll Revenue Credited to Louisville Exchange	.....	12,663.47	
12. Toll Revenue Earned at Louisville but not credited to Louisville	.....	$52,512.33	

EXHIBIT No. 7.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Memoranda of Toll Earnings and Toll Collections for 1908.

1. Gross Toll Collections	.....	$52,769.78
2. A. T. & T. Co., Originating Commissions	.....	3,272.37
3. C. T. & T. Co., Messenger Fees	.....	658.30
4. A. T. & T. Co. " "	.....	.....
5. Total		$56,700.45
6. Less Discount on Coupons	$50.35	.....
7. Bad Debts	177.84	.....
8. Bad Toll Accounts	1,007.77	.....
		1,235.96
9. Gross Toll Revenue Earned at Louisville Exchange		$55,464.49
10. Toll Revenue Earned at Louisville Exchange	$55,464.49	
11. Toll Revenue Credited to Louisville Exchange	11,562.78	
12. Toll Revenue Earned at Louisville but not credited to Louisville	$43,901.71	

EXHIBIT No. 8.

Cumberland Telephone and Telegraph Company.

Detail of Operating Expenses, Maintenance Expense, and Reconstruction Cost.

Classification of Accounts. Fiscal Year 1905.	As charged per records C. T. & T. Co.	Excerpts and additions as agreed upon by accountants.	Expenses as adjusted by accountants, for analysis.
General expenses.			
1. Prorate of General Account	.....	$3,139.93	$3,139.93
2. Prorate of General Office Expenses	$16,726.81	5,521.47	11,205.34
3. Postage, Printing and Stationery	3,524.16	.....	3,524.16
4. Directory Expenses	7,309.36	.....	7,309.36
5. Taxes	13,698.29	7.85	13,690.44
6. Legal Expenses	1,607.60	.....	1,607.60
7. Totals	$42,866.22	$2,389.39	$40,476.83
Operating Expenses:			
1. Prorate of General Account	.....	429.38	429.38
2. Salaries and Wages	67,724.16	8,435.89	59,231.87
	.....	56.40	.....
3. Rent, Light and Heat	12,607.48	.....	Others, 5,407.48
			Main, 7,200.00
4. Advertising and Canvassing	9,427.96	.....	9,427.96
5. Incidental Expenses	2,574.35	6.50	2,567.85
6. Totals	$92,333.95	$8,069.41	$84,264.54

Maintenance Repairs:				
1. Prorate of General Account	.....	916.78		916.78
2. Salaries and Wages	29,100.97	.....		29,100.97
3. Rent, Light and Heat	1,331.64	.....		1,331.64
4. Materials	6,837.87	130.76		6,707.11
5. Traveling	3,376.71	112.70		3,264.01
6. Conduit, Pole and Roof Rent	547.75	.....		547.75
7. Insurance	4,312.04	.....	Others,	2,959.54
			Main,	1,352.50
8. Damage and Compensation	2,951.63	.....		2,951.63
9. Incidentals	692.56	5.35		687.21
10. Totals	$49,151.17	$667.97		$49,819.14
Maintenance Reconstruction:				
1. Salaries and Wages	32,722.44	.....		32,722.44
2. Rent, Light and Heat	.....	.....		.....
3. Materials	7,125.81	.....		7,125.81
4. Traveling	1,395.67	192.90		1,202.77
5. Incidentals	.....	.....		.....
6. Totals	$41,243.92	$192.90		$41,051.02
7. Grand Totals	$225,595.26	$9,983.73		$215,611.53
Memo.:				
Add to make totals agree with C. T. & T. Co. Records:				
Instrument Expense	13,454.87	.....		11,559.76
Uncollectible Accounts	1,679.39	.....		.....
Totals as per Records of C. T. & T. Co.	$240,729.52	$9,983.73		$227,171.29

EXHIBIT No. 8.

Cumberland Telephone and Telegraph Company.

Details of Operating Expenses, Maintenance Expenses, and Reconstruction Cost.

Classification of Accounts. Fiscal Year 1906.	As charged per records C. T. & T. Co.	Excerpts and additions as agreed upon by accountants.		Expenses as adjusted by accountants for analysis.
General Expenses.				
1. Prorate of General Account	.....	$3,460.20		$3,460.20
2. Prorate of General Office Expenses	$16,717.44	5,447.29		11,270.15
3. Postage, Printing and Stationery	3,769.38	.....		3,769.68
4. Directory Expenses	9,102.19	.....		9,102.19
5. Taxes	16,236.82	.....		16,236.82
6. Legal Expenses	3,379.78	.....		3,379.78
7. Totals	$49,205.61	$1,987.09		$47,218.52
Operating Expenses:				
1. Prorate of General Account	.....	429.40		429.40
2. Salaries and Wages	66,898.31	7,519.29		59,318.78
	.....	60.24		.....
3. Rent, Light and Heat	11,818.13	.....	Others,	4,618.13
			Main,	7,200.00
4. Advertising and Canvassing	6,581.68	62.54		6,519.14
5. Incidental Expenses	2,652.61	.....		2,652.61
6. Totals	$87,950.73	$7,212.67		$80,738.06

Maintenance Repairs:				
1. Prorate of General Account	.....	$1,102.19		1,102.19
2. Salaries and Wages	33,887.71	2,464.74		31,422.97
3. Rent, Light and Heat	1,375.91	.....		1,375.91
4. Materials	3,725.54	191.15		3,734.39
5. Traveling	3,987.26	18.96		3,968.30
6. Conduit, Pole and Roof Rent	418.23	250.00		168.23
7. Insurance	4,572.68	.....	Others,	3,144.23
			Main,	1,428.45
8. Damage and Compensation	5,970.20	2.00		5,968.20
9. Incidentals	484.06	.....		484.06
10. Totals	$54,621.59	$1,824.66		$52,796.93
Maintenance Reconstruction:				
1. Salaries and Wages	22,722.20	18.50		22,703.70
2. Rent, Light and Heat	25.19	.....		25.19
3. Materials	16,219.65	2.28		16,217.37
4. Traveling	1,680.43	3.37		1,677.06
5. Incidentals	2.75	.....		2.75
6. Totals	$40,650.22	$24.15		$40,626.07
Grand Totals	$232,428.15	$11,048.57		$221,379.58
Memo.:				
Add to make totals agree with C. T. & T. Co. Records:				
Instrument Expense	13,848.79	.....		12,518.70
Uncollectable Accounts	1,519.41	.....		.....
Totals as per records of C. T. & T. Co.	$247,796.35	.....		$233,898.28

EXHIBIT No. 8.

Cumberland Telephone and Telegraph Company.

Details of Operating Expenses, Maintenance Expenses, and Reconstruction Cost.

Classification of Accounts. Fiscal Year 1907.

General Expenses.	As charged per records C. T. & T. Co.	Excerpts and additions as agreed upon by accountants.		Expenses as adjusted by accountants for analysis.
1. Prorate of General Account	.....	$3,614.37		$3,614.37
2. Prorate of General Office Expenses	$16,299.74	5,072.98		11,226.76
3. Postage, Printing and Stationery	4,015.55	.....		4,015.55
4. Directory Expenses	7,999.36	.....		7,999.36
5. Taxes	17,900.82	.....		17,900.82
6. Legal Expenses	1,338.68	41.87		1,296.81
7. Totals	$47,554.15	$1,500.48		$46,053.67
Operating Expenses:				
1. Prorate of General Account	.....	$716.84		716.84
2. Salaries and Wages	64,172.06	5,725.72		58,316.18
	.....	130.16		.....
3. Rent, Light and Heat	12,542.81	.....	Main,	6,880.00
			Others,	5,662.81
4. Advertising and Canvassing	4,994.25	25.00		4,969.25
5. Incidental Expenses	3,115.96	.....		3,115.96
6. Totals	$84,825.08	$5,164.04		$79,661.04

Maintenance Repairs:				
1. Prorate of General Account	.....	$4,476.57		$4,476.57
2. Salaries and Wages	$44,685.03	.....		44,685.03
3. Rent, Light and Heat	2,392.39	.....		2,392.39
4. Materials	3,860.14	.....		3,860.14
5. Traveling	5,999.86	103.13		5,705.88
6. Conduit, Pole and Roof Rent	.....	90.85		.....
7. Insurance	824.47	125.00		699.47
	3,314.32	.....	Others,	2,027.32
			Main,	1,287.00
8. Damage and Compensation	220.85	50.00		170.85
9. Incidentals	313.51	1.85		311.66
10. Totals	$61,510.57	$4,105.74		$65,616.31
Maintenance Reconstruction:				
1. Salaries and Wages	$17,811.41	.....		$17,811.41
2. Rent, Light and Heat				
3. Materials	22,277.96	136.53		22,141.43
4. Traveling	1,959.73	20.80		1,938.93
5. Incidentals	3.33	.....		3.33
6. Totals	$42,052.43	$157.33		$41,895.10
7. Grand Totals	$235,942.23	$2,716.11		$233,226.12
Memo.:				
8. Add to make totals agree with C. T. & T. Co. Records:				
Instrument Expense	14,984.21	.....		13,372.49
Uncollectible Accounts	2,344.94	.....		.....
Totals as per records of C. T. & T. Co.	$253,271.38	$2,716.11		$246,598.61

EXHIBIT No. 8.

Cumberland Telephone and Telegraph Company.

Details of Operating Expenses, Maintenance Expenses, and Reconstruction Cost.

Classification of Accounts, Fiscal Year 1908.

General Expenses.	As charged per records C. T. & T. Co.	Exc[illegible]pts and additions as agreed upon by accountants.		Expenses as adjusted by accountants for analysis.
1. Prorate of General Account	.....	$1,921.03		$1,921.03
2. Prorate of General Office Expenses	$10,173.88	642.59		9,531.29
3. Postage, Printing and Stationery	3,352.24	.....		3,352.24
4. Directory Expenses	4,439.44	.....		4,439.44
5. Taxes	19,563.85	.....		19,563.85
6. Legal Expenses	3,268.90	.....		3,268.90
7. Totals	$40,798.31	$1,278.44		$42,076.75
Operating Expenses:				
1. Prorate of General Account	.....	268.47		268.47
2. Salaries and Wages	57,274.33	4,159.24		53,115.09
3. Rent, Light and Heat	13,268.56	.....	Main,	6,720.00
			Others,	6,548.56
4. Advertising and Canvassing	5,631.21	.....		5,631.21
5. Messengers	727.94	.....		727.94
6. Incidental Expenses	2,429.01	.....		2,429.01
7. Totals	$79,331.05	$3,890.77		$75,440.28

General Expenses.

1. Prorate of General Account.....
2. Prorate of General Office Expenses.....
3. Postage, Printing and Stationery.....
4. Directory Expenses .....
5. Taxes .....
6. Legal Expenses .....

7. Total .....

Operating Expenses:

1. Prorate of General Account.....
2. Salaries and wages.....
3. Rent, Light and Heat—Others.....
" " " " —Main.....
4. Advertising and Canvassing.....
5. Incidental Expenses .....

6. Total .....

Maintenance Repairs:

1. Prorate of General Account.....
2. Salaries and wages.....
3. Rent, Light and Heat.....
4. Materials .....
5. Traveling .....
6. Conduits, Pole and Roof Rent.....
7. Insurance—Others .....
" —Main .....
8. Damage and Compensation.....
9. Incidentals .....

10. Total .....

Maintenance Reconstruction:

1. Salaries and wages.....
2. Rent, Light and Heat.....
3. Materials .....
4. Traveling .....
5. Incidentals .....

Total .....

6. Instrument Expense .....

Total .....

7. Deduct Main Reconstruction chargeable to depreciation Reserve

EXHIBIT No. 9.

Expenses for Year 1905.

	As adjusted by accountants for analysis.		Deduct account overcharge.	Charge real estate expense.	Charge supply expense.	Charge toll department 16.92%.	Charge Louisville exchange.
.....	$3,139.93		.....	.....	.....	.....	$3,139.93
.....	11,205.34		.....	.....	.....	$1,895.94	9,309.40
.....	3,524.16		.....	.....	.....	596.28	2,927.88
.....	7,309.36		.....	.....	.....	.....	7,309.36
.....	13,690.44		.....	$1,831.57	$120.14	$1,986.19	9,752.54
.....	1,607.60		.....	.....	.....	272.01	1,335.59
.....		$40,476.83	.....	$1,831.57	$120.14	$4,750.42	$33,774.70
.....	$429.38		.....	.....	.....	.....	$429.38
.....	59,231.87		.....	.....	.....	$13,269.95	45,961.92
.....	5,407.48		.....	.....	.....	1,218.24	5,407.48
.....	7,200.00		.....	.....	.....		5,981.76
.....	9,427.96		.....	.....	.....	1,595.21	7,832.75
.....	2,567.85		.....	.....	.....	434.48	2,133.37
.....		$84,264.54	.....	.....	.....	$16,517.88	$67,746.66
.....	$916.78		.....	.....	.....	.....	$916.78
.....	29,100.97		.....	.....	.....	.....	29,100.97
.....	1,331.64		.....	.....	.....	.....	1,331.64
.....	6,707.11		.....	.....	.....	.....	6,707.11
.....	3,264.01		.....	.....	.....	$552.27	2,711.74
.....	547.75		.....	.....	.....	.....	547.75
.....	2,959.54		$635.26	$379.65	$307.05	.....	1,637.58
.....	1,352.50		.....	765.00	.....	99.40	488.10
.....	2,951.63		.....	.....	.....	1,500.00	1,451.63
.....	687.21		.....	.....	.....	116.28	570.93
.....		$49,819.14	$635.26	$1,144.65	$307.05	$2,267.95	$45,464.23
.....	$32,722.44						
.....	.....						
.....	7,125.81						
.....	1,202.77						
.....	.....						
.....		$41,051.02					
.....		11,559.76					
.....		$227,171.29	$635.26	$2,976.22	$427.19	$23,536.25	
serve.....		41,051.02					

General Expenses:

1. Prorate of General Account.....
2. Prorate of General Office Expenses.....
3. Postage, Printing and Stationery.....
4. Directory Expenses .....
5. Taxes .....
6. Legal Expenses .....

7. Total .....

Operating Expenses:

1. Prorate of General Account.....
2. Salaries and wages.....
3. Rent, Light and Heat—Main.....
   " " " " —Others.....
4. Advertising and Canvassing.....
5. Incidental Expenses .....

6. Total .....

Maintenance Repairs:

1. Prorate of General Account.....
2. Salaries and wages.....
3. Rent, Light and Heat.....
4. Materials .....
5. Traveling .....
6. Conduit, Pole and Roof Rent.....
7. Insurance—Others .....
   " —Main .....
8. Damage and Compensation.....
9. Incidentals .....

10. Total .....

Maintenance Reconstruction:

1. Salaries and wages.....
2. Rent, Light and Heat.....
3. Materials .....
4. Traveling .....
5. Incidentals .....

6. Total .....

7. Instrument Expense .....

8. Total .....

9. Deduct Main Reconstruction chargeable to Depreciation Reserve.

Expenses for Year 1906.

	As adjusted by accountants, for analysis.		Deduct account overcharge.	Charge real estate expense.	Charge supply expense.	Charge toll department 16.95%.	Charge Louisville exchange.
.....	$3,460.20		.....	.....	.....	.....	$3,460.20
.....	11,270.15		.....	.....	.....	$1,910.29	9,359.86
.....	3,769.38		.....	.....	.....	638.91	3,130.47
.....	9,102.19		.....	.....	.....	.....	9,102.19
.....	16,236.82		.....	$1,755.39	$114.14	2,435.26	11,932.03
.....	3,379.78		.....	.....	.....	572.87	2,806.91
.....	$47,218.52	$47,218.52	.....	$1,755.39	$114.14	$5,557.33	$39,791.66
.....	$429.40		.....	.....	.....	.....	$429.40
.....	59,318.78		.....	.....	.....	$15,472.43	43,846.35
.....	7,200.00		.....	.....	.....	1,220.40	5,979.60
.....	4,618.13		.....	.....	.....	.....	4,618.13
.....	6,519.14		.....	.....	.....	1,104.99	5,414.15
.....	2,652.61		.....	.....	.....	449.62	2,202.99
.....		$80,738.06	.....	.....	.....	$18,247.44	$62,490.62
.....	$1,102.19		.....	.....	.....	.....	$1,102.19
.....	31,422.97		.....	.....	.....	.....	31,422.97
.....	1,375.91		.....	.....	.....	.....	1,375.91
.....	3,734.39		.....	.....	.....	.....	3,734.39
.....	3,968.30		.....	.....	.....	$672.63	3,295.67
.....	168.23		.....	.....	.....	.....	168.23
.....	3,144.23		$257.46	$556.30	$695.93	.....	1,634.54
.....	1,428.45		.....	765.00	.....	112.45	551.00
.....	5,968.20		.....	.....	.....	.....	5,968.20
.....	484.06		.....	.....	.....	82.05	402.01
.....		$52,796.93	$257.46	$1,321.30	$695.93	$867.13	$49,655.11
.....	$22,703.70						
.....	25.19						
.....	16,217.37						
.....	1,677.06						
.....	2.75						
.....		$40,626.07					
.....		12,518.70	.....	.....	.....	.....	$12,518.70
.....		$233,898.28	$257.46	$3,076.69	$810.07	$24,671.90	$164,456.09
serve		$40,626.07					
		$193,272.21					

		As adj by acco for an
General Expenses:		
1. Prorate of General Account	$3,614.37	
2. Prorate of General Office Expenses	11,226.76	
3. Postage, Printing and Stationery	4,015.55	
4. Directory Expenses	7,999.36	
5. Taxes	17,900.82	
6. Legal Expenses	1,296.81	
7. Total		$
Operating Expenses:		
1. Prorate of General Account	$716.84	
2. Salary and wages	58,316.18	
3. Rent, Light and Heat—Main	6,880.00	
4. " " " " —Others	5,662.81	
5. Advertising and Canvassing	4,969.25	
6. Incidental Expenses	3,115.96	
7. Total		$
Maintenance Repairs:		
1. Prorate of General Account	$4,476.57	
2. Salaries and wages	44,685.63	
3. Rent, Light and Heat	2,392.39	
4. Materials	3,860.14	
5. Traveling	5,705.88	
6. Conduits, Poles and Roof Rent	699.47	
7. Insurance—Others	2,027.32	
" —Main	1,287.00	
8. Damages and Compensation	170.85	
9. Incidentals	311.66	
10. Total		$6
Maintenance Reconstruction:		
1. Salaries and wages	$17,811.41	
2. Rent, Light and Heat	.....	
3. Materials	22,141.43	
4. Traveling	1,938.93	
5. Incidentals	3.33	
6. Total		$4
7. Instrument Expenses		1
8. Total		$24
9. Deduct Maintenance Reconstruction Chargeable to Depreciation Reserve		4
		$20
10. Add undercharge account Insurance		

EXHIBIT No. 9.

Expenses for Year 1907.

	As adjusted by accountant, for analysis.		Added account undercharge.	Charge real estate expense.	Charge supply expense.	Deducted account overchange.	Charge toll dep't 17.50%.	Charge Louisville exchange.
..	$3,614.37		.....	.....	.....	.....	.....	$3,614.37
..	11,226.76		.....	.....	.....	.....	$1,964.68	9,262.08
..	4,015.55		.....	.....	.....	.....	702.72	3,312.83
..	7,999.36		.....	.....	.....	.....	.....	7,999.36
..	17,900 82		.....	$1,791.06	$124.52	$122.50	2,775.98	13,086.76
..	1,296.81		.....	.....	.....	.....	226.94	1,069.87
..		$46,053.67	.....	$1,791.06	$124.52	$122.50	$5,670.32	$38,345.27
..	$716.84		.....	.....	.....	.....	.....	$716.84
..	58,316.18		.....	.....	.....	.....	$15,041.28	43,274.00
..	6,880.00		.....	.....	.....	.....	1,204.00	5,676.00
..	5,662.81		.....	.....	.....	.....	.....	5,662.81
..	4,969.25		.....	.....	.....	.....	869.61	4,099.64
..	3,115.96		.....	.....	.....	.....	545.29	2,570.67
..		$79,661.04	.....	$1,791.06	$124.52	.....	$17,660.18	$62,000.86
..	$4,476.57		.....	.....	.....	.....	.....	$4,476.57
..	44,685.03		.....	.....	.....	.....	.....	44,685.03
..	2,392.39		.....	.....	.....	.....	.....	2,392.39
..	3,860.14		.....	.....	.....	.....	.....	3,860.14
..	5,705.88		.....	.....	.....	.....	$998.53	4,707.35
..	699.47		.....	.....	.....	.....	.....	699.47
..	2,027.32		$1,126.85	$464.85	$1,023.61	.....	.....	1,665.71
..	1,287.00		.....	742.50	.....	.....	$95.29	449.21
..	170.85		.....	.....	.....	.....	.....	170.85
..	311.66		.....	.....	.....	.....	54.54	257.12
..		$65,616.31	$1,126.85	$1,207.35	$1,023.61	.....	$1,148.36	$63,363.84
..	$17,811.41							
.	.....							
..	22,141.43							
.	1,938.93							
..	3.33							
.		$41,895.10						
.		13,372.49	.....	.....	.....	.....	.....	$13,372.49
.		$246,598.61	$1,126.85	$2,998.41	$1,148.13	$122.50	$24,478.86	$177,082.46
10		41,895.10						
		$204,703.51						
.		1,126.85						

		As adj by acco for ana
General Expenses:		
1. Prorate of General Account	$1,921.03	
2. Prorate of General Office Expenses	9,531.29	
3. Postage, Printing and Stationery	3,352.24	
4. Directory Expenses	4,439.44	
5. Taxes	19,563.85	
6. Legal Expenses	3,268.90	
7. Total		$4
Operating Expenses:		
1. Prorate of General Account	$268.47	
2. Salaries and wages	53,115.09	
3. Rent, Light and Heat—Others	6,720.00	
" " " " —Main	6,548.56	
4. Advertising and Canvassing	5,631.21	
5. Incidental Expenses	727.94	
6. Incidental Expenses	2,429.01	
7. Total		$7
Maintenance Repairs:		
1. Prorate of General Account	$6,624.15	
2. Salaries and wages	28,836.17	
3. Rent, Light and Heat	2,967.27	
4. Materials	6,376.10	
5. Traveling	3,623.21	
6. Conduit,Pole and Roof Rent	607.19	
7. Insurance—Main	1,341.88	
" —Others	2,241.23	
8. Damage and Compensation	1,945.81	
9. Incidentals	142.90	
10. Total		$5
Maintenance Reconstruction:		
1. Salaries and wages	$23,273.04	
2. Rent, Light and Heat		
3. Materials	5,145.23	
4. Traveling	2,921.72	
5. Incidentals	110.08	
6. Total		$3
7. Instrument Expense		1
8. Total		$21
9. Deduct Maint. Reconstruction chargeable to Depreciation Reserve		3
10. Add undercharge account Insurance		$18

EXHIBIT No. 9.

Expenses for Year 1908.

	As adjusted by accountant, for analysis.		Added account undercharge.	Charge real estate expense.	Charge supply expense.	Deduct account overcharge.	Charge toll department 15%.	Charge Louisville exchange.
..	$1,921.03		.....	.....	.....	.....	.....	$1,921.03
...	9,531.29		.....	.....	.....	.....	$1,429.69	8,101.60
..	3,352.24		.....	.....	.....	.....	502.84	2,849.40
..	4,439.44		.....	.....	.....	.....	.....	4,439.44
..	19,563.85		.....	$1,715.47	$119.62	$54.00	2,651.21	15,023.55
..	3,268.90		.....	.....	.....	.....	490.34	2,778.56
..		$42,076.75	.....	$1,715.47	$119.62	54.00	$5,074.08	$35,113.58
..	$268.47		.....	.....	.....	.....	.....	$268.47
..	53,115.09		.....	.....	.....	.....	$11,590.16	41,524.93
..	6,720.00		.....	.....	.....	.....	1,008.00	5,712.00
.	6,548.56		.....	.....	.....	.....	.....	6,548.56
..	5,631.21		.....	.....	.....	.....	844.68	4,786.53
..	727.94		.....	.....	.....	.....	727.94	.....
..	2,429.01		.....	.....	.....	.....	364.35	2,064.66
.		$75,440.28	.....	.....	.....	.....	$14,535.13	$60,905.15
.	$6,624.15		.....	.....	.....	.....	.....	$6,624.15
.	28,836.17		.....	.....	.....	.....	.....	28,836.17
.	2,967.27		.....	.....	.....	.....	.....	2,967.27
.	6,376.10		.....	.....	.....	.....	.....	6,376.10
.	3,623.21		.....	.....	.....	.....	$543.48	3,079.73
.	607.19		.....	.....	.....	.....	.....	607.19
.	1,341.88		.....	$905.00	.....	.....	65.53	371.35
.	2,241.23		$971.16	403.30	$816.80	.....	.....	1,992.29
.	1,945.81		.....	.....	.....	.....	.....	1,945.81
.	142.90		.....	.....	.....	.....	21.43	121.47
.		$54,705.91	$971.16	$1,308.30	$816.80	.....	$630.44	$52,921.53
	$23,273.04							
	.....							
.	5,145.23							
	2,921.72							
	110.08							
		$31,450.07						
		13,722.52	.....	.....	.....	.....	.....	$13,722.52
		$217,395.53	$971.16	$3,023.77	$936.42	$54.00	$20,239.65	$162,662.78
		31,450.07						
		$185,945.46						
		971.16						

Maintenance Repairs:				
1. Prorate of General Account	.....	$6,624.15		6,624.15
2. Salaries and Wages	52,109.21	23,273.04		28,836.17
3. Rent, Light and Heat	2,967.27	.....		2,967.27
4. Materials	11,521.33	5,145.23		6,376.10
5. Traveling	6,544.93	2,921.72		3,623.21
6. Conduit, Pole and Roof Rent	607.19	.....		607.19
7. Insurance	3,583.11	.....	Main,	1,341.88
			Others,	2,241.23
8. Damage and Compensation	1,945.81	.....		1,945.81
9. Incidentals	252.98	110.08		142.90
10. Totals	$79,531.83	$24,825.92		$54,705.91
Maintenance Reconstruction:				
1. Salaries and Wages				
2. Rent, Light and Heat	.....	.....		23,273.04
3. Materials				
4. Traveling	.....	.....		5,145.23
5. Incidentals	.....	.....		2,921.72
6. Totals	.....	.....		110.08
7. Grand Totals	.....	.....		$31,450.07
	$199,661.19	$27,438.25		$203,673.01
Memo.:				
Add to make totals agree with C. T. & T. Co. Records:				
Instrument Expense	16,195.21	.....		13,722.52
Uncollectable Accounts	3,814.64	.....		.....
Miscellaneous Prorate	10,949.66	.....		.....
Totals per record of C. T. & T. Co.	$230,620.70	$27,438.25		$217,395.53

(Here follows Exhibit No. 9, marked pages 3024-3027.)

EXHIBIT No. 10.

Summary of Toll Service in and out of Louisville, Ky.

	Outgoing calls.	Cash revenue collected.	Average per call.	Incoming calls.
1906.				
Only 10 months available for year 1906.				
Totals	132,754.00	$42,457.01	31.98¢	107,099.00
1907.				
Entire year.				
Totals	140,740.00	$57,095.93	40.94¢	126,347.00
1908.				
Only 11 months available for year 1908.				
Totals	109,207.00	$48,223.07	44.16¢	91,773.00

(Here follows Exhibit No. 11, marked pages 3029-3034.)

Cumberland Te

Per Cent of Revenu

1905.	Main exchang
1. Assessed Value	$42,000.(
2. Ledger "	101,942.9
3. Rental Charged	
4. Insurance " on building	7,920.(
5. Taxes "	765.(
	1,118.9
6. Per cent of Rental Revenue on ledger value	
7. " " Insurance " " " "	7.77%
8. " " Taxes " " " "	.754%
	1.09%
9. " " Total " " " "	9.614%
10. " " Rental revenue if taxes and insurance were paid by the C. T. & T. Co. instead of by the Louisville Exchange	5.926%

Cumberland Tele

Per Cent of Revenue L

1906.	Main exchange.
1. Assessed Value	$42,000.00
2. Ledger "	102,419.20
3. Rental Charged	
4. Insurance " on building	7,920.00
5. Taxes "	765.00
	1,059.91
6. Per cent of Rental Revenue on ledger value	
7. " " Insurance " " " "	7.77%
8. " " Taxes " " " "	.754%
	1.035%
9. " " Total " " " "	9.559%
10. " " Rental revenue if taxes and insurance were paid by the C. T. & T. Co. instead of by the Louisville Exchange	5.981%

EXHIBIT No. 11.

umberland Telephone and Telegraph Company.

nt of Revenue Derived From Louisville Real Estate.

Main exchange.	East exchange.	South exchange.	West exchange.	Stable.	All property.
$42,000.00	$9,250.00	$8,500.00	$9,250.00	$600.00	$69,600.00
101,942.95	17,734.11	15,195.00	15,964.10	1,325.74	152,161.50
7,920.00	1,410.00	900.00	1,320.00	300.00	11,850.60
765.00	108.00	155.20	74.90	10.85	1,113.95
1,118.97	233.54	226.46	246.44	.....	1,825.41
7.77%	7.894%	5.265%	8.269%	22.63%	7.79%
.754%	.609%	1.021%	.470%	.818%	.732%
1.09%	1.317%	1.490%	1.54%	.....	1.200%
9.614%	9.820%	7.776%	10.279%	23.448%	9.722%
5.926%	5.968%	2.754%	6.259%	21.812%	5.858%

EXHIBIT No. 11.

mberland Telephone and Telegraph Company.

t of Revenue Derived From Louisville Real Estate.

Main exchange.	East exchange.	South exchange.	West exchange.	Stable.	All property.
$42,000.00	$9,250.00	$8,500.00	$9,250.00	$600.00	$69,600.00
102,419.20	17,734.11	15,195.00	15,964.10	1,493.74	152,806.15
7,920.00	1,500.00	900.00	1,320.00	300.00	11,940.00
765.00	126.00	141.30	102.00	21.50	1,155.80
1,059.91	221.76	214.51	233.43	25.78	1,755.39
7.77%	8.458%	5.923%	8.269%	20.084%	7.814%
.754%	.710%	.929%	.645%	1.439%	.7565%
1.035%	1.250%	1.409%	1.462%	1.726%	1.149%
9.559%	10.418%	8.261%	10.376%	23.249%	9.7195%
5.981%	6.498%	3.585%	6.162%	16.919%	5.9985%

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Cumberland Telephor

Per Cent of Revenue Deri

1907.	Main exchange.
1. Assessed Value	$42,000.00
2. Ledger Value	102,419.20
3. Rental Charged	8,440.00
4. Insurance charged on buildings	742.50
5. Taxes charged on buildings	1,077.72
6. Per cent of Rental Revenue on ledger value	8.246%
7. " " Insurance " " " "	.7249%
8. " " Taxes " " " "	1.0522%
9. " " Total Earnings " " "	10.0231%
10. " " Rental revenue if taxes and insurance were paid by C. T. & T. Co. instead of by Louisville Exchange	6.4689%

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Per Cent of Revenue Deri

1908.	Main exchange.
1. Assessed Value	$42,000.00
2. Ledger	102,419.20
3. Rental Charged	8,700.00
6. Per cent of Rental Revenue on Ledger Value	8.494%
10. Per cent of Rental Revenue if Taxes and Insurance were paid by the C. T. & T. Co. instead of by the Louisville Exchange	6.533%

EXHIBIT No. 11.

Cumberland Telephone and Telegraph Company.

Per Cent of Revenue Derived From Louisville Real Estate.

	Main exchange.	East exchange.	South exchange.	West exchange.	Stable.	All property.
	$42,000.00	$9,250.00	$8,500.00	$9,250.00	$600.00	$69,600.00
	102,419.20	17,734.11	15,195.00	15,964.10	1,503.74	152,816.15
	8,440.00	1,500.00	900.00	1,320.00	320.00	12,480.00
	742.50	99.00	141.30	92.70	21.50	1,097.00
	1,077.72	233.25	218.11	237.35	24.63	1,791.06
	8.246%	8.458%	5.923	8.269%	21.280%	8.167%
	.7249%	.5582%	.9299%	.5813%	1.4298%	.718%
	1.0522%	1.3152%	1.4354%	1.4868%	1.6379%	1.172%
	10.0231%	10.3314%	8.2883%	10.3371%	24.3477%	10.057%
	6.4689%	6.5846%	3.5577%	6.2009%	18.2123%	6.277%

EXHIBIT No. 11.

er Cent of Revenue Derived From Louisville Real Estate.

	Main exchange.	East exchange.	South exchange.	West exchange.	Stable.	All property.
	$42,000.00	$9,250.00	$8,500.00	$9,250.00	$600.00	$69,600.00
	102,419.20	17,734.11	15,195.00	15,964.00	1,503.74	152,816.15
	8,700.00	1,500.00	900.00	1,320.00	300.00	12,720.00
	8.494%	8.458%	5.923%	8.269%	19.950%	8.324%
	6.533%	6.837%	3.620%	6.441%	16.786%	6.418%

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Cumberland Tele

Rentals Charged

1905. Per Year .....

January to October Per Month, $115.00 .....
October to December " " 125.00 .....
" " " " " 25.00 .....

1906. Per Year .....

1907. Per Year .....

January to May, 4 mos. per month, $660.00 .....
May to December, 8 " " " 725.00 .....
January to May, 4 " " " 30.00 .....
May to December, 8 " " " 25.00 .....

1908. Per Year .....

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Cumberland Teleph

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Real

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1909.

Main Exchange .....
South " .....
East " .....
West " .....
Warehouse and Lot .....
Stable .....

Total value of Louisville Real Estate,
Telephone & Telegraph Company

EXHIBIT No. 11 A.

umberland Telephone and Telegraph Company.

Rentals Charged Against Louisville Exchange.

	Main exchange.	East exchange.	South exchange.	West exchange.	Stable.	Total.
.....	$7,920.00	.....	$900.00	$1,320.00	.....	$10,140.00
.....	.....	$1,035.00	.....	.....	.....	1,035.00
.....	.....	375.00	.....	.....	.....	375.00
.....	.....	.....	.....	.....	$75.00	75.00
	$7,920.00	$1,410.00	$900.00	$1,320.00	$75.00	$11,625.00
.....	$7,920.00	$1,500.00	$900.00	$1,320.00	$300.00	$11,940.00
.....	.....	1,500.00	900.00	1,320.00	.....	.....
.....	2,640.00	.....	.....	.....	.....	.....
.....	5,800.00	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	120.00	.....
.....	.....	.....	.....	.....	200.00	.....
	$8,440.00	$1,500.00	$900.00	$1,320.00	$320.00	$12,480.00
.....	$8,700.00	$1,500.00	$900.00	$1,320.00	$300.00	$12,720.00

EXHIBIT No. 11 B.

umberland Telephone and Telegraph Company.

Louisville, Ky.

Real Estate Account.

Recapitulation.

.....	$102,419.20
.....	15,195.00
.....	17,734.11
.....	15,964.10
.....	8,025.27
.....	1,503.74
sville Real Estate, per General Ledger of The Cumberland elegraph Company.....	$160,841.42

EXHIBIT No. 11 B.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Real Estate Account.

Main Exchange.

See Auditor's Bill # 18131.

		Dr.	Cr.
1900. January 1st,	Transferred from O. V. T. Co. books	$103,534.50	
March 28th,	from L. K. Webb's Ledger C. p. 186	529.80	
1902. July,	Voucher # 2544	1,266.40	
1903. February,	" # 2260	20.70	
1904. March,		.....	$70.20
April,		87.50	
March,	Sold Green Street Lot	.....	3,500.00
October,		11.25	
1905. February,		476.25	
		$105,926.40	$3,507.20
		3,507.20	
1909. January 1st,	Value Main Exchange	$102,419.20	

South Exchange.

See Auditor's Bill # 18131.

1900.	January 1st,	Original Cost from O. V. T. Co. Books		$4,500.00	
1902.	January,	Vouchers, 2001, 153, 1890 and 1880		275.10	
	February,	"	2011-2271	122.68	
	March,	"	116	6,112.82	
	April,	"	307-312	93.02	
	May,	"	112	3.00	
	June,	"	680-652	3,772.90	
	December,	"	1943	340.00	
	April,	"	312	.....	26.77
1904.	March,	"	.....	2.25	
				$15,221.77	$26.77
				26.77	
1909.	January 1st,	Value of South Exchange		$15,195.00	

EXHIBIT No. 11 B.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Real Estate Account.

East Exchange.

See Auditor's Bill # 18131.

		Dr.	Cr.
1902. July,	Purchase Price of lot	$4,038.50	
1903.	Vouchers of expense Account Construction	496.34	
	" " " " Auditor's Bill # 14223	300.00	
	Work done on building—Paid Young & Humphrey Auditor's Bill 14558	11,972.67	
	Further Similar Charges	913.10	
1904. June,		13.50	
1909. January 1st,	Value of East Exchange		$17,734.11

West Exchange.

See Auditor's Bill # 18131.

1902.	September16th,	Purchase Price of Lot	$2,882.50	
1903.	.....	Various Vouchers	561.04	
	.....	Auditor's Bill 14223	149.00	
		" " 14558 Work done on building—Paid Young & Humphrey	11,548.50	
		Vouchers	7.40	
1904.	April 19th,	Cash	802.00	
	August 30th,	Voucher	5.16	
	September 30th,	"	8.50	
1909.	January 1st,	Value of West Exchange		$15,964.10

		Assessed value.
January, Voucher 290.		
Copy of transcript of record in action # 18438—City of Louisville vs. Ohio Valley Telephone Co., regarding Franchise Tax		.....
Voucher 290.		
Transcript of record for Court of Appeals, in re Franchise Tax.		.....
February, Voucher 509		.....
Main Office		$42,000.00
South "		8,500.00
East "		9,250.00
West "		9,250.00
Warehouse		4,800.00
Personalty		186,000.00
Franchise		300,000.00
Rate $1.86 per $100.00 Less 3% Discount		.....
September, Voucher 454		.....
Capital Stock	$763,671.00	
Less Tangible Property	524,825.00	
Value of Franchise	$238,846.00	
Distributed as follows:		
No. state subscribers	10,529	
No. Louisville Subscribers	8,876	
Total Subscribers State @ 50¢ per $100.00	19,405	.....
Forward		.....
		.....

EXHIBIT No. 12.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Taxes—Fiscal Year 1905.

	Assessed value.	Amount of taxes paid.	Real estate.	Personalty.	Franchise.	Miscellaneous.
of ng ..	.....	$3.00	.....	.....	.....	$3.00
se ..	.....	9.00	.....	.....	.....	9.00
..	.....	10,099.91				
..	$42,000.00	.....	$757.77			
.	8,500.00	.....	153.36			
.	9,250.00	.....	166.89			
..	9,250.00	.....	166.89			
..	4,800.00	.....	86.60			
.	186,000.00	.....	.....	$3,355.80		
.	300,000.00	.....	.....	.....	$5,412.60	
.....			$1,331.51	$3,355.80	$5,412.60	
.	.....	550.45				
)						
)						
-						
)						
)						
3						
-						
)	.....	.....	.....	.....	550.45	
	.....	.....	$1,331.51	$3,355.80	$5,963.05	$12.00
	.....	$10,662.36				

		Assessed value.
Forward		.....
October, Voucher # 759		.....
Main Office		$42,000.00
South "		8,500.00
East "		7,750.00
West "		9,250.00
Warehouse		3,900.00
Personalty		235,350.00
Franchise		138,938.00

Rate:
County 36¢ per $100.00
State 50¢ " $100.00

Personalty $235,350.00 @ 86¢=		$2,024.01
Franchise County only $138,938.00 @ 36¢		500.18
Divided on basis of subscribers as follows:		
Jeffersontown	$18.70	
Anchorage	35.70	
Harrods Creek	24.14	
Pleasure Ridge Park	29.92	
	108.46	
Louisville	2,415.73	
		$2,524.19

In lieu of absolute distribution as between Louisville Franchise and Louisville Personalty we charge Louisville Franchise with the total Franchise tax; and deduct the Country portion from Personalty.

Personalty	$2,024.01
Country portion	108.46
Louisville Personalty	$1,915.55

December, Voucher # 290 ....

Tax on lot—Oldham St. between 12th & 13th. Bought from Mr. Theo. Harris with agreement to pay the taxes for the previous year.

Total

EXHIBIT No. 12.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Taxes—Fiscal Year 1905.

Assessed value.	Amount of taxes paid.	Real estate.	Personalty.	Franchise.	Miscellaneous.
.....	$10,662.36	$1,331.51	$3,355.80	$5,963.05	$12.00
.....	3,029.77				
2,000.00	.....	361.20			
8,500.00	.....	73.10			
7,750.00	.....	66.65			
9,250.00	.....	79.55			
3,900.00	.....	33.54			
5,350.00	.....	.....	1,915.55		
8,938.00	.....	.....	.....	500.18	
.....	6.16	6.16			
		$1,951.71	$5,271.35	$6,463.23	$12.00

Cumberland Tele

Taxe

A
v

Forward		..
December, Voucher #773		..
Capital Stock	$975,000.00	..
Less Tangible Property	631,610.00	
Value of Franchise	$343,390.00	
Rate 50¢ per $100.00.		
Total Tax	1,716.95	
Divided:		
Louisville Subscribers, 9,705	$708.89	
State Subscribers, 13,904	1,008.06	
	1,716.95	
Totals		..

EXHIBIT No. 12.

Cumberland Telephone and Telegraph Company.

Taxes—Fiscal Year 1906.

Louisville, Ky.

		Assessed value.	Amount of taxes paid.	Real estate.	Personalty.	Franchise.	Miscellaneous.
.....	.....		$15,527.93	$1,869.53	$7,030.71	$6,623.82	$3.87
.....	.....		708.89				
...	$975,000.00	.....	.....	.....	.....	708.89	
...	631,610.00						
...	$343,390.00						
...	1,716.95						
89 06							
—	1,716.95						
.....	.....	.....	16,236.82	$1,869.53	$7,030.71	$7,332.71	$3.87

	Assessed valuation.	Amount of taxes paid.
February, Voucher, #678		$13,081.90
Rate $1.80 per $100.00 less 3% Discount.		
Main Office	$42,000.00	.....
South "	8,500.00	.....
East "	9,250.00	.....
West "	9,250.00	.....
Warehouse and Lot	5,300.00	.....
Warehouse Shed and Stable	960.00	.....
Personalty	280,690.00	.....
Franchise	393,300.00	.....
March, Voucher #704.		.....
Subscription to Committee on Tax Reform	.....	200.00
April, Voucher #757.		
Rental Earnings of D. H. Phones in City and County offices, Post offices and U. S. Officials' Offices	.....	144.50
May, Voucher #757.		
Same as April	.....	144.50
June, Voucher #757.		
Same as April	.....	147.00
July, Voucher #509.		
Same as April	.....	63.50
August, Voucher #517	.....	173.28
Capital Stock	$1,000,000.00	
Deduct: Tangible Property	773,420.00	
Value of Franchise	$226,580.00	.....
Rate, 50¢ per $100.00		
$226,580.00 @ 50¢=$1,132.90.		
Distributed on basis of subscribers as follows:		
State in Total $259.50		
Louisville 108.42		
Balance to State 151.08		
Forward		$14,354.68

EXHIBIT No. 12.

umberland Telephone and Telegraph Company.

Louisville, Ky.

Taxes Fiscal Year 1907.

Amount of taxes paid.	Real estate.	Personalty.	Franchise.	D. H. rental earnings.	Miscellaneous.
$13,081.90					
.....	$733.32				
.....	148.41				
.....	161.50				
.....	161.50				
.....	92.54				
.....	16.76				
.....	.....	$4,900.85			
.....	.....	.....	$6,867.02		
.....	$1,314.03	$4,900.85	$6,867.02		
200.00	.....	.....	.....	.....	$200.00
141.50	.....	.....	.....	$144.50	
144.50	.....	.....	.....	144.50	
147.00	.....	.....	.....	147.00	
63.50	.....	.....	.....	63.50	
473.28					
.....	.....	.....	473.28		
$14,254.68	$1,314.03	$4,900.85	$7,340.30	$499.50	$200.00

			Assessed valuation.
Forward			.....
August, Voucher #509.			
Same as April			.....
September, Voucher #517.			
County tax on franchise as assessed by State Board.....			$112,296.00
Rate 32¢ per $100.00.....		$359.35	
Prorated on Subscriptions:			
Anchorage	131	$4.15	
Harrods Creek	94	2.98	
Jeffersontown	83	2.63	
Louisville	10,842	343.83	
Pl. Ridge Park.....	129	4.09	
St. Mathews	67	1.67	
		359.35	
September, Voucher #509.			
Same as April			.....
October, Voucher #509.			
Same as April			.....
November, Voucher #509.			
Same as April			.....
December, Voucher #509.			
Same as April			.....
October, Voucher #517.			.....

EXHIBIT No. 12.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Taxes—Fiscal Year 1907.

	Assessed valuation.	Amount of taxes paid.	Real estate.	Personalty.	Franchise.	D. H. rental earnings.	Miscellaneous.
...	.....	$14,254.68	$1,314.03	$4,900.85	$7,340.30	$499.50	$200.00
...	.....	66.00					
... .35	$112,296.00	343.83	.....	.....	343.83		
35							
..	.....	66.00	.....	.....	.....	66.00	
.	.....	66.00	.....	.....	.....	66.00	
.	.....	57.50	.....	.....	.....	57.50	
.	.....	57.50	.....	.....	.....	57.50	
.	.....	$2,989.31					

				Assessed Valuation.
January, Voucher #509.				
Deadhead Subscribers				
February, Voucher #509.				
D. H. Subscribers				
" Voucher #517				
	Main Exchange			$42,000.00
	South "			8,500.00
	East "			9,250.00
Rate $1.75 per $100.00	West "			9,250.00
Less — %.	Warehouse and Lot			5,300.00
	Material Shed and Stable			960.00
	Personalty			297,250.00
	Franchise			440,000.00
March, Voucher #509.				
D. H. Subscriptions				
April, Voucher #509.				
D. H. Subscriptions				
May, Voucher #554.				
D. H. Subscribers				
June, Voucher #554.				
D. H. Subscribers				
July, Voucher #554.				
D. H. Subscribers				
August, Voucher #539				
Value of Franchise				379,383.00
Rate 50¢ per $100.00			$1,896.91	
Proportioned as follows:				
Louisville Subscribers	10,049	$842.68		
State Subscribers	12,601	1,054.23		
	22,650		$1,896.91	
August, Voucher, #554.				
D. H. Subscribers				
Forward				

EXHIBIT No. 12.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Taxes—Fiscal Year 1908.

	Assessed Valuation.	Amount of Taxes Paid.	Real Estate.	Personalty.	Franchise.	Dead Head Rental Earnings.
.....	.....	$57.50	.....	.....	.....	$57.50
....	.....	57.50	.....	.....	.....	57.50
....	.....	13,792.38	.....	.....	.....	.....
....	$42,000.00	.....	$712.95	.....	.....	.....
....	8,500.00	.....	144.29	.....	.....	.....
....	9,250.00	.....	157.02	.....	.....	.....
....	9,250.00	.....	157.02	.....	.....	.....
ot...	5,300.00	.....	89.98	.....	.....	.....
table.	960.00	.....	16.29	.....	.....	.....
....	297,250.00	.....	.....	$5,045.83	.....	.....
....	440,000.00	.....	.....	.....	$7,469.00	.....
			$1,277.55	$5,045.83	$7,469.00	
....	.....	57.50	.....	.....	.....	57.50
....	.....	57.50	.....	.....	.....	57.50
...	.....	35.50	.....	.....	.....	35.50
....	.....	35.50	.....	.....	.....	35.50
....	.....	35.50	.....	.....	.....	35.50
...	.....	842.68	.....	.....	842.68	.....
...	379,383.00	.....	.....	.....	.....	.....
5,91	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....
6.91						
...	.....	35.00	.....	.....	.....	35.50
...	.....	$15,006.06	$1,277.55	$5,045.83	$8,311.68	$371.00

			Assessed Valuation.
Forward			
September, Voucher #539			
County Franchise Tax			$221,734.00
Rate 26¢ per $100.00.			
All charged to Louisville; should be distributed on number of subscribers, to wit:			
See Voucher #539 Aug. '08. Item $1,896.91.	Anchorage	147	
	Harrods Creek	103	
	Jeffersontown	108	
	Louisville	10,049	
	Pl. Ridge Park	109	
	St. Matthews	83	
September, Voucher, #554.			
D. H. Subscribers			
September, Voucher #532.			
Commonwealth of Ky. vs. C. T. & T. Co.:			
Plead guilty and assessed		$1,000.00	
Costs		25.00	
		$1,025.00	
Apportioned to State Exchanges:			
Louisville	9,722		
State	12,411		
October, Voucher #551			
D. H. Subscribers			
November, Voucher #539			
Main Exchange			42,000.00
South, "			8,500.00
East "			8,750.00
West "			9,250.00
Warehouse and Lot			3,900.00
Material Room and Stable			960.00
Personalty			341,850.00
Personalty—$341,850.00 @ 76¢ = $2,598.06			
Anchorage	$44.10		
Harrods Creek	30.90		
Jeffersontown	32.40		
Louisville	2,433.06		
Pl. Ridge Park	32.70		
St. Matthews	24.90		
	2,598.06		
Forward			

EXHIBIT No. 12.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Taxes—Fiscal Year 1908.

	Assessed Valuation.	Amount of Taxes Paid.	Real Estate.	Personalty.	Franchise.	D. H. Rental Earnings.	Tax Suit State of Ky. vs. C.T.&T.Co.
.....	.....	$15,006.06	$1,277.55	$5,045.83	$8,311.68	$371.00	.....
....	.....	576.51	.....	.....	.....	.....	.....
....	$221,734.00	.....	.....	.....	576.51	.....	.....
d on							
147							
103							
108							
0,049							
109							
83							
....	.....	35.00	.....	.....	.....	35.00	.....
	.....	450.24	.....	.....	.....	.....	.....
0.00							
5.00							
5.00	.....	.....	.....	.....	.....	.....	$450.24
....	.....	35.00					
....	.....	.....	.....	.....	.....	35.00	.....
...	.....	2,990.60	.....	.....	.....	.....	.....
...	42,000.00	.....	319.20	.....	.....	.....	.....
...	8,500.00	.....	64.60	.....	.....	.....	.....
...	8,750.00	.....	66.50	.....	.....	.....	.....
...	9,250.00	.....	70.30	.....	.....	.....	.....
...	3,900.00	.....	29.64	.....	.....	.....	.....
...	960.00	.....	7.30	.....	.....	.....	.....
...	341,850.00	.....	.....	2,433.06	.....	.....	.....
	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....	.....
....	.....	$19,093.41	$1,835.09	$7,478.89	$8,888.19	$441.00	$450.24

	Assessed valuation.	Taxe
Forward		
November, Voucher 539.		
County taxes, Compromise in back tax suit, $400.44 Years, 1903, 1904, 1905, 1906, 1907 and 1908, Charged to Louisville Taxes, 1908		
November, Voucher 554.		
D. H. Subscribers		
December, Voucher 554.		
D. H. Subscribers		
		$

EXHIBIT No. 12.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Taxes—Fiscal Year 1908.

	Assessed valuation.	Amount of taxes paid.	Real estate.	Personalty.	Franchise.	D. H. Rental earnings.	Tax Suit State of Ky. vs. C. T. & T. Co.	Back taxes.
.....	.....	$19,093.41	$1,845.09	$7,478.89	$8,888.19	$441.00	$450.24	.....
fears, Louis-	.....	400.44	.....	.....	.....	.....	.....	$400.44
.....	.....	35.00	.....	.....	.....	35.00	.....	.....
.....	.....	35.00	.....	.....	.....	35.00	.....	.....
	.....	$19,563.85	$1,835.09	$7,478.89	$8,888.19	$511.00	$450.24	$400.44

Exhibit No. 11 B.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Real Estate Account.

Warehouse and Lot.

			Dr.	Cr.
1905. January 1st,	Lot Cost	$5499.25		
	Other Items	835.86		
			$6,335.11	
			1,499.25	
March 31st,	Auditor's Bill # 26543		12.00	
April 29th,			33.70	
1907. March 30th,			145.21	
1908. May 31st.				$8,025.27
1909. January 1st,	Value of Warehouse, Lot and Pole Yard			

Stable Account

			$1,325.74	
1905. December 31st,	Account to date		168.00	
1906. June 15th,			6.00	
1907. January 9th,			4.00	
" 9th,				$1,503.74
1909. January 1st,	Value of Stable to date			

(Here follows Exhibit No. 12, marked pages 3038-3046.)

EXHIBIT No. 12 A.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Taxes—Louisville Real Estate.

1905.	City.	State and county.	Total.
Main Exchange	$757.77	$361.20	$1,118.97
South "	153.36	73.10	226.46
East "	166.89	66.65	233.54
West "	166.89	79.55	246.44
Warehouse	86.60	33.54	120.14
Oldham St. Lot	6.16	.....	6.16
Total.....			$1,951.71
1906.			
Main Exchange	733.32	326.59	1,059.91
South "	148.41	66.10	214.51
East "	161.50	60.26	221.76
West "	161.50	71.93	233.43
Warehouse	83.81	30.33	114.14
Shed and Stable	16.76	9.02	25.78
Total			$1,869.53

Deadhead Phone Rentals; charged Louisville Exchange as Taxes. These amounts being charged in excess of amounts credited to Dead Head Phone Revenue.

1907.

Main Exchange	733.32	344.40	1,077.72
South "	148.41	69.70	218.11
East "	161.50	71.75	233.25
West "	161.50	75.85	237.35
Warehouse	92.54	31.98	124.52
Shed and Stable	16.76	7.87	24.63
Added account D. H. Phones..			*122.50
Total			$2,038.08

1908.

Main Exchange	712.95	319.20	1,032.15
South "	144.29	64.60	208.89
East "	157.02	66.50	223.52
West "	157.02	70.30	227.32
Warehouse	89.98	29.64	119.62
Shed and Stable	16.29	7.30	23.59
Added account D. H. Phones..			*54.00
Total			$1,889.09
Grand Total			$7,748.41

* 1907.	
April	$14.00
May	14.00
June	13.50
July	13.50
August	13.50
September	13.50
October	13.50
November	13.50
December	13.50
Total	$122.50

*1908.	
January	$13.50
February	13.50
March	13.50
April	13.50
Total	$54.00

EXHIBIT No. 13.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Insurance for Years 1905, 1906, 1907 & 1908.

	Amount charged insurance per records of C. T. & T.Co.	Real Estate.	Supply Expense.	Rents, switch boards, etc.	Amounts unaccounted for.
1905.					
Main Exchange	.....	$765.00	.....	$1,352.50	.....
South "	.....	155.20	.....	473.36	.....
East "	.....	108.00	.....	216.00	.....
West "	.....	74.90	.....	145.27	.....
Warehouse	.....	30.70	$307.05	.....	.....
Stable	.....	10.85	.....	37.95	.....
Total	..... $4,312.04	$1,144.65	$307.05	$2,225.08	$635.26
1906.					
Main Exchange	.....	$765.00	.....	$1,428.45	.....
South "	.....	141.30	.....	477.92	.....
East "	.....	126.00	.....	216.57	.....
West "	.....	102.00	.....	142.80	.....
Warehouse	.....	116.00	$695.93	.....	.....
Stable	.....	21.50	.....	.....	.....
East Stable	.....	29.50	.....	14.75	.....

Automobiles	.....	.....	.....	37.50	.....
Total	..... $4,572.68	$1,301.30	$695.93	$2,317.99	$257.46
1907.					
Main Exchange	.....	$742.50	.....	$1,287.00	.....
South "	.....	141.30	.....	477.92	.....
East "	.....	99.00	.....	225.50	.....
West "	.....	92.70	.....	146.04	.....
Warehouse	.....	102.35	$1,023.61	.....	.....
Stable	.....	21.50	.....	32.25	.....
East Stable	.....	8.00	.....	4.00	.....
Automobiles	.....	.....	.....	37.50	.....
Total	..... $3,314.32	$1,207.35	$1,023.61	$2,210.21	$1,126.85
1908.					
Main Exchange	.....	$905.00	.....	$1,341.88	.....
South "	.....	141.20	.....	538.50	.....
East "	.....	64.00	.....	256.00	.....
West "	.....	64.00	.....	197.54	.....
Warehouse	.....	102.10	$816.80	.....	.....
Stable	.....	24.00	.....	53.75	.....
East Stable	.....	8.00	.....	4.00	.....
Automobiles	.....	.....	.....	37.50	.....
Total	..... $3,583.11	$1,308.30	$816.80	$2,429.17	$971.16

EXHIBIT No. 14.

Cumberland Telephone and Telegraph Company.

Classified Phone Service, Louisville Exchange.

1905.	Phones as per classification 22d of month.	Less P. B. ex. ext. sets, P. S. & D. H.	Actual number of subscribers.	Gross earnings per classification.	Less earnings P. B. ex. & ext. sets.	Earnings on actual phones subscribed.	Average earnings.
January	8,776	2,849	5,927	$22,333.42	$1,926.13	$20,407.29	$3.44
February	8,766	2,859	5,907	22,294.28	1,937.46	20,356.82	3.44
March	8,800	2,865	5,935	22,471.04	1,948.29	20,522.75	3.45
April	8,700	2,853	5,847	22,318.65	1,949.71	20,368.94	3.48
May	8,909	3,076	5,833	22,367.90	2,080.88	20,287.02	3.47
June	8,876	3,078	5,798	22,476.23	2,102.88	20,373.35	3.51
July	8,665	3,044	5,621	22,008.56	2,069.73	19,938.83	3.54
August	8,653	3,053	5,600	21,867.88	2,110.01	19,757.87	3.49
September	8,824	3,069	5,755	22,423.81	2,157.02	20,266.79	3.52
October	8,930	3,096	5,834	22,661.95	2,199.34	20,462.61	3.50
November	9,009	3,108	5,901	22,842.64	2,248.21	20,594.43	3.49
December	9,112	3,122	5,990	23,191.98	2,280.26	20,911.72	3.65
Totals	106,020	36,072	69,948	$269,258.34	$25,009.92	$244,248.42	.....
Average Monthly	8,835	3,006	5,829	22,438.19	2,084.08	20,354.11	$3.49
" " per 'phone	.....	.....	.....	2.54	.693	.....	3.49

1906.							
January	9,203	3,189	6,014	$23,318.46	$2,287.70	$21,030.76	$3.49
February	9,605	3,537	6,068	23,546.94	2,325.44	21,221.50	3.49
March	9,756	3,692	6,064	23,654.15	2,346.15	21,308.00	3.51
April	9,846	3,816	6,030	23,565.62	2,352.99	21,212.63	3.51
May	9,880	3,899	5,981	23,555.69	2,379.65	21,176.04	3.54
June	9,859	3,923	5,936	23,354.80	2,376.94	20,977.86	3.53
July	9,705	3,900	5,805	23,087.28	2,382.50	20,704.78	3.56
August	9,741	3,950	5,791	22,995.20	2,389.42	20,605.78	3.55
September	9,954	4,056	5,898	23,330.18	2,453.29	20,876.89	3.53
October	10,080	4,106	5,974	23,615.10	2,473.79	21,141.31	3.55
November	10,237	4,284	5,953	23,581.27	2,495.45	21,085.82	3.54
December	10,399	4,440	5,959	23,671.91	2,513.10	21,158.81	3.55
Totals	118,265	46,792	71,473	$281,276.60	$28,776.42	$252,500.18	.....
Average Monthly	9,855	3,899	5,956	$23,439.73	$2,398.03	$21,041.67	$3.53
" " per 'phone	.....	.....	.....	2.38	.615¢	.....	3.53

Classified Phone Service, Louisville Exchange.

1907							
January	10,516	4,626	5,890	$23,628.51	$2,221.36	$21,407.15	$3.63
February	10,700	4,799	5,901	23,780.57	2,692.95	21,087.62	3.57
March	10,841	4,952	5,889	23,842.26	2,721.80	21,120.46	3.58
April	10,864	5,028	5,836	24,076.34	2,770.75	21,305.59	3.65
May	10,926	5,095	5,831	24,324.29	2,819.80	21,504.49	3.68
June	10,978	5,180	5,798	24,326.61	2,866.51	21,460.10	3.70
July	10,885	5,200	5,685	24,171.52	2,846.47	21,325.05	3.75
August	10,851	5,205	5,646	24,110.48	2,864.65	21,245.83	3.77
September	10,919	5,317	5,602	24,420.62	2,904.78	21,515.84	3.84
October	10,882	5,234	5,648	24,649.24	2,912.06	21,737.18	3.84
November	10,822	5,197	5,625	24,624.73	2,912.63	21,712.10	3.86
December	10,768	5,162	5,606	24,484.83	2,922.05	21,562.78	3.84
Totals	129,952	60,995	68,957	$290,440.00	$33,455.81	$256,984.19	....
Average Monthly	10,829	5,083	5,746	24,203.33	2,821.32	21,415.36	3.73
" " per phone.	....	....	....	2.23	.555¢	.....	3.73

Cumberland Telephone and Telegraph Company.

Classified Phone Service, Louisville Exchange.

1908.							
January	10,551	5,117	5,434	$24,810.89	$2,910.07	$21,900.82	$4.03
February	10,507	5,102	5,405	24,389.49	3,019.07	21,370.42	3.93
March	10,480	5,083	5,397	24,677.80	3,018.94	21,658.86	4.01
April	10,156	5,033	5,123	27,298.77	3,032.28	24,266.49	4.73
May	10,049	4,964	5,085	25,098.06	3,015.19	22,082.87	4.34
June	9,969	4,911	5,058	24,474.67	3,001.19	21,473.48	4.24
July	9,780	4,824	4,956	24,225.91	2,984.06	21,241.85	4.28
August	9,696	4,748	4,948	24,167.63	2,981.84	21,185.79	4.30
September	9,722	4,640	5,082	24,467.06	2,988.43	21,478.63	4.22
October	9,725	4,555	5,130	24,918.12	3,030.42	21,887.70	4.26
November	9,656	4,542	5,114	24,877.53	3,087.03	21,790.50	4.26
December	9,657	4,492	5,165	24,997.78	3,094.02	21,903.76	4.23
Totals	119,948	58,051	61,897	$298,303.71	$36,162.54	$262,141.17	
Average Monthly	9,996	4,838	5,158	25,033.64	3,013.54	21,853.43	$4.23
" " per phone.	....	....	....	2.50	.622¢	.....	4.23

Exhibit No. 15.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

1905. *Exchange Earnings and Expenses.*

Gross Earnings		$259,556.15
Expenses:		
General Expenses	$33,774.70	
Operating Expenses	67,746.66	
Maintenance Repairs	45,464.23	
Instrument Expense	11,559.76	
		158,545.35
Net Revenue		$101,010.80
Percent of Expense to Gross Revenue		61.08%
" " Net Revenue to Gross Revenue		38.92%
" " " " " Book cost of plant	$1,596,356.29	6.33%
" " " " " Value of plant	1,212,127.46	8.333%
Average number of stations	8,836	
Average Gross Revenue per Station		$29.37
Average Expenses per station		17.94
Average Net Revenue per station		11.43
Number of Subscribers, (Average)	5,829	
Average Gross Revenue per Subscriber		$44.53
Average Expense " "		27.20
Average Net Revenue " "		17.33

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EXHIBIT No. 15.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Exchange Earnings and Expenses for 1906.

Gross Earnings	.....	$283,194.04
Expenses:		
General Expenses	$39,791.66	
Operating "	62,490.62	
Maintenance Repairs	48,655.11	
Instrument Expense	12,518.70	
		164,456.09
Net revenue	.....	$118,737.95
Percent of Expense to Gross Revenue	.....	58.07%
Percent of Net Revenue to Gross Revenue	.....	41.93%
" " " " " Book Cost of Plant	$1,685,481.44	7.04%
" " " " " Value of Plant	1,301,252.61	9.125%
Average number of stations	9,857	.....
" Gross revenue per station	.....	$28.73
" Expenses " "	.....	16.69
" Net Revenue " "	.....	12.04
Number of Subscribers (Average)	5,956	.....
Average Gross Revenue per subscriber	.....	$47.55
" Expense " "	.....	27.62
" Net Revenue " "	.....	19.93

EXHIBIT No. 15.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Exchange Earnings and Expenses for 1907.

Gross Earnings	.....	$307,095.04
Expenses:		
General Expenses	$38,345.27	
Operating Expenses	62,000.86	
Maintenance Repairs	63,363.84	
Instrument Expense	13,372.49	
		177,082.46
Net Revenue	.....	$130,012.58
Percent of Expenses to Gross Revenue	.....	57.66%
Percent of Net Revenue to Gross Revenue	.....	42.34%
" " " " " Book Cost of Plant	$1,706,251.86	7.62%
" " " " " Value of Plant	1,322,023.03	9.835%
Average Number of Stations	10,830	.....
" Gross Revenue per Station	.....	$28.35
" Expenses " "	.....	16.35
" Net Revenue " "	.....	12.00
Number of Subscribers (Average)	5,746	.....
Average Gross Revenue per Subscriber	.....	53.45
" Expense " "	.....	30.82
" Net Revenue " "	.....	22.63

3054 EXHIBIT No. 15 A.

Cumberland Telephone and Telegraph Company.

Toll Earnings as Allotted to Louisville by C. T. & T. Co. and Toll Expenses.

Year 1905.

Gross Revenue	.....	$10,267.23
Expenses:		
General Expenses	$4,750.42	
Operating Expenses	16,517.88	
Maintenance Repairs	2,267.95	23,536.25
Net Revenue	.....	$13,269.02
Per cent of Expense to Gross Revenue	.....	229.24%
" " Net Revenue to Gross Revenue	.....	129.24
Average Number of Stations	8,836	.....
" Gross Revenue per station	.....	$1.16
" Expenses " "	.....	2.66
" Net Revenue " "	.....	1.50
" Number of Subscribers	5,829	.....
" Gross Revenue per Subscriber	.....	1.76
" Expenses " "	.....	4.04
" Net Revenue " "	.....	2.28

3055 EXHIBIT No. 15 A.

Cumberland Telephone and Telegraph Company.

Toll Earnings as Allotted to Louisville by C. T. & T. Co. and Toll Expenses.

Year 1906.

Gross Revenue		$11,304.40
Expenses:		
General Expenses	$5,557.33	
Operating "	18,247.44	
Maintenance Repairs	867.13	24,671.90
Net Revenue		$13,367.50
Percent of Expenses to Gross Revenue		218.25%
" " Net Revenue to Gross Revenue		118.25%
Average Number of Stations	9,857	
" Gross Revenue Per Station		$1.15
" Expenses " "		2.50
" Net Revenue " "		1.35
" Number of Subscribers	5,956	
" Gross Revenue per Subscriber		1.90
" Expenses " "		4.14
" Net Revenue " "		2.24

3056 EXHIBIT No. 15 A.

Cumberland Telephone and Telegraph Company.

Toll Earnings as Allotted to Louisville by C. T. & T. Co. and Toll Expenses.

Year 1907.

Gross Revenue		$12,663.47
Expenses:		
General Expenses	$5,670.32	
Operating "	17,660.18	
Maintenance Repairs	1,148.36	24,478.86
Net Revenue		$11,815.39
Percent of Expense to Gross Revenue		193.32%
" " Net Revenue to Gross Revenue		93.32%
Average Number of Stations	10,830	
" Gross Revenue Per Station		$1.17
" Expenses " "		2.26
" Net Revenue " "		1.09
" Number of Subscribers	5,746	
" Gross Revenue per Subscriber		2.20
" Expenses " "		4.26
" Net Revenue " "		2.06

3957 EXHIBIT No. 15 A.

Cumberland Telephone and Telegraph Company.

Toll Earnings as Allotted to Louisville by C. T. & T. Co. and Toll Expenses.

Year 1908.

Gross Revenue		$11,562.78
Expenses:		
General Expenses	$5,074.08	
Operating "	14,535.13	
		20,239.65
Net Revenue		$8,676.87
Percent of Expense to Gross Revenue		175.04%
" " Net Revenue to Gross Revenue		75.04%
Average Number of Stations	10,006	
" Gross Revenue per Station		1.15
" Expenses " "		2.02
" Net Revenue " "		.87
" Number of Subscribers	5,158	
" Gross Revenue Per Subscriber		2.24
" Expenses " "		3.92
" Net Revenue " "		1.68

EXHIBIT No. 16.

Cumberland Telephone and Telegraph Company.

Recapitulation of Deductions Claimed from Pay Rolls of Louisville Exchange.

	1905.			1906.		
	Total.	Toll.	District.	Total.	Toll.	District.
Toll Operators	$7,616.74	$7,616.74	.....	$8,470.41	$8,470.41	.....
Toll Chief and Telegraph Operator	1,591.76	1,591.76	.....	2,526.60	2,526.60	.....
Metzger's Pay Roll	971.52	.....	$971.52	1,004.92	.....	$1,004.92
Dean's Pay Roll et al	1,852.49	.....	1,852.49	704.96	.....	704.96
Portion of Office Pay Roll	1,978.56	.....	1,978.56	1,711.57	.....	1,711.57
Minton and P. B. Exchange Operators	1,608.15	1,608.15	.....	1,855.64	1,855.64	.....
Superintendent and Manager	3,633.32	.....	3,633.32	4,097.84	.....	4,097.84
Toll Clerks, Messengers, etc	2,453.30	2,453.30	.....	2,619.78	2,619.78	.....
Miscellaneous	.....	.....	.....	2,464.74	.....	2,464.74
Toll Switching Operators	.....	.....	.....	.....	.....	.....
Totals	$21,705.84	$13,269.95	$8,435.89	$25,456.46	$15,472.43	$9,984.03

Operating	$7,519.29
Maintenance	2,464.74
Total	$9,984.03

EXHIBIT No. 16.

Cumberland Telephone and Telegraph Company.

Recapitulation of Deductions Claimed from Pay Rolls of Louisville Exchange.

	1907.			1908.		
	Total.	Toll.	District.	Total.	Toll.	District.
Toll Operators	$8,252.36	$8,252.36	.....	$6,018.80	$6,018.80	.....
Toll Chief and Telegraph Operators	1,965.72	1,965.72	.....	976.30	976.30	.....
Metzger's Pay Roll	1,024.30	.....	$1,024.30	844.92	.....	$844.92
Dean's Pay Roll et al	781.66	.....	781.66	760.81	.....	760.81
Portion of Office Pay Roll	1,513.55	.....	1,513.55	1,522.41	.....	1,522.41
Minton and P. B. Exchange Operators	1,914.31	1,914.31	.....	1,910.06	1,910.06	.....
Superintendent and Manager	2,406.21	.....	2,406.21	870.50	.....	870.50
Toll Clerks, Messengers, etc	2,430.26	2,430.26	.....	2,344.97	2,344.97	.....
Miscellaneous	.....	.....	.....	301.60	141.00	160.60
Toll Switching Operators	478.63	478.63	.....	199.03	199.03	.....
Total	$20,767 00	$15,041.28	$5,725 72	$15,749.40	$11,590.16	$4,159.24

EXHIBIT No. 17.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Detailed Statement of Instruments in Use.

	Number of subscribers January 1st.	Added during year.	Taken out during year.	Number subscribers end of month.	Added during year total.	Taken out during year total.
Number of Telephones in use at time the C. T. & T. Co. took over the O. V. T. Co. January 1st, 1900	3,536					
Year 1900—January	....	184	36	3,684	....	....
February	3,684	172	17	3,839	....	....
March	3,839	185	37	3,987	....	....
April	3,987	224	49	4,162	....	....
May	4,162	242	49	4,355	....	....
June	4,355	152	89	4,418	....	....
July	4,418	108	146	4,380	....	....
August	4,380	80	55	4,405	....	....
September	4,405	191	53	4,543	....	....
October	4,543	214	87	4,670	....	....
November	4,670	116	50	4,736	....	....
December	4,736	195	43	4,888	5,599	711

Number of Subscribers January 1st, 1901.....	4,888					
Year 1901—January	4,888	253	93	5,048	....	....
February	5,048	212	44	5,216	....	....
March	5,216	180	43	5,353	....	....
April	5,353	218	75	5,496	....	....
May	5,496	343	114	5,725	....	....
June	5,725	281	98	5,908	....	....
July	5,908	184	219	5,873	....	....
August	5,873	131	75	5,929	....	....
September.	5,929	356	103	6,182	....	....
October	6,182	427	142	6,467	....	....
November	6,467	330	116	6,681	....	....
December	6,681	268	54	6,895	3,183	1,176
Number of Subscribers January 1st, 1902.....	6,895					
Year 1902—January	6,895	206	135	6,966	....	....
February	6,966	155	90	7,031	....	....
March	7,031	140	88	7,083	....	....
April	7,083	156	212	7,027	....	....
May	7,027	183	155	7,055	....	....
June	7,055	205	257	7,003	....	....
July	7,003	489	589	6,903	....	....
August	6,903	287	458	6,732	....	....
September	6,732	337	404	6,665	....	....
October	6,665	379	507	6,537	....	....
November	6,537	340	279	6,598	....	....
December	6,598	267	125	6,740	3,144	3,299

EXHIBIT No. 17.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Detailed Statement of Instruments in Use.

	Number of subscribers January 1st.	Added during year.	Taken out during year.	Number subscribers end of month.	Added during year total.	Taken out during year total.
Number of Subscribers January 1st, 1903.....	6,740					
Year 1903—January.....	6,740	288	296	6,732	....	....
February	6,732	278	147	6,863	....	....
March	6,863	356	117	7,102	....	....
April	7,102	431	232	7,301	....	....
May	7,301	433	214	7,520	....	....
June	7,520	295	238	7,577	....	....
July	7,577	331	423	7,485	....	....
August	7,485	227	237	7,475	....	....
September	7,475	260	191	7,544	....	....
October	7,544	184	302	7,426	....	....
November	7,426	298	257	7,467	....	....
December	7,467	209	129	7,547	3,590	2,783

Number of Subscribers January 1st 1904.....	7,547					
Year 1904—January	7,547	293	400	7,440	....	....
February	7,440	324	168	7,596	....	....
March	7,596	216	148	7,664	....	....
April	7,664	201	270	7,595	....	....
May	7,595	309	180	7,724	....	....
June	7,724	411	239	7,896	....	....
July	7,896	433	444	7,885	....	....
August	7,885	417	284	8,018	....	....
September	8,018	576	276	8,318	....	....
October	8,318	685	450	8,553	....	....
November	8,553	570	265	8,858	....	....
December	8,858	355	222	8,991	4,790	3,346
Number of Subscribers January 1st, 1905.....	8,991					
Year 1905—January	8,991	248	457	8,782	....	....
February	8,782	205	221	8,766	....	....
March	8,766	153	117	8,802	....	....
April	8,802	162	264	8,700	....	....
May	8,700	407	198	8,909	....	....
June	8,909	160	193	8,876	....	....
July	8,876	144	355	8,665	....	....
August	8,665	132	145	8,652	....	....
September	8,652	338	166	8,824	....	....
October	8,824	288	182	8,930	....	....
November	8,930	229	118	9,011	....	....
December	9,011	216	115	9,112	2,682	2,561

EXHIBIT No. 17.

Cumberland Telephone and Telephone Company.

Louisville, Ky.

Detailed Statement of Instruments in Use.

	Number of subscribers January 1st.	Added during year.	Taken out during year.	Number subscribers end of month.	Added during year total.	Taken out during year total.
Number of Subscribers January 1st, 1906.....	9,112					
Year, 1906—January	9,112	247	156	9,203	....	....
February	9,203	546	143	9,606	....	....
March	9,606	253	103	9,756	....	....
April	9,756	253	163	9,846	....	....
May	9,846	216	171	9,891	....	....
June	9,891	169	190	9,870	....	....
July	9,870	196	361	9,705	....	....
August	9,705	164	128	9,741	....	....
September	9,741	328	115	9,954	....	....
October	9,954	304	178	10,080	....	....
November	10,080	361	204	10,237	....	....
December	10,237	259	97	10,399	3,296	2,009
Number of Subscribers January 1st, 1907.....	10,399					
Year, 1907—January	10,399	322	205	10,516	....	....
February	10,516	402	217	10,701	....	....
March	10,701	250	109	10,842	....	....
April	10,842	248	225	10,865	....	....

May	10,865	257	195	10,927	....	....
June	10,927	208	156	10,979	....	....
July	**10,979**	126	218	10,887	....	....
August	10,887	132	166	10,853	....	....
September	10,853	277	211	10,919	....	....
October	10,919	237	274	10,882	....	....
November	10,882	142	203	10,821	....	....
December	10,821	90	143	10,768	2,691	2,322
Number of Subscribers January 1st, 1908	10,768					
Year, 1908—January	10,768	190	343	10,615	....	....
February	10,615	83	191	10,507	....	....
March	10,507	94	121	10,480	....	....
April	10,480	95	358	10,217	....	....
May	10,217	100	268	10,049	....	....
June	10,049	93	173	9,969	....	....
July	9,969	104	293	9,780	....	....
August	9,780	116	200	9,696	....	....
September	9,696	207	181	9,722	....	....
October	9,722	191	188	9,725	....	....
November	9,725	159	228	9,656	....	....
December	9,656	133	132	9,657	1,565	2,676
Number of Subscribers January 1st 1909	9,657					
Year, 1909—January	9,657	170	250	9,577	....	....
February	9,577	102	158	9,521	....	....
March	9,521	112	108	9,525	....	....
April	9,525	167	196	9,496	....	....
May	9,496					

3063

EXHIBIT No. 18.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Damage and Compensation. Deductions from Exchange Expenses.

1905. April, Voucher #290	Damages paid to toll operator, Rose Cummings, Injured while on duty as Toll Operator at Louisville, Ky., June 4th, 1904....	$1,500.00

3064

EXHIBIT No. 19.

Cumberland Telephone and Telegraph Company.

Louisville, Ky.

Insurance. Deductions from and Additions to Exchange Expenses.

	Charge to real estate expense.	Charge to supply expense.	Deductions account overcharge.	Additions account undercharge.	Total deductions.
1905	$1,144.65	$307.05	$635.25	.....	$2,086.96
1906	1,301.30	695.93	257.46	.....	2,254.69
1907	1,207.35	1,023.61	.....	$1,126.85	1,104.11
1908	1,308.30	816.80	.....	971.16	1,153.94

Additions and Deductions Account of undercharge and overcharge are made because of the custom of the C. T. & T. Co. of prorating the total Insurance of the entire Company, and in this prorating Louisville was charged in excess in 1905 and 1906 and undercharged in 1907 and 1908.

3064½

EXHIBIT No. 20.

Cumberland Telephone and Telegraph Company.

Derivation of Percentage on Which Toll Expenses Are Computed.

	Exchange gross revenue.	Toll gross revenue.	Total.	Percentage of toll collections to total.
1905	259,556.15	52,870.28	312,426.43	16.92
1906	283,194.04	57,805.60	341,017.64	16.95
1907	307,095.04	65,175.80	372,270.84	17.5
1908	314,275.52	55,464.49	370,759.91	15.

3065 The deposition of W. C. Polk, 2nd deposition, taken on the — day of ——, 19—, at the office of —— ——, in Louisville, County of Jackson, and State of Kentucky, to be read as evidence, on behalf of the —— in an action between —— ——, plaintiff, —— ——, defendant–, now pending in the —— Circuit Court —— —— by Attorney being present.

—— —— being duly sworn and examined by Mr. —— —— as Attorney for the —— deposed as follows:

Q. 1. Since giving your deposition in this case, the plaintiff has taken the deposition of J. E. Jagoe. Have you read that deposition?

A. I have.

Q. 2. Mr. Jagoe in his deposition says there are certain quantities and qualities of material, such as aerial wire, and cables, poles, lines, etc., which are not mentioned in your deposition. I will ask you if, since you have read Mr. Jagoe's deposition, you have gone over the blue prints referred to in your former deposition, and which were filed with Mr. Crum's deposition to ascertain the exact amount of material, and the gauge and other details connected with and appearing on those blue prints?

A. I have, yes, sir.

Q. 3. Is there any variation between the figures given in your deposition and the facts as you found them after going

3066 over the blue print a second time?

A. The only material difference is in the classification of cable. The total amount of linear feet of cable will not vary, but there will be a variation in its classification.

Q. 4. How do you account for the variation of the figures given in your first deposition and your present figures?

A. One is, on account of the great amount of cable not being mentioned, either size or gauge, and the other on account of the short time I had before to go over the print. I was rushed and hurried the matter through and evidently got classifications mixed more or less in making my classifications and multiplications.

Q. 5. Did you make notes of what amount of material appeared on those blue prints, when you first went over them?

A. I did, yes, sir.

Q. 6. And in making the detailed statements and amounts and quantities and qualities, did you place down on your detailed statements all of the linear feet that appear?

A. No, sir; I found in going back over my original notes, mistakes where I had placed wrong gauges and quantities—mistakes in classification.

Q. 7. Mr. Jagoe on page 7 of his deposition says the Cumberland Company has 21,154-5/16 conductor miles of aerial cable, and he places the value of that at $20.41 per mile. Please state

3067 what is the significance in stating the number of conductor miles of aerial cable?

A. Stating it in that way means nothing. It is simply getting into large figures to confuse the court. Stating the value of the cable at so much per linear feet conductor miles, means nothing

unless you know the size, 25, 50. 100, 200 or 400 pair, because the price varies.

Q. 8. What, in a general way, would be the cost per mile of 25 pair cable?

A. Per conductor mile, 25 pair cable is 11.61.

Q. 9. What would be the cost of conductor mile, 400 pair cable?

A. 6.13.

Q. 10. Mr. Jagoe on page 8 of his deposition says that the Cumberland Telephone Co. has 18,626.3 conductor miles underground cable. Do the same facts apply to that classification as applied to the classification of aerial cable?

A. Yes, sir. Cable is never purchased in that way.

Q. 11. Now, taking up the underground cable, have you before you a statement showing what Mr. Jagoe says is the amount of cable appearing on those blue prints as being underground cable?

A. I have.

Q. 12. And the classification of it?

A. Yes, sir.

Q. 13. Please read that to the stenographer.

3968 A.—

Underground Cable.

1,842	feet	25	pair	22	gauge	11	cents	per	foot....	$202.62
2,766	"	50	"	22	"	17	"	"	"	470.22
54,256	"	50	"	19	"	27	"	"	"	14,649.12
2,925	"	100	"	22	"	29	"	"	"	848.25
1,143	"	100	"	20	"	40	"	"	"	457.20
130,139	"	100	"	19	"	52	"	"	"	67,677.48
8,484	"	200	"	22	"	55	"	"	"	4,666.20
55,854	"	200	"	20	"	70	"	"	"	39,097.80
50,276	"	400	"	22	"	93	"	"	"	46,756.68
Add for wool cable.....										7,950.00
Total										$182,775.00

Q. 14. What does Mr. Jagoe place as the other incidental items going to make up his total of $288,942.50—in a general way what items does he include?

A. He includes all items connected with the installing, drawing it in and splicing.

Q. 15. Do you know how much he added for Freight and Supervision?

A. He puts in Freight and Supervision $57,525.07.

Q. 16. And that makes a total of how much?

A. $288,942.50.

Q. 17. Have you gone over those blue prints representing the cables in the conduit system in the City of Louisville?

A. I have.

3069 Q. 18. Have you made out an accurate statement of the amount of cable, its size, gauge and value of it, as you believe it to be?

A. I have.

Q. 19. Please read it to the stenographer.

A.—

Underground Cable.

1,855	feet	25	pair	22	gauge	at	12	cents.....	$223.00
1,934	"	50	"	22	"		20	"	387.00
39,696	"	50	"	19	"		24	"	9,527.00
3,100	"	100	"	22	"		31	"	341.00
1,098	"	100	"	20	"		38	"	417.00
130,252	"	100	"	19	"		43	"	56,006.00
9,971	"	200	"	22	"		52	"	5,185.00
58,501	"	200	"	20	"		68	"	39,781.00
52,863	"	400	"	22	"		96	"	50,748.00
Total 299,270 linear feet.....									$162,615.00

Q. 20. Is your statement as just detailed by you an accurate statement of the number of feet of underground cable as appears on those blue prints?

A. It is.

Q. 21. Are the gauges and number of pair in the respective cables designated on those blue prints in the way you have read them off in your detailed statement.

3070 A. The statement that I have read is as it is actually marked. I have a supplemental statement here classifying all cables not marked. This is a complete statement of all marked cable.

Q. 22. Is there any cable appearing in the underground system not marked? If so, in what way is it not marked?

A. There is no large amount of the underground system—there is some little not marked as to gauge.

Q. 23. Have you a statement of that before you?

A. No, sir. The quantity not marked, I have not classified: I put it—the unclassified, in one list without designating whether underground or aerial.

Q. 24. Is there any difference between the cost of cable for an underground system, and for an aerial system?

A. No, sir.

Q. 25. Is there any difference in installing?

A. There is a slight difference in installing.

Q. 26. Which costs the most?

A. The aerial system, on account of including the stringing of messenger wire and guying.

Q. 27. All not marked on the underground, you have put in as part of the aerial system?

A. Yes, sir; so that the cost of installing would be more than up to what it really did cost.

Q. 28. Now, Mr. Jagoe has specified here a part of the cable in the central office as being wool covered. Have you taken
3071 that into account in your statement?

A. I have taken it into account by allowing office lengths to off-set the cable wool lengths. The number of feet of cable I de-ignate, exceeds the number of feet shown on the blue print, because I have added extra amounts for splicing pole ends and office ends, which quantities do not appear on the blue print.

Q. 29. In what way did you make any such calculation as that you have just mentioned?

A. For instance on the blue print, the measurement from a certain street to a certain street, and from a certain man-hole to a certain man-hole is so much. Now, in splicing cables, you have to have those ends overlap in order to make a splice, so that after you get through figuring the feet, you have to add an additional amount to overcome the splicing of ends, and to also reach into the racks from the office man-hole. I added a figure for the amount from the office man-hole to the racks.

Q. 30. You mean to say you added sufficient amount to cover these items?

A. Yes, sir.

Q. 31. And put it in at the same amount as you did the cable appearing on the blue prints?

A. Yes, sir.

Q. 32. Mr. Jagoe also mentioned splicing, lead sleeve, wiping solder, boxes with protectors, pot-heads, labor of pulling in
3072 cable, laying out pairs of main frames, paraffine, paper sleeves, etc. What have you — say in regard to those items, have you placed any value on those various items? If so, how did you arrive at the value you placed on the items covered by those?

A. I know from past experience, how much it costs to install cables per foot, and I figured my cost at so much per foot as installation, and did not go into these various materials used in installation.

Q. 33. Which is the customary method of reaching the cost of installing an underground cable system, the method you pursued or the method Mr. Jagoe pursued?

A. The method I pursued at so much per foot for laying the cable.

Q. 34. Why is that?

A. Because its cost does not vary materially in various systems.

Q. 35. Under what circumstances would the itemized bill of material such as Mr. Jagoe has used become necessary?

A. It only becomes necessary when it becomes necessary to place the order for material. In making the estimate, those items are not considered at all.

Q. 36. What do you say is the value of installing the cable system including these various items you have mentioned here, and also freight, if there is freight?

3073 A. I include my freight in the cost of cable, which is the proper way, as cable is practically always purchased, delivered or with a freight allowance.

Q. 37. Answer the balance of my question.

A. I allow nine cents per linear foot for installation of cable.

Q. 38. How much does that amount to in dollars?

A. That makes a total cost of the underground cable system $189,549.

Q. 39. Is nine cents per foot a sufficient amount to cover all those items?

A. It is very liberal, as I know that the Western Electric Co., which has taken several contracts for installation of cables for the Bell Telephone Co. has done so often at seven cents a foot.

Q. 40. Including all the items I read to you?

A. Yes, sir; all but the two items of Cable Boxes and Protectors.

Q. 41. What, in a general way, would be the cost of cable boxes and protectors for such a system as this?

A. I have no objection to allow those to remain the same as Mr. Jagoe places them. Approximately $10 per box and twenty-five cents per pair for protection.

Q. 42. What is the value in dollars and cents that he fixes for that?

A. I do have an objection to placing the value. I was
3074 under the impression that there was a different value on the cable boxes. I thought they were put at $10, but he put them in at $21.

Q. 43. What do you say that should be fixed at?

A. $10 per cable box.

Q. 44. What would that amount to?

A. Approximately $3,000.

Q. 45. What value does he place on the protectors

A. The way it is placed here you cannot state. It is bunched in such a way that you cannot get at it.

Q. 46. What value would you place on Protectors?

A. Twenty-five cents per pair.

Q. 47. How much would that amount to in dollars and cents?

A. As they have 5800 circuits in use, the entire cost for the total system would be $1,400.50, both underground and aerial protection.

Q. 48. I notice some considerable difference between you and Mr. Jagoe as to the price of these various gauges of cables that each of you specify. Is there any substantial difference between the price you place on the 25 pair 22-gauge cable?

A. I place the value one cent per foot higher than Mr. Jagoe.

Q. 49. How about the 50 pair of 22 gauge?

A. I place three cents higher per foot than Mr. Jagoe.

Q. 50. What about the 50 pair 19 gauge?

A. Mr. Jagoe places three cents higher than I do.

Q. 51. What about the 100 pair 22-gauge cable?

3075 A. I make it two cents higher than Mr. Jagoe.

Q. 52. How about 100 pair 20-gauge cable?

A. I am two cents under Mr. Jagoe.

Q. 53. How about 100 pair 19 gauge cable?

A. I am nine cents under Mr. Jagoe.

Q. 54. How about 200 pair 22 gauge cable?
A. I am two cents under.
Q. 55. How about 200 pair 20 gauge?
A. I am two under.
Q. 56. How about 400 pair 22?
A. I am three cents higher than Mr. Jagoe.
Q. 57. What is the difference between 22 gauge cable and 19 gauge cable?
A. The 19 gauge cable is a larger size conductor and has more copper than the 22 gauge cable.
Q. 58. Is that the reason why 19 gauge cable costs more than 22 gauge cable?
A. Yes, sir.
Q. 59. Are those priced delivered prices?
A. They are.
Q. 60. Do you know what cables specified in your detailed statement can be delivered at Louisville at the prices you have designated?
A. I do.
Q. 61. How do you know that?
3076 A. I am familiar with the current cable prices.
Q. 62. Is there any difference between cable manufactured by the Western Electric Co. or cable manufactured by the Roebling Co.?
A. No, sir.
Q. 63. Are both recognized as standard?
A. Yes, sir.
Q. 64. Is one as good as the other?
A. Yes, sir.
Q. 65. Have you had occasion to see quotations of prices from Roebling in recent months?
A. I have.
Q. 66. Do they accord with your statement of prices delivered as detailed by you
A. They are slightly lower than the prices I have designated.
Q. 67. How about the Stromberg Co., do they manufacture cables?
A. They do.
Q. 68. Is the cable manufactured by them a standard cable?
A. Yes, sir.
Q. 69. Equally as good as the Western Electric?
A. Yes, sir.
Q. 70. Have you had occasion to see a price list from that company?
3077 A. I have.
Q. 71. How do they compare with your statements of prices?
A. They are slightly lower than the prices I have designated.
Q. 72. I notice in some instances Mr. Jagoe is higher than you, and in some instances lower than you. For instance, Mr. Jagoe says 1824 feet of 50 pair 22-gauge: Is he lower or higher than you there?

A. In looking over Mr. Jagoe's prices, he seemed to get under me in the kinds of cable of which there was a small quantity, and in the kind of cable of which there was a large quantity, his prices go over me, and it is evident his prices are not in proportion with each other. For instance, he places a value of fifty-two cents on 100 pair of 19 gauge cable and then he places a value of forty cents on 100 pair of 20 gauge and twenty-nine cents on 100 pair at 22 gauge. If he is correct as to his prices on 22 and 20 he is wrong as to his prices on 19.

Q. 73. Explain how that is.

A. Because the prices on 19 are so much out of proportion to what it is on the other, that is self evident, that there is something wrong.

Q. 74. What is the difference between 20 and 22 gauge 100 pair?

A. For instance, at two points in gauges, 22 and 20, he only makes a difference of eleven cents per foot and in making a
3078 change of one point from his 20 to 19, he makes a difference of 12 cents per foot.

Q. 75. Is there a No. 21 gauge?

A. Yes, sir.

Q. 76. Does the same relative ratio apply between 19 and 20, that there does between 20 and 21?

A. Practically.

Q. 77. Mr. Jagoe says on page 53 of his deposition that it would cost ninety-four cents per foot, to install a cable in the conduit system: What have you to say on that?

A. He evidently is including the cost of cable with the cost of labor. You cannot place a value in that way, because the amount of cable varies, that is, the cost of installing 25 pair would not correspond with the cost of installing 60 pair, on account of it varying in cost price.

Q. 78. Have you a statement before you showing Mr. Jagoe's figures on the amount of aerial cable, gauge, etc?

A. Yes, sir.

Q. 79. Will you please read that into the deposition?

3079 Aerial Cable.

1,275 feet	10 pair	22 gauge at	7 cents per foot.....	$89.25
15,181	25	22	11	1,669.91
22,285	50	22	17	3,788.45
51,063	50	19	27	13,787.01
182,363	100	22	29	52,884.98
155,346	100	19	52	80,779.92
103,249	200	22	55	46,786.95
Total				$199,786

Q. 80. I notice that Mr. Jagoe includes in his aerial cable a lot of messenger, protector boxes guy clamps, U bolts, lead sleeving, wiping solder, paraffine, paper sleeves, coils, labor of stringing, messenger, cable boxes and splices and tinning. He also includes supervision. What is the total of all those?

A. $431,953.35.

Q. 81. You mean the total items I have read will be the difference between the total figures given awhile ago and $431,953.35?

A. The total I gave included the cost of cable with all of these items you have enumerated.

Q. 82. Have you gone over these blue prints again to ascertain the exact amount of cable in the aerial system giving the gauge and respective pairs?

A. Yes, sir.

3080 Q. 83. Have you made an itomized statement showing all those details?

A. Yes, sir.

Q. 84. I will ask you to read that statement in your deposition.

A.—

Aerial Cable.

5,000	feet	10 pair	22 gauge	8 cents per foot.....	$400
29,078		25	22	12	3,489
18,513		50	22	20	3,703
54,659		50	19	24	13,118
37,634		100	22	31	11,667
88,914		100	19	43	38,233
44,647		200	22	52	23,216
Total, 278,445 linear feet.....					$93,826

That does not include all aerial cable. I have another classification here which is not designated as to gauge and length.

Q. 85. Explain the facts in regard to that additional amount of aerial cable?

A. The amount of aerial cable which I have just made has been plainly designated, indicating as to gauge and size. The additional list I am now preparing to give is cable which has not been plainly designated either as to its size or gauge:

3081 15,402 feet 25 pair cable, not designated as to gauge.
32,210 feet 50 pair cable, "
127,298 feet 100 pair cable, "
23,742 feet 200 pair cable, "
63,532, not designated as to size and not designated as to gauge.

Q. 86. Have you placed any value on that part of the cable system?

A. I have.

Q. 87. Now as to the 15,402 feet 25 pair you say that has no gauge specified?

A. No, sir.

Q. 88. Have you in arriving at the value of that placed any gauge on it?

A. I have.

Q. 89. What gauge?

A. 22 gauge.

Q. 90. Why did you do that?

A. Because in all places where 25 pair was designated there was no other gauge indicated but 22. It was therefore natural to assume that this 25 pair was 22.

Q. 91. As to the 32,210 feet of fifty pair, for which no gauge was designated, have you given a gauge for that and placed the value on it?

A. I have.

3082 Q. 92. What gauge did you designate that as?

A. I divided it placing one-half as twenty-two and one-half at nineteen thinking that would make a fair average.

Q. 93. How does the fifty pair usually appear on the blue print.

A. It appears in both sizes, 22 and 19.

Q. —. As to the 127,298 feet of one hundred pair for which no gauge was given, do you designate that as any particular gauge and if so what gauge?

A. I did the same thing with this 100 pair as I did with the 50 pair, made one-half of it 22 and one-half 19.

Q. —. For the same reason.

A. For the same reason.

Q. 96. As to the 23,712 feet of the 200 pair what have you done with that in this respect?

A. I called it number 22.

Q. 97. Why have you done that?

A. In practically all cases where 200 pair was used it was designated as 22 in all cases where it was used aerially. This particular pair was aerial cable and it was reasonable to assume it was 22.

Q. 98. As to the 63,532 feet which was neither designated as to size or gauge, what did you do?

A. I called it 100 pair as to size and 22 gauge, giving it

3083 the large size and the smaller gauge, thinking this would be a fair average.

Q. 99. Have you placed the same prices on these last items that you have just gone over which you placed on the same pair and gauge detailed in your first statement?

A. I have.

Q. 100. What is the total of that value?

A. The total cable in which the pair is indicated but the gauge not given is $68,364. The value of the 63,532 feet in which neither the size nor gauge is given is $19,695.

Q. 101. Adding those three items together makes a total of how much as the value you place on the aerial cable?

A. $181,885.

Q. 102. What have you done with respect to these items such as lead sleeves, conductors, messengers, &c.?

A. I have done the same as I did in the underground, as costing so much per linear foot cable and installing it ready for service.

Q. 103. How much per linear foot have you placed in your statement?

A. 11 cents, making a total cost of the aerial cable system, $241,351.

3084 Q. 104. I believe you said it was nine cents for the underground cable system?

A. Yes, sir.

Q. 105. What is the difference?

A. The difference comes in in the messenger wire and installing.

Q. 106. How did you treat the messenger wire in your former deposition?

A. I treated the messenger wire in my former deposition as part of the pole line system. I might say in this connection I have made my items in every case in this instance to correspond with Mr. Jagoe's divisions. In my classifications all the way through I have included the same items as he does so that my total when I got through in my classification would correspond with his classification.

Q. 107. As to the comparison of prices per foot, how do your prices per foot for aerial cables compare with your prices per foot for underground cables?

A. The cost prices are the same.

Q. 108. How about Mr. Jagoe's?

A. The same.

Q. 108½. Do the same facts with relation to Mr. Jagoe's deposi-
3085 tion insofar as the prices are concerned apply to aerial cable which he designated in connection with the underground cable?

A. They do. The large prices per foot where he is above me, are on the large quantities of cable, and on the small items of cables per foot are below me.

Q. 109. Is the same class of cable used underground that is used overhead?

A. Yes, sir.

Q. 110. Purchased and used indiscriminately?

A. Yes, sir.

Q. 111. Is eleven cents per foot a sufficient amount to allow for installing and furnishing all of the incidental items mentioned by Mr. Jagoe and necessary to install aerial system cables?

A. Yes, sir. I might state in that connection that apparently that increase of two cents per foot simply allows for messenger wire. That is not true so far as splicing the cable itself. It cost much less to splice an aerial cable than underground, because the lengths are longer, and you don't have to make so many splices, consequently that two cents difference does not mean the cost of stringing the messenger. Not only the cost of the messenger, but a certain amount of the nine cents goes to the messenger, for the aerial can be spliced
and put in service cheaper than the underground on account
3086 of the longer lengths and less number of splices to be made.

Q. 112. I notice in Mr. Jagoe's statement on page 51, he places the labor of stringing the cable at five cents, and about twelve decimals per foot: What have you to say as to that item?

A. That would almost splice and terminate a cable in addition to the stringing.

Q. 113. Mr. Jargoe also states that the cost per cable foot is eighty-one cents: What have you to say in regard to that?

A. It depends altogether on what size and gauge it is.

Q. 114. Do those blue prints represent any aerial cable as being dead cable?

A. Yes, sir.

Q. 115. How much?

A. 7,664 feet of 50 pair, 14790 feet of 100 pair, 4825 feet of 200 pair, 3,943 feet of 400 pair; Total 31,232 linear feet.

Q. 116. What would dead cable mean?

A. It would mean not connected in any way either at the office or the subscribers.

Q. 117. Do those blue prints show any line of cable marked as proposed lines of cable?

A. They do.

Q. 118. How much of it, if you know?

A. The entire plan of the West Office is marked proposed
3087 plan; our plan of the East Office is marked proposed plan. And I think possibly one section of the Main.

Q. 119. Have you included that in your detailed statement of the amount of cable in the plant?

A. I have except in one particular instance where I have had a chance to look up where I thought the cable did not exist, and found that it did not, and consequently took it off my list.

Q. 120. Where was that?

A. Payne and Frankfort Avenue.

Q. 121. Did that appear as proposed line of cable?

A. It appeared on the plan which was headed "proposed plan," and knowing this particular territory, I did not think the amount of cable as it was designated was there, and I took particular pains this time to go out and see if this particular route was as designated on the plan, and I found it was one cable short of the plan. There were three designated on the plan, and two existed.

Q. 122. Were all the three plans marked proposed plans?

A. The heading of the blue print was "Proposed plan" and that applied to the entire sheet.

Q. 123. You found that one of the lines of cable did not in reality exist?

A. No, sir. It did not exist.

Q. 124. Did you investigate any of the other lines marked on these blue prints as proposed plans?

3088 A. No, sir; I have not had time.

Q. 125. Mr. Jagoe in his deposition says there were 5800 circuits of wire in use in connection with the Louisville Exchange?

A. That means there are that many circuits in use or subscribers' lines.

Q. 126. Does it mean that there are 5800 pairs of wires extending from subscribers' stations to the four exchanges of the Telephone Company's plants?

A. Yes, sir.

Q. 127. What does the aerial and conduit system show to be the number of circuits installed in those systems in the city of Louisville?

A. The plans indicate there are 21,200 cable pairs entering the four offices.

Q. 128. Does that mean 21,400 circuits?

A. 21,200 circuits.

Q. 129. Does that mean that of the 21,200 there are only 5800 in use?

A. According to Mr. Jagoe's deposition, yes.

Q. 130. If a telephone company has only 5800 circuits in use, how many circuits would it be proper or essential for it to have installed in its cable system?

A. 8000 to 9000 would be the greatest plenty.

Q. 131. Would you say then, that 11,000 or 12,000 circuits
3089 which appear in the cable system, are surplusage and of no value to a telephone company?

A. It simply represents an expenditure that was unnecessary at the time it was made, a tying up of capital before there is business requiring its use. Cables can be installed at any time under 60 or 90 days.

Q. 132. If a telephone company had only 9,000 circuits instead of 21,000, how much less would be the cost of the cable system than it is as it appears now?

A. I would say off hand 35 to 40 percent. You cannot figure the cost in the same proportion as the pairs indicate, because the majority of these pairs, which could be avoided, are shorter pairs, or the inside territory. Consequently, the total amount to be cut out of the system, would not be in the same proportion as the number of the circuits or pairs.

Q. 133. Mr. Jagoe says there is in use in the East Louisville Exchange 13,870 poles. How does that compare with your former deposition as to the extent of the poles in use by this exchange?

A. It is larger.

Q. 134. What number of poles, did you state in your deposition was your estimate of the number of poles connected with the exchange?

A. 11,000.

3090 Q. 135. How do you divide this?

A. I figured that 1,000 was for country territory and 10,000 for the city.

Q. 136. Mr. Jagoe says on page 73 of his deposition that 4,000 of these poles are located in the country outside of the city limits and that there are only 303 subscribers, or subscribers' stations connected with the Louisville exchange and located outside of the city limits. What would you say as to the estimate of 4,000 poles to take care of those 303 subscribers' stations?

A. I would consider it an enormous expense for service to that many subscribers, and it does not seem reasonable, that the company would spend money and labor to set 4,000 poles to serve 300 subscribers.

Q. 137. Have you since you have been in Louisville on this oc-

casion made any inspection of the poles used by the Cumberland Co. outside the city limits?

A. I have.

Q. 138. State what inspection you made?

A. I made the inspection with the idea of finding out whether any of these main leads going out, were carrying country lines exclusively, and also to verify about No. 10 and No. 12 iron wire. I stated in my deposition that 500 miles of iron wire was used to take care of country subscribers. Mr. Jagoe stated that they
3091 didn't use any No. 12 wire, which I said that 500 miles was, but that they used No. 10, and I made this investigation at the terminal inspection.

Q. 139. State over what route you went in making this inspection?

A. I took the Frankfort Avenue route out to St. Matthews, the route from Cherokee Road, out the Bardstown Road, Baxter Avenue, the route out the Preston street Road and the route out the Third street Road, and the route out Seventh street. I did not continue any further out the southwest part of the town.

Q. 140. How far out in the country did you go?

A. I went beyond the last cable box. What I was after was to find what kind of wire was going from the last cable box, in the country.

Q. 141. What character of wire as between subscribers and trunk lines or toll wires did these telephone routes seem to carry?

A. They were carrying as Mr. Jagoe said, No. 14 and No. 10 iron. I found no 12, but the No. 10 seemed to be for toll lines and trunk lines—the local subscribers seemed to be served with No. 14 instead of No. 12 as I allowed.

Q. 142. What about the extension of the pole system?

A. Practically all the pole routes carry trunk lines, and toll lines in addition to local service.

Q. 143. What do you mean by trunk line?

A. Lines to outside switching boards.

3092 Q. 144. Did you trace any of them into switching boards outside of the county?

A. I went to St. Matthews.

Q. 145. What did you find there?

A. I found an office at that place and a set of cables going into it, one cable from the east office to St. Matthews.

Q. —. Do you know whether a charge is made for telephone connection with St. Matthews?

A. I called up the Long Distance and asked what the charges were to talk to St. Matthews, and the reply was ten cents for three minutes.

Q. 147. Did you trace any trunk line running to Pleasureridge Park?

A. Only a short distance. I did not follow them into the Pleasureridge office, because I did not go that far, but they were going that road.

Q. 148. Do you know whether any toll charge is made for communicattion between Louisville and Pleasureridge Park?

A. I made the same investigation; I called for Long Distance, and I asked what the charge would be to talk to Pleasureridge Park, and I got the same reply, ten cents for three minutes.

Q. 149. Are you familiar with the number of poles usually installed in connection with telephone plants of this size outside of city limits, to take care of country subscribers?

A. Yes, sir.

3093 Q. 150. What would be your judgment as to the number of poles that would be required to take care of 303 subscribers outside of the city of Louisville?

A. I considered I was very liberal, when I allowed 1,000 poles, over three poles to a subscriber.

Q. 151. What do you now have to say in regard to your estimates of 11,000 poles for the Louisville exchange?

A. I think it is ample.

Q. 152. Will that provide sufficient facilities in the way of poles both outside and inside the city limits?

A. Yes, sir.

Q. 153. Now, as to the value of those poles: What value did you place on them when you gave your deposition before?

A. I placed a value of $15 simply for setting the pole equipped with cross arms, steps and hardware.

Q. 154. That included purchasing and paying for the poles?

A. Yes, sir.

Q. 155. Now, Mr. Jagoe has placed a value on those poles of $23.92 each: Does he include in the value of his poles any item which you do not include in yours?

A. He includes only one item that I did not include in my $15 value.

Q. 156. What was that?

A. Guying. In that connection, I also wish to say, I was not able to determine exactly what he said. He places a charge for guying in his pole line estimate, and also a charge for guying in his

3094 cable estimate, so I assume that he was charging guying only where there is aerial lines, and charges his guying of cables where there are cables on the line, and I have made my estimate that way.

Q. 157. Mr. Jagoe says there is a number of creosote pine poles used by the Cumberland Company in Louisville, and he specifies the number of routes; for instance, he says on page 10 of his deposition that some of the routes are as follows: Sixth street, West Jefferson street, West Main street, Bank street, Grayson street, West Market street, between Fourteenth and Twenty-second—I believe those are the only ones he specifies. Since you have been in Louisville, have you examined any of those routes, to ascertain whether there are any creosoted poles on them?

A. Yes, sir.

Q. 158. What routes did you examine?

A. He designated particularly the route on West Market, Fourteenth to Twenty-second, as being a beautiful and expensive line apparently. He said it would do a telephone man's heart good to go

and look at it. I thought I would like to see that, and I went out to look at it. I went over the whole line of poles and didn't find any creosoted poles.

Q. 159. How about West Jefferson street?

A. I thought he might have made a mistake and that the line might have been on W. Jefferson or W. Main instead of Mar-
3095 ket and I went to West Main street, and also to West Jefferson and I found no creosoted poles except one pole. Evidently after the line had been built, it had been set to get over an electric light. But there were no leads on any of those, and as I had been unable to find any creosoted leads, a I thought I would go to Bank, and there were no creosoted poles at Bank street at the Fifteenth street crossing. If there were any on Bank street, they were out of sight.

Q. 160. Have you seen any creosoted poles at all used by the Cumberland Telephone Co. in the city of Louisville?

A. I have seen a few. In my drive yesterday of the car line, I kept an eye open for creosoted poles, and probably in the half a day I saw twenty-five or fifty creosoted pine poles.

Q. 161. You went over the routes inside as well as outside the city?

A. Yes, sir; I will say this in connection with creosoted pine poles, that assuming that twenty-five per cent. of the plant or twenty five hundred poles in the city limits were creosoted pine, it would make no diffeffrence whatever, in my figures on the estimate. Creosoted pine poles are not an exorbitant expense.

Q. 162. Have you had occasion to purchase creosoted pine poles?

A. Yes, sir.

3096 Q. 163. Do you know the cost?

A. Yes, sir.

Q. 164. Do you know the freight rate from the creosoting plant to Louisville?

A. Yes, sir.

Q. 165. Taking into consideration Mr. Jagoe's guying which he adds to the pole line, placing that also as a part of your estimate of value of the pole line in Louisville, and estimating them at 11,000, what value do you place on the poles?

A. In order to get my pole estimate, to correspond with his, including guying, I have made my estimate $16.00 instead of $15.00.

Q. 166. That makes a total of how much for the pole lines in Louisville?

A. $176,000.

Q. 167. Mr. Jagoe on page 11, says that his pole in connection with the Louisville plant, are on an average of 40-foot poles. On what basis do you estimate the value?

A. I think he is about right, and I made my estimate accordingly on that basis.

Q. 168. Using Mr. Jagoe's figures on the value of the pole line and the value of the aerial wire on the aerial line, and assuming that the company has 4,000 poles outside of the city of Louisville

what would Mr. Jagoe's figures show to be the value of the
3097 poles and aerial wire outside the city limits of Louisville?

A. Slightly over $100,000.

Q. 169. Mr. Jagoe refers to your statement to the effect that it is bad engineering to have two lines of pole on the same street, and in that connection makes this statement:

"It is pretty much as though you were to have a warehouse with a capacity, say 1,000 hogshead of tobacco, and needed a capacity of 2,000. This Warehouse you have is in good shape, and will last for many years, and will accommodate the 1,000 hogshead. On your space next door, you can build another Warehouse, and it just resolves itself into the question of whether you will tear down the first Warehouse and build a Warehouse of 2,000 capacity, or whether you will build another of 1,000 capacity which you could later on increase to 2,000 capacity." What have you to say as to Mr. Jagoe's parallel case?

A. I think Mr. Jagoe's illustration does not fit the case. According to his line of reasoning, he would argue something like this: If he were operating a narrow gauge railroad, and the business outgrew his line—he had been operating a 50-ton engine, 10-ton cars with a forty pound rail—he would go to the Board of Directors and make a recommendation to build another narrow gauge roadway build more 50-ton engines, and more 10-ton cars and with a forty pound rail, instead of advising to rebuild their roadway with standard gauge,
heavy cars and engines, so that he could haul longer
3098 trains.

Q. 170. What would be the proper method to pursue if a pole line did not have sufficient cross arms on it, and could not be used to carry aerial wire in its open condition?

A. The proper manner to proceed to increase facilities, would be to spend Two or Three Hundred Dollars, to strengthen up the old line, to carry additional cable, instead of spending $1,000 to build a new line, in a new location.

Q. 171. Is the amount of cable that a line of poles can carry practically unlimited or not?

A. It is; it is simply a question of putting up additional guying as you may need it.

Q. 172. What is the occasion for using a cable at all?

A. In order to carry additional facilities, to increase capacity.

Q. 173. Now, coming to aerial wire, I should like to have you state again, what you have to say about the character of work that is used by the Cumberland Company in the city of Louisville, in its aerial wire sytem?

A. Fourteen iron wire in its city system, and I had allowed twelve iron wire for country subscribers, but in my new estimate, I have made it fourteen iron wire instead of twelve.

Q. 174. Why did you do that?

A. Because I don't believe they are using larger wires for country subscribers than for city.

3099 Q. 175. Upon what do you base that belief?

A. On my personal examination of the routes.

Q. 176. Did you find any No. 10 wire in the system?

A. I did not find any going to local subscribers' stations.

Q. 177. Did you find any at all?

A. I found some going on to further points, so that I took it for granted that the No. 10 was going to trunk lines, to sub-stations, or else were toll lines circuits.

Q. 178. What is the difference between BB and EBB wire?

A. EBB is considered better because a finer wire, but it is no better for telephones. It is softer, but has no more tensile strength.

Q. 179. Which is generally used by telephone companies such as this?

A. Some use EBB, but the majority of work is BB.

Q. 180. Do you remember how many feet of wire Mr. Jagoe gives as the amount used in connection with this exchange?

A. Approximately 5,800 miles, something a little over that. I do not remember the exact figures.

Q. 181. I call your attention to Mr. Jagoe's deposition, and I ask you how many miles of wire he says the company has of No. 14 wire and how many of No. 10?

A. 4,960 of 14 and 584 of No. 10.

Q. 182. What value does he place on that wire?

A. $77,035.87.

3100 Q. 183. Does he indicate how much per mile he places the value at?

A. $13.8853.

Q. 184. Does he place a separate value on the No. 14 wire?

A. Not at this particular point.

Q. 185. What is the difference between the cost of the No. 10 and the No. 14 wire?

A. No. 10 is much larger and weighs more pounds per foot, than the 14, and costs materially more. I don't remember the exact number of pounds per mile.

Q. 186. In your former deposition, did you indicate how much wire would be sufficient to take care of the subscribers in the city of Louisville?

A. I did, yes.

Q. 187. How much was that estimate?

A. 3,000 miles in the city, and 500 miles in the country, a total of 3,500 miles.

Q. 188. Are Mr. Jagoe's figures on the amount of wire in the city an estimate?

A. It is.

Q. 189. Is there any way of determining accurately how much wire there is in the system?

A. Not at a reasonable expense.

Q. 190. How would you go about determining how much wire there is in the system?

3101 A. Start out and go over all the routes and measure it.

Q. 191. How long, and how many men would it take to do that completely?

A. It would take quite a time, and of course, the number of men

would govern the time, but it would be rather an expensive proposition, and the end to be gained, would not justify it.

Q. 192. With a given telephone system and a given city in which to install a given number of subscribers' stations, and the number of poles, and the amount of cable, is it possible to make anything like an accurate estimate of the amount of aerial wire that would be used?

A. Yes, sir.

Q. 193. What do you now estimate to be the amount of wire used in connection with the aerial system?

A. In driving over the system yesterday, I saw no reason for altering my estimate. If anything, I believe I am too large.

Q. 194. I believe you stated in your former deposition, the extent of your experience in telephone work?

A. Yes, sir.

Q. 195. What value do you place on that 3,500 miles of wire?

A. $52,000.

Q. 196. How does that compare with the value placed on it in your former deposition?

3102 A. I did not have it as a separate item in the former deposition, but the price is the same as I had before, with the exception that I have called the 500 in the country, 14 instead of twelve which slightly reduced it.

Q. 197. What is the total value you now place on the poles?

A. $176,000.

Q. 198. Does that include all the items which go to make up the pole line as mentioned by Mr. Jagoe in his deposition?

A. Yes, sir; it does.

Q. 199. Does the item representing the value of the work include the cost of stringing it and installing it?

A. It includes all the items mentioned by Mr. Jagoe.

Q. 200. Do the two items representing Pole and Aerial wire include the purchase and installing—the placing of the poles in positions as they now are?

A. Yes, sir.

Q. 201. Mr. Jagoe in his deposition on page 7 says that the company has 438,803 duct feet of conduit and that this amount of conduit is shown on the blue print about which you have already testified, and which was filed by Mr. Crum, when he gave his deposition. Have you gone over those blue prints again to ascertain the amount of duct feet of conduit appearing thereon?

A. I have.

Q. 202. What do you find to be the actual facts?

3103 A. We practically agree. I found it to be 437,909.

Q. 203. Mr. Jagoe places a value on that at 38.82 cents per duct foot. What have you to say about that valuation?

A. I believe I was and am familiar with as much conduit work as any other individual and in all my experience, I never heard a figure that in any way approximates that. That price is exorbitant and unreasonable.

Q. 204. Have you built a conduit system in the city of Louisville?

A. I have.

Q. 205. For what company?

A. For the Home Telephone Company.

Q. 206. Do you remember how much per duct foot to build that conduit system?

A. Less than sixteen cents per foot, to build that duct system, including the man holes and everything.

Q. 207. How does that system compare with the system of the Cumberland Telephone Co., if you know?

A. The only difference you might say, from a specification standpoint, is that the system is not entirely encased in concrete whereas I have assumed there is to be. This would make a difference of about two cents per duct foot, so that from the same basis, the allowance to them should be eighteen cents per duct foot to take care of the concrete.

Q. 208. Which is a better conduit system, that of the
3104 Cumberland Co. or that of the Home?

A. The Home system.

Q. 209. Which will last the longest?

A. The Home Telephone Co.

Q. 210. Which will require the most maintenance?

A. Practically the maintenance on either would cut no figure. Maintenance is a very slight percent of a conduit system.

Q. 211. In what cities have you superintended the construction of or constructed a conduit system?

A. Toledo, Ohio; Columbus, Ohio; Akron, Ohio; Dayton, Ohio; Springfield, Ohio; Zanesville, Ohio; Indianapolis, Ind.; Terre Haute, Ind.; Fort Wayne, Ind.; Peoria, Ill.; Rockford, Ill.; Kansas City, Mo.; Kansas City, Kansas; Lawrence, Kansas; Mobile, Ala.; Utica, N. Y.; and possibly some smaller places—and Louisville, Kentucky.

Q. 212. Have you known the cost of building conduit systems in all these places?

A. I have and do.

Q. 213. Do you know the cost per conduit foot?

A. Yes, sir.

Q. 214. Do you know the class of conduit that was constructed?

A. Yes, sir.

Q. 215. Now, basing your figures on the result of your
3105 knowledge in constructing conduit systems in all these cities, including Louisville, what do you place as the value of reconstructing new throughout the conduit system of the Cumberland Telephone Co. per conduit foot?

A. Twenty cents per conduit foot.

Q. 216. Mr. Jagoe refers to some lynch tile and iron pipe. What have you to say in regard to that class of conduit?

A. I have taken those items into consideration, and I have allowed $7500 for the iron pipe to offset the initial increased cost per foot of the conduit. I also, have taken care of the increased duct

capacity of the lynch tile by doubling 10,239 feet and then allowing the duct feet to be taken out by man-holes to off-set the other increased capacity of the lynch. In other words, the linear feet measurement given by the blue print is from centre to centre of the man-hole, and does not represent exactly the duct. Consequently from the blue print, you would exceed the amount in the system. So I figured the increase in running the conduits from the man-holes would off-set the difference in the lynch.

Q. 217. Do you know anything about what it cost to install iron pipe, such as the telephone company has here?

A. Yes, sir.

Q. 218. Does Mr. Jagoe give any figures on that item?

A. He infers that iron pipe is very expensive when in fact, it is not. $7500 more than accounts for the difference, as I have
3106 gone thoroughly into different sizes of iron pipe, which I did not do before, and the larger portion of the iron pipe of the system is two inches or less, and two inch costs ten cents per foot.

Q. 219. What does it cost to install?

A. Less per duct foot to install, because it does not require high priced workmen. Laborers can handle the iron pipe, where you have to have masons to handle the conduit.

Q. 220. Is lynch tile multiple duct?

A. It is vitrified clay, but increases the duct capacity.

Q. 221. Do you know whether this system here has the multiple duct in it?

A. Only in this particular case. They designate the number of conduits from man-hole to man-hole, and the linear feet.

Q. 222. Your twenty cents per duct foot applies to the entire system, or to the vitrified clay part?

A. The entire system.

Q. 223. I believe you said you had added $7500?

A. To off-set the increased cost of iron pipe over the vitrified clay.

Q. 224. Which lasts the longer, the vitrified clay or the iron pipe?

A. Vitrified clay.

Q. 225. Do you know of any company that uses the iron pipe at the present time?

3107 A. Iron pipe is not considered up-to-date modern construction.

Q. 226. Do you know of any company using it?

A. I do not in a large area. The Western Union uses it, because they have gotten in the habit; I suppose. The people there have been in charge for years, and they do not like to change their habits.

Q. 227. What value do you place then on the conduit system of the city of Louisville?

A. 437,909 feet at twenty cents per foot, plus $7,500, $95,082.

Q. 228. Is that amount sufficient to reproduce this conduit system new throughout?

A. Very liberal estimate.

Q. 229. Now, as to the equipment: Your figures in your former deposition as to the cost of the equipment were $203,000 for the four switchboards. What do you say about that now?

A. No change.

Q. 230. Do you think that will reproduce it new throughout?

A. Yes, sir.

Q. 231. I believe you said in your former deposition that the standard of equipment made by the independent manufacturers is as good as the standard equipment made by the Western Electric Co.?

A. Yes, sir.

3108 Q. 232. And will perform service equally as well as the Western Electric Co. equipment?

A. Yes, sir.

Q. 233. And will last as long?

A. Yes, sir.

Q. 234. Is there any more maintenance required in connection with the Independent, than in connection with the Western Electric?

A. No, sir.

Q. 235. Will the service given by the Independent Standard equipment be throughout the life of the equipment, as good continuously as it is with the Western Electric?

A. Yes, sir.

Q. 236. Mr. Jagoe says in his deposition that he places the value on the Central Office Equipment of $32.90 per subscriber. What have you to say in regard to that sort of valuation?

A. That is a new way of placing a valuation on a switchboard. The switch board value would change from day to day. If he took out a subscriber, it would grow less, and if he put on one, it would be more. A switch board is a fixed amount. Install it, and it is there.

Q. 237. As to the subscribers' equipment, what did you state in your former deposition to be your estimate of that?

A. I have made my subscribers' equipment to correspond

3109 to his.

Q. 238. Classify the subscribers' equipment?

A. Switchboards; private branch; booths; coin boxes; etc. Value $128,755.

Q. 239. What value did you place on it in your former deposition?

A. I did not have them classified in that way, but there is practically no change in the value.

Q. 240. Mr. Jagoe in his deposition on page 8 says, he includes in the Equipment for Subscribers' Station, Private branch exchanges; subscribers' instruments; interior wires; interior block wires; drop wires; booths; coin collectors; pay station apparatus, and special fittings used in connection with that class. Have you included everything in your estimate?

A. Everything that Mr. Jagoe mentioned, except that I do not figure on 112 private branch exchanges, as he states; I figures 75 exchanges as I did before, and he says he has figured on 112 private branch exchanges.

Q. 241. Mr. Smith, the Auditor of the Cumberland Company stated that there were 75 private branch exchanges, and he gave a

list of them. Mr. Jagoe says there are 112. I hand you a telephone directory of the Cumberland Company of date February 1st 1910, and I ask you to look at the name Gibson, Marshall & Gibson and see how they are classified as respects service?

3110 A. Private branch exchange.

Q. 242. Look at the name Helm & Helm and say how they are classified?

A. Private branch exchange.

Q. 243. Look at the name Bullitt & Bullitt and see how they are classified as to service?

A. They have no classification at all.

Q. 244. Look at the name Jas. R. Duffin and see how his name is classified as to service?

A. Private branch exchange.

Q. 245. I will show you here a block box in connection with the Home Telephone apparatus which seems to be an instrument with 13 holes with a plug to go into the holes for calling different people. Is that a private branch exchange?

A. No, sir.

Q. 246. What is that?

A. An inter communicating system.

Q. 247. If the names that have been mentioned have cases such as that, have they private branch exchanges or any inter communicating system of service?

A. They have not private branch exchanges; they have an inter communicating service.

3111 Q. 248. If they have a box like that?

A. Yes, sir.

Q. 249. In the valuation you have placed on this plant is there any material difference as to the quantity of material in the plant except insofar as the poles and aerial wire is concerned.

A. No, sir; no material difference as to quantity.

Q. 250. Mr. Jagoe in his deposition gives items representing over $200,000. expenditures for freight and supervision. What would you say about those items?

A. I don't understand why he should put freight as an item. All the prices he designates would deliver the material. The price he named for cable would deliver it in Louisville. The price he named for wire would deliver the wire in Louisville. All of his prices would deliver the article here so I don't see why he includes freight with supervision.

Q. 251. Would the price you named for wire &c. deliver the materials here?

A. Yes, sir.

Q. 252. Including freight?

A. Yes, sir.

Q. 253. What would you say as to that amount of expenditure for supervision?

3112 A. Judging from the amount of cables now in the system to take care of, 5,800 circuits I should not think there had been much supervision. This is a very large item and also they

have a large supervision item on their switch board and there is no supervision at all practically as far as the Cumberland Telephone Company is concerned for switchboard. The engineer of the Western Electric Company writes the specification and the Western Electric Company installs it and puts it in service and so far as supervision on the Western Electric Swithboard, there is nothing to it.

Q. 254. Does the Western Electric Company install and turn over the switchboard over to the telephone company ready for use?

A. Ready for service, yes; and in a great many cases I have known them not to allow the local company's employees in the room to supervise it.

Q. 255. How about subscribers' equipment?

A. I notice on that $3.00 per station, almost one half the cost of the telephone. It costs them $3.00 for each telephone they put in service simply for a supervising item, which everybody knows they don't have.

Q. 256. You stated in your former deposition what you
3113 considered to be the depreciated value of this plant in its present condition over what it would be in a new condition. You remember what that amount was, and if not, what amount would you say would be its present value as compared with the new figure.

A. I stated that I had made no specific examination so far as to determine the present value from a depreciated standpoint but taking what I know of a going concern as a general proposition and the way they are kept up and knowing the general character of the Cumberland and the way they are doing work, I consider twenty per cent as a reasonable amount exclusive of real estate.

Q. 257. What do you say as to the amount of tools and teams and material on hand that would be required to operate this plant?

A. I made no changes on those items and allowed $18,000 for miscellaneous supplies and material on hand and $2,000 for furniture and fixtures.

Q. 258. What as to the working capital?

A. I figure $10,000 to $20,000 would be a sufficient working capital for operating the plant.

Q. 259. In your former deposition I notice you say $10,000 and then—$20,000 to $50,000.

Q. 260. Explain if these were correct figures?

3114 A. I do not understand the figures. I have no recollection of stating that. What I must have had in mind was if the Company was carrying a construction account or doing construction work I figure $50,000, but as to operating a plant without construction $10,000 to $20,000 would be enough.

Q. 261. You also in your former deposition gave some items for engineering and miscellaneous expenses connected with the building of such a plant as this new throughout. State those items over again.

A. Those remain the same as before.

Taxes, rent insurance	$ 5,000.
Soliciting and right of way	15,000.
Engineering and supervision	20,000.
Legal and miscellaneous	50,000.
Total	$90,000.

Q. 262. Will you please state in full the items that go to make up the Cumberland Telephone Company's plant here and the value you place on them so that it will all be at one place?

A. The classifications I make here are made in the same manner as Mr. Jagoe's including the same item which he made.

3115 Conduit	$95,082.
Underground cable	189,549.
Aerial cable	241,351.
Pole lines	176,000.
Aerial wires	52,000.
Switchboards	203,000.
Sub-stations, private branch exchanges booths &c.	128,755.
Miscellaneous supplies on hand	18,000.
Furniture and fixtures	2,060.
Taxes, rent and insurance	5,000.
Soliciting and right of way	15,000.
Engineering and supervision	20,000.
General legal miscellaneous	50,000.
Total	$1,195,737.

Q. 263. In your former deposition I believe you said you were the construction engineer who built the Home Telephone Company plant here in Louisville, did you not?

A. Yes, sir.

Q. 264. Do you know whether the cost of the Louisville Home Telephone Plant was more or less than $1,000,000, at the time it had 6,000 circuits in use?

A. It was less than $1,000,000, at the time they had the same number of circuits in use *the* the Cumberland Telephone Company now has.

3116 Q. 265. Did you construct or have knowledge of the construction of the Toledo Independent Telephone plant?

A. I did.

Q. 266. Do you know the amount of bonds and stocks on that plant.

A. I do not know exactly at the present time, no, sir. I know approximately.

Q. 267. Approximately, what was it?

A. Approximately, $1,400,000, applied to Toledo and some outside exchanges, and of course the bond issues covers them.

Q. 268. Did they have an equal amount of stock?

A. Approximately so.

Q. 269. Do you know whether that plant or the stock in that plant has been recently sold

A. A majority of it has at least been.

Q. 270. When was that constructed?

A. 1901.

Q. 271. Do you know whether it has paid interest on the bonds since constructed?

A. It has.

Q. 272. Do you know whether it has paid any dividend on the stock?

3117 A. It has——

Q. 273. What dividend?

A. Started at four and has been paying six in recent years for four or five years.

Q. 274. Do you know what rates are charged by the Toledo Telephone Company for independent line service?

A. $30. for residence and $48. for business with a discount of $2.00 if paid in advance from the 1st to the 15th of the month.

Q. 275. $2.00 a quarter or a year?

A. $2.00 a year, $.50 a quarter.

Q. 276. What are the party line rates?

A. $18. and $24. I think net, $20. and $26. gross.

Q. 277. $18. for residence?

A. $18. for a four party and $24. for a two party. I am not certain about the party line business. I don't think they have much of that.

Q. 278. Do you know what the price was that was paid by the purchaser of the stock at the time the new management obtained control?

A. I simply know what people said they got for it and what the papers published.

Q. 279. Was that the current report among the business men and stockholders of the Toledo Telephone Company?

3118 A. Yes, sir.

Q. 280. What was that amount?

A. From $.80 to $.83 on the dollar.

Q. 281. For the stock?

A. For the stock, yes, sir.

Q. 282. How many subscribers has that exchange in Toledo?

A. Approximately 13,000.

Q. 283. Do you know whether the bonds represent the construction cost or the bonds and stock both?

A. The stock does not represent any cost. The bonds represent the cost of the property.

Q. 284. Now you have mentioned a considerable amount of cable the gauge of which was not indicated. Is there any way of ascertaining what the gauge of that cable is?

A. No, sir; except by opening the cable or measuring with an electric instrument.

Q. 285. Is there any intimation in Mr. Jagoe's deposition that he ascertained the actual gauge of that cable?

A. Only by observing in driving over the routes and that would be impossible to do.

Recess for dinner.

3119 Q. 286. You have spoke of a number of these blue prints showing proposed lines and showing cable not specified as to quantity and as to size and numb[illegible] pairs and also a number of blue prints showing dead cables. I w[illegible] you would select some of the blue prints covering these various characters of cable and mark them in such a way that the Master can see them readily?

A. Take blue prints with a red figure nine. I do not know whether that indicates an exhibit number or not.

Q. 287. How is that headed?

A. East cable exchange map, showing lines going out Payne Avenue and up Pope Street and Frankfort Avenue. This map shows according to its title existing cables and proposed cables, and the total number of cables going out Payne and Frankfort Avenues is three. I went over this route in person and found there are only two cables whereas there are three designated on the print. The one proposed is 200 pair and is practically a mile and a half long which makes the quantity quite vital.

The blue print with the title Aerial Cable Construction South Exchange shows a large number of cables going out Ormsby Street and Euclid Street where neither the size of the cable as to its number of pairs or the gauge is shown. Also a large num-
2120 ber of cables going down the alley between Third and Fourth Street and neither the size of these cables as to number of pairs or gauge is given. In this particular instance somebody has marked in red pencil as to the size, which is not official as it is not a part of the blue print, for if these sizes had been known they evidently would have been placed on the tracings.

Q. 288. I will ask you to mark that map on the face of it under the title number one?

A. I do so.

Here is a map headed underground cables, which shows in a number of cases dead cables, here with one hundred pair—the one hundred pair being designated in lead pencil in this case and not a part of the blue print and is marked dead.

In the conduits going west on Green Street and South in Center and East in Broadway and South on Fifth, also in several instances on West Green Street, different sections of underground cable in one case where a long piece of four hundred pair is marked dead, also a piece of 100 pairs on Nineteenth, marked dead.

Q. 298. How are those last part- of the cable marked
3121 dead?

A. Part of the tracing.

Q. 290. Part of the map?

A. Yes, sir. Also sections of two hundred pair 20 gauge and 200 pair 22 gauge.

Q. 291. Will you mark that one under the title Polk number two?

A. I do so.

Blue printed headed proposed cable lay out for West Exchange. This is the only print showing this territory and only in two or three instances in the whole cable lay out of the West office which is quite a large one is the gauge indicated.

Q. 292. Is it all marked as proposed cable?

A. They have it marked old cable and new cable and proposed cable and you cannot tell anything about it whether the cables are there or not.

Q. 293. Mark that one Polk number three under the title.

A. I do so.

Q. 294. Did you include that dead cable in the amount of cable in the system?

A. I did.

Q. 295. Is it included in your estimate of the value of the
3122 plant?

A. It is. I also included in my estimate the expenses of connecting it up and putting it in ready for service.

Q. 296. Did you examine any creosoted poles about which you spoke this morning?

A. I did.

Q. 297. What seemed to be the character of the creosote work done on the poles?

A. It does not seem to be creosoted under high pressure. This particular pole that I took the piece from has been creosoted by dipping or under light pressure.

Q. 298. Which is the higher grade, the dipping or the heavy pressure?

A. Heavy pressure.

Q. 299. You say you got a piece out of one of them?

A. Yes, sir.

Q. 300. On page 17 of Mr. Jagoe's deposition he refers to the fact that in your former deposition you place all 20 gauge cable under 19 and 22 stating there was only a small amount of 20 gauge cable. I believe you now say there is a large amount
3123 of 20 gauge cable and I ask you how that mistake was made in your original deposition?

A. Simply after the totals were made in transferring the additions from the sheets I had over here the 20 gauge is placed under the 22.

Q. 301. Did you have anyone assisting you in transferring those notes?

A. Yes, sir.

Q. 302. Was the mistake made in transferring from your working notes?

A. Yes, sir; that clerk that assisted me was not assisting in transferring particular but in making multiplications and additions.

Q. 303. Mr. Jagoe on page 25 of his deposition says he does not think any man would have a right—engineering expert or otherwise—to undertake the value of telephone plant such as the Cumberland Telephone Company plant in Louisville without an accurate knowledge and thorough investigation of it. What do you say about your ability to place a substantially accurate value on this plant?

A. I would have a right to place a replacement value if I knew the quantity of material but I would not have a right to place
3124 the present value of the property. I am not attempting to place the present value of the property. I am fixing the value on replacing this property with new material.

Q. 304. Do you think in view of the fact that you have had as much work of this character as you have had, including installing the plant in Louisville that you are competent to place the value on the plant?

A. Yes, sir; knowing the quantity of material in the plant and knowing the character of the plant as well as I do, its lay out, I am capable of estimating what it would cost to handle that material and put it in place the same as a contractor who knowing the character of the building, whether fireproof, brick or frame, if he knows the size and general character, he makes an estimate of the cost of the building by cubic contents, knowing what it will cost by cubic contents to construct a building of that character.

Q. 305. I don't think I asked you what value you placed on number 10 and number 14 aerial wire. What value did you place on that?

A. I placed a value on the Aerial wire—a total value the
3125 price per pound on 14 is four and a quarter cents. I don't remember the number of pounds in a mile. I think number 14 has 96 pounds in a mile which at four and a quarter cents would be $4.08 per mile.

Q. 306. What about number 10, what value did you place on that?

A. I claim there is no number 10 in the plant and my new estimate includes no number 10. I placed that five hundred miles of number 10 in number 14.

Q. 307. What is the value of the number 10 wire?

A. It weighs 250 pounds to a mile and the price is four cents or four and an eighth practically $10.30 per mile.

Q. 308. Mr. Jagoe has spoken something about what the Government statistics show: What do you know about the Government statistics so far as telephone plants?

A. In the first place Government statistics are four or five years behind and the telephone business is delevoping so rapidly that statistics four and five years old do not apply. Those statistics are so bunched that it would be impossible to apply them to any
3126 specific plant as they are bunched and averages taken over large territories and you can not apply them to any specific plant with any accuracy.

Q. 309. Mr. Jagoe says you evidently did not take account of laterals and tunnels. Did you?

A. I took account of laterals as they are part of the duct feet of the underground system and are included but I took no account of tunnels. I noticed in one or two instances and marked it that it would be such a trifling cost compared with the total that it would be immaterial.

Q. 310. Did you make any attempt to get an employee of the Cum-

berland Company to go with you and make and inspection of these poles and these wires about which Mr. Jagoe has testified?

A. I did.

Q. 311. What effort did you make in this respect?

A. My reason for making the effort was this: Mr. Jagoe and I were agreeing practically in all cases except as to quantity with the exception of number 10 wire and poles in the country and for that number 10 wire and poles in the country I asked to be shown so that I would place it in the estimate and I thought they would be glad to do so. If I were underestimating I wanted to take account

3127 of it.

Q. 312. What did you do in order to get the statistics?

A. In the first place I wanted to get a man familiar with the routes as far as leading out of the City was concerned to be able to identify the lines and I went over to the Home Telephone and asked them to give me their best trouble man who had been tracing trouble in the outskirts and was familiar with those sections and I took him along with me and had him take me direct to these routes without losing time and had him climb the poles and indicate the circuit whether there was any number twelve or number ten and how many circuits of each.

Q. 313. What I asked was what effort you made to get the Cumberland Telephone Company——

A. I asked you to make arrangement to get a man and you said you would do so and you called upon Mr. Burnett the Commissioner with me and asked about the advisability of doing so and Mr. Burnett said he thought it was all right and you called up Mr. Granbery and reported that Mr. Granbery said "no."

Mr. BLAKEY: I will stipulate the reasons you gave. Mr.

3128 Granbery.

Mr. GRANBERY: That is so clearly incompetent telephoning in my absence of the thing that I do not care for it.

Mr. BLAKEY: I think that is competent.

Cross-examined by Mr. GRANBERY:

Q. You were not familiar with the company's plant outside of the city, the pole routes?

A. Not specifically. I could tell after I had gotten there whether Home or Cumberland but I wanted this man to go along so that he could climb.

Q. 315. Didn't you tell Mr. Blakey to tell Mr. Granbery the reason you wanted the man to go was that you were not familiar with the country pole routes and you wanted the man——

A. I wanted a man familiar with the toll routes and cables so that I could——

Q. 316. If you could get it from somebody else why should the company go to the expense to send you a man?

A. I thought the company was anxious that the left out material should go in the estimate and would show it to me.

3129 Q. 317. And after you had somebody to go with you you report there is no number 10 wire in this exchange?

A. The number 10 wire was out there but there was no local drops of number 10. All the number 10 went on. I followed number 10 to St. Matthews, and found it went clear through and there were no local drops with Number 10.

Q. 318. Have you not said there was no 10 in this exchange?

A. I said I believed there was no number 10 in the local.

Q. 319. Notwithstanding the fact that Mr. Jagoe had so stated in his deposition?

A. Mr. Jagoe didn't specifically say that. He said there was 500 in the suburban territory, but did not specify that it was connected with the local subscribers.

Q. 320. Why didn't you tell Mr. Blakey to tell Mr. Granbery the reasons you wanted a man?

A. I had told Mr. Blakey the reason but I didn't tell him to tell you so.

Q. 321. Were you ever connected with the Cumberland Telephone Company in any way?

A. No, sir.

3130 Q. 322. How did you get such an intimate knowledge of their method of dealing with the Western Electric Company in the installation of Equipment?

A. I assumed that they dealt with the Cumberland Company as with other Companies.

Q. 323. What other companies have you knowledge of their dealing with?

A. The Central Union Telephone Company.

Q. 324. When was it?

A. From 1895 to 1900.

Q. 325. From 1900 up until now, have you any knowledge of the method of the Western Electric Company in dealing with the Cumberland Company and with the Central Union?

A. Not directly, I have from hearsay.

Q. 326. Have you any knowledge of how the Western Electric Company deals with any other Bell Company?

A. Not directly, only what men tell me.

Q. 327. Do you know now whether the Cumberland installs its own equipment or whether it has an electric company to install it?

A. I do not know.

Q. 328. Do you know whether the Western Electric Company makes up the plans and specifications for the Cumberland
3131 Company or whether the Cumberland Company's men make them up?

A. I know when I had anything to do with it the Western Electric Company made up the specification.

Q. 329. I asked you with reference to the Cumberland Company and the Western Electric Company: Do you know anything about it at all?

A. Not directly.

Q. 330. What do you know about it indirectly?

A. I know their general method of doing business.

Q. 331. That is, you knew them ten years ago?

A. And I know it now from conversation with their employees.

Q. 332. You don't know what their method is with the Cumberland?

A. Not directly.

Q. 333. I believe you stated the total cost of replacement of this plant, extra real estate was $1,195,737?

A. Yes, sir.

Q. 334. Was that correct?

A. Yes, sir.

Q. 335. Did you intend to say or do you now say anything about its present value?

A. I do not, only in an off hand way I made a statement
3132 this morning that as a general average a concern going for several years, moderately maintained will run down 20 per cent.

Q. 336. Don't you think it will be better to say that you have no knowledge of the present condition of the plant and of the relative value compared with the replacement value?

A. I didn't say I had any knowledge. I had not made investigation.

Q. 337. Then you don't wish to have any opinion stated in your deposition as to the present actual value of the complainant company's plant in this suit?

A. No, sir; not as a specific proposition.

Q. 338. Now in operating a plant, the replacement value of which is the amount you have stated, what would be the annual expense of conducting that telephone plant, operating and maintaining it?

A. A plant the size of this one?

Q. 339. Yes, I mean the plant in the city of Louisville with which you are familiar, and the general conditions?

A. How much it would cost to operate the plant?

Q. 340. Yes, including everything, conducting the tele-
3133 phone business on that exchange in the city of Louisville.

A. It runs somewhere in the neighborhood of $20. a station, $18. to $20.

Q. 341. I don't want the per station because that varies from day to day. I want it in dollars and cents per annum. How would you divide the expenses, into what classifications would you group your expenses?

A. General Office expenses, Operating Expenses, the operators and those directly connected with the plant, Maintenance Expenses and what you might call Installations, or—I don't know how to prescribe that,—the Construction Item, taking care of the additions and new subscribers and the taking out or change expenses, parties move in from one place to the other or where the service is discontinued. That expense should be kept separately. That would cover it.

Q. 342. What about taxes?

A. That would be under general expenses.

Q. 343. What would you include in general expenses?

A. Your officers' salaries, your clerks' salaries, your superintendent

your heads of division salaries, such items as heat, light, taxes, stationery, and items of that sort.

3134 Q. 344. And legal damage claims?

A. Yes, sir.

Q. 345. How much would you allow under the head of general expenses per annum?

A. About $30,000.

Q. 346. What would you allow under operating?

A. About $108,000.

Q. 347. What would you allow for maintenance?

A. In the neighborhood of $40,000 to $45,000, say $45,000.

Q. 348. What other expenses would you have?

A. There is that construction expense that would depend altogether on your construction business.

Q. 349. Would you include construction as expense or as addition to capital?

A. As addition to capital.

Q. 350. I ask you about conducting the plant.

A. There would be your take out and change expense.

Q. 351. Take out and put in?

A. Yes, sir.

Q. 352. How much would you allow for that?

A. About $7,500.

Q. 353. What other expense do you include?

A. That would take care of you all right and the expense

3135 would be from $180,000 to $200,000 a year.

Q. 354. Would you allow anything for depreciation?

A. I think there should be.

Q. 355. What would you allow?

A. I would set aside the depreciation account practically five per cent of the physical material—the physical value. I have set aside $50,000 a year and any renewals made I would charge against that account.

Q. 356. Would you charge maintenance out of that account?

A. No, sir. There are two kinds of maintenance, Maintenance of Operation and Maintenance of Plant. I would charge Maintenance of Plant and Material.

Q. 357. Would you charge that $50,000 as an expense of conducting business?

A. A renewal expense.

Q. 358. It is an expense of conducting business?

A. It should be provided for.

Q. 359. Is not that a necessity?

A. Some companies don't do it and seem to get along.

Q. 360. But it is not your opinion as an expert——

A. That it should be done.

3136 Q. 361. Is it not necessary?

A. Yes, sir.

Q. 362. If it is not done, what will happen?

A. There will be a day of reckoning.

Q. 363. What do you mean?

A. Quit business or raise rates.

Q. 364. What do you mean by raising rates?

A. If you have not provided for it, you will have to raise rates to provide for it.

Q. 365. In other words, you would have to go down in your pocket and put up money unless you provide for a reconstruction account?

A. Yes, sir.

Q. 366. And that five per cent does what?

A. A line is broken, and a man has to go out.

Q. 367. That is repairs?

A. Yes, sir.

Q. 368. That could not be charged against this?

A. No, sir.

Q. 368. I am talking about reconstruction. Do you think five per cent is ample for reconstruction of a plant in Louisville?

A. Yes, sir. Here is a plant with a large conduit system. If you didn't have a conduit system you would have to have
3137 larger than five per cent but five per cent is sufficient here.

Q. 369. Would it not depend largely on experience of one who is with the plant as to what would be a sufficient amount to set aside for that purpose?

A. There would be a more definite way of finding out than that.

Q. 370. But at last it is a mere matter of each man's individual opinion of what is sufficient?

A. Yes, sir.

Q. 371. Engineers differ very differently?

A. They do.

Q. —. Who is the man who has best knowledge of what is necessary?

A. The reason engineers differ——

Q. 373. Answer the question: Who is the man who has best knowledge of what is necessary?

A. The difference comes in in this way——

Q. 374. But who is the man who has the best right to say what is the correct amount to set aside for any particular plant?

A. General manager.

Q. 375. Now you may add anything you like.

A. One General Manager will operate the same plant so
3138 that less per cent will be necessary and another general manager will operate so that more will be necessary. There is a difference in General Managers which affects your depreciation fund.

Q. 376. Does not the way the original construction was done cut a figure?

A. Yes, sir.

Q. 377. And the way you maintained the plant?

A. Yes, sir.

Q. 378. So that you have to know all of those things before you can determine what is the proper amount to set aside for depreciation?

A. Yes, sir.

Q. 379. Now on this question of original construction cost and maintenance cost, if your original construction is cheap and your capital account is low, your maintenance account is heavy?

A. Yes, sir.

Q. 380. And if your original construction is high class then your maintenance account is less?

A. Yes, sir.

Q. 381. And so with depreciation?

A. Yes, sir.

Q. 382. So that a man must know the local conditions and the local facts before he can determine what the per cent of de-
3139 preciation is.

A. Yes, sir.

Q. 383. And within a reasonable degree of accuracy?

A. I don't say reasonable because there is a little variation.

Q. 384. I said a reasonable degree of accuracy?

A. Nobody I ever heard ever claimed it goes over eight per cent. It goes from four to eight per cent.

Q. 385. In different parts of the country the per cent varies?

A. Yes, sir; owing to climatic conditions.

Q. 386. Then also the fact of the city sometimes requires a change of pole routes and duct routes, cuts a figure.

A. Yes, sir.

Q. 387. I believe you stated a moment ago that the Government Reports were four or five years behind and that the progress of the business was so rapid that statistics four or five years old were not of much use or value.

A. No, sir.

Q. 388. That is correct?

A. Yes, sir.

Q. 389. Now this question of the revolution of the art may not affect the plant to three or four years and then affect it very
3140 vitally, is not that so?

A. Yes, sir.

Q. 390. So that you cannot figure the depreciation will be the same year by year, and you can only figure over a cycle of time on an average—is not that correct?

A. Reasonably so.

Q. 391. Is it not bound to be so? For instance, sleet storms do not come every year?

A. No, sir.

Q. 392. Now over and above all of that, is there not a list that cannot be figured on that cannot be taken into consideration and provided for?

A. There is a certain risk but that risk, as far as per cent is not a large amount.

Q. 393. It is a risk, nevertheless, that has to be taken into consideration?

A. There is a certain risk.

Q. 394. You stated that Mr. Jagoe in grouping his figures evi-

dently did it to confuse the court, that is your statement, in making the price for conductor miles of cable?

A. I stated that those figures did not mean anything, that they were large amounts and didn't mean anything.

3141 Q. 395. Did you not say that was meant to confuse the court?

A. I said I could not figure out anything else.

Q. 396. You never saw Mr. Jagoe before today?

A. I know he claims to be a practical telephone man, and I know he knows cable is not purchased or figured in that manner.

Q. 397. You do not know what his reason was for putting it in that form?

A. No, sir.

Q. —. You attributed to him a sinister purpose?

A. No, sir; I did not attribute to him a sinister purpose.

Q. 399. You said it was to confuse the court.

A. He had given the cost per foot and then gave another set of figures that the court could not get a corresponding basis on.

Q. 400. Aside from what other reason may have been, did you not state that it was for the purpose of confusing the court?

A. I could not figure out any other reason.

Q. 401. Don't you think that is a sinister purpose, if a man should do that?

A. No, sir.

Q. 402. Is that legitimate and proper?

A. Mr. Blakey asked me why these prices were put in

3142 that form, and I said I could not figure any other reason.

Q. 403. Could not you have said you didn't know?

A. I did say that.

Q. 404. But you added that you thought it was for the purpose of confusing the court. Why did you think that?

A. I could not figure out any other reason for it.

Q. 405. Do you know anything of Prof. Jackson, who was on the Chicago Commission, and also made the physical value of New England Telephone Co.?

A. I have met him.

Q. 406. A man of excellent standing in your profession?

A. Yes, sir.

Q. 407. His opinion is entitled to great respect?

A. Yes, sir.

Q. 408. Did you know that he used those figures and made up his statement on those figures for the Massachusetts Commission?

A. I knew certain statements were put in that way.

Q. 409. You knew he had done that?

A. In some instances.

Q. 410. Did you think he did it to confuse anybody?

A. I do not know.

Q. 411. Why did you think Mr. Jagoe did it to confuse

3143 the court?

A. Because there was no reason why he should figure that way in this case. Mr. Jackson was figuring for statistics.

Q. 412. Was not he making a physical valuation of the property, and stating it in figures?

A. Well, and these were additional parts gotten up for statistics.

Q. 413. Do you remember that Prof. Jackson stated it that way?

A. It has been some time since I read his report, and I could not say how it was.

Q. 414. You state, if he did state it that way, it was for statistics?

A. I say I judge so.

Q. 415. You really do not know whether that is true or not?

A. No, sir.

Q. 416. If he did do it, you think he did it for statistical purposes?

A. Yes, sir.

Q. 417. Rather than for——

A. Unit of cost.

Q. 418. What do you mean by cost per mile?

A. Per conductor mile.

Q. 419. You would not use that conductor mile?

A. No, sir.

3144 Q. 420. That would tend to confuse the court?

A. Yes, sir.

Q. 421. How do you measure cable?

A. Per foot.

Q. 422. What is the difference between measuring per foot and per conductor mile?

A. A foot is the usual way of designating it, and it is the way it should be.

Q. 423. In the last analysis, what is it you are getting, conductor miles or feet?

A. Cable feet.

Q. 424. There are many different kind of cable?

A. Yes, sir.

Q. 425. Many different sizes of cable?

A. Yes, sir; and when you are buying by the foot, you can specify the size by conductor mile.

Q. 426. When you speak of buying by the foot, you have to give additional information before anybody knows what is is?

A. Yes, sir.

Q. 427. At the last analysis, is it not a question of how many conductor feet you have in your cable?

A. No.

Q. 428. If you have 100 feet of 22-gauge cable or 100 feet of 20-gauge cable or 100 feet of 19-gauge cable, and one of 50 pair and another of 100 pair and another of 200 pair, what would
3145 be the last analysis, would not you be bound to reduce that to conductor feet, to get the amount of cable?

A. You wouldn't know anything about the plant, if you didn't know the size of the cable.

Q. 429. After you knew the size of the cable, could you not reduce it to conductor feet?

A. You might have a system of five pair, and it wouldn't be much of a system.

Q. 430. These blue prints, did they purport to be correct and accurate and complete?

A. They were assumed to be approximately correct.

Q. 451. Didn't you read Mr. Crum's deposition?

A. I did.

Q. 432. Didn't you read where Mr. Crum stated that where those blue prints were handed to him, it was stated to him it was not complete?

A. I remember the statement that they were practically correct.

Q. 433. As an engineer, don't you know that those cables were not made up for the purpose of showing what was in the plant, but were made up to show more the extent of the plant?

A. They were made up in a different way. The West Office seems to be proposed plan, and that is the only plan of the
3146 West Office, whereas in the main office, I am not certain whether there is any mark proposed or not. The Main Office indicates that there is a permanent plan, and the East is marked—there are three maps of this office. Two of them are marked permanent, and one proposed.

Q. 434. One is proposed and the other purports to be there.

A. Yes, sir.

Q. 435. Don't you know these blue prints were made more than two years ago?

A. I don't know anything about that.

Q. 436. Did you ask?

A. No, sir.

Q. 437. Did you ask anybody whether these blue prints undertook to state correctly the cable plant in Louisville?

A. I just assumed from the statistician that they were practically correct, and they were handed to me as practically correct.

Q. 438. Who handed them to you as being practically correct?

A. Mr. Blakey turned them over to me, and said they were supposed to be practically correct, and for me to use them in getting at the amount of material.

Q. 439. Now, you have undertaken to give the cost of the underground aerial cable, delivered in Louisville. Are you giv-
3147 ing the present market prices of cable?

A. I am.

Q. 440. Is that present market price higher or lower than for the past six years?

A. I have not figured in that way the market price I give you now is practically what it was in the last year. Cable has not varied five per cent one way or the other.

Q. 441. What about the last six years?

A. About 1907, it was very high, twenty per cent.

Q. 442. In getting at the value of the plant for the purpose of fixing a rate, do you think it is fair to take the market price at the particular time, and figure that exclusively?

A. My instructions were to figure the price of the plant at this time.

Q. 443. Now, if they had called on you to do that three years ago, your price would have been twenty per cent higher?

A. Yes, sir; probably twenty per cent higher on cable.

Q. 444. Do you know how Prof. Jackson handled that in making the physical valuation for the New England Commission?

A. I do not recall it.

Q. 445. Don't you recall that he took the last six years as being fair to the public and to the company?

A. No, sir.

3148 Q. 446. Are you familiar with the work Prof. Jackson has been doing for the New England Highway Commission in Massachusetts?

A. I simply read it in the Journals. I never read the official report.

Q. 447. You stated the cost of cable plus the freight to Louisville. Have you gone to manufacturers to get the price of cable delivered in Louisville?

A. I got the prices of manufacturers probably within a month or six weeks—within a month or six weeks I get prices, and have had prices for the last fifteen years, and I know the price of copper. The price of copper is published every day, and I know the relation of cable to copper, and I cannot be far wrong though I have the quotations in addition.

Q. 448. What about freight to Louisville?

A. The freight in Louisville I checked up and protected myself on that.

Q. 449. How?

A. By allowing twenty-five cents per hundred. I know that was amply large.

Q. 450. Too large?

A. Ample. I knew it would be less.

3149 Q. 451. Why put it at a figure, when you knew it would be less?

A. All estimates are with allowances.

Q. 452. Upon what factory?

A. Either Rochester or Trenton, N. J.

Q. 452. Is the freight rate the same from those places to Louisville?

A. Less from Rochester.

Q. 454. Which did you use?

A. I based it on a twenty-five cent freight rate which is higher than either.

Q. 455. What items are to be added to the cost of cable plus the freight to make up the value or cost of the cable, as it is underground connected up for service?

A. The cost of labor and installing.

Q. 456. What are the items?

A. Lead sleeve, solder, paper sleeves pot-head wire, bridle wire, bridle pleats, bridle rings, cable boxes, and your protector amounts.

Q. 457. Is that all?
A. Aerial cable, you have your aerial cable hangers.
Q. 458. Stick to underground cable.
A. That covers it with the exception of laborers.
Q. 459. How much did you add for splicing?
A. I did not figure it that way. I figured so much per foot for installation.

3150 Q. 460. When you figured so much per foot for installation, it is a mere exercise of your opinion of what it would run?

A. I know what it cost on several systems. I kept track of it, and know how it ran. It didn't vary over a cent or two on any system.
Q. 461. Don't you think the best way would be to get exactly the different quantities of material, and then add them up?
A. It is impossible to give accurate accounts. It is not absolutely correct, and it would be a question of going through and counting the splicing and you cannot tell where the aerial splices are from the plue print. My way of getting at it is more accurate than yours. I know how much it cost a foot, and you don't know how much has gone into the plant without counting it.
Q. 462. Suppose the company has had actual experience putting in cable, and undertakes to state the kind of material, and the cost of installation—don't you think that is more accurate than your estimate?
A. No, sir; for you have a lot of maintenance expenses which should not go into replacement.
Q. 463. But suppose the accounts had been properly and correctly kept?
A. Of course, that would be accurate.

3151 Q. 464. Much more accurate than your opinion or that of any other engineer who had not had any connection with the work?

A. Yes, but I don't believe any company keeps them accurately.
Q. 465. You make the same statement, I presume, with reference to aerial cables.
A. Yes, sir.
Q. 466. Now, you stated that Mr. Jagoe in his deposition understated the value of small quantity of cable and overstated the value of large quantity, as compared with your figures. Is that correct?
A. Comparing the prices, I notice there was one price out of proportion with all of his other prices, and I notice that that particular item out of proportion was a large item.
Q. 467. Who first stated the items of cost and value?
A. I did.
Q. 468. Did you not lump it in the first deposition
A. No, sir; I gave my price per foot.
Q. 469. On each particular kind of cable?
A. Yes, sir.
Q. 470. In your first deposition?
A. Yes, sir.

Q. 471. And Mr. Jagoe following along varied from your
3152 figures as you have stated?

A. Yes, sir.

Q. 472. What is the smallest item of cable in your list? and Mr. Jagoe's list?

A. I don't remember.

Q. 473. Examine and see.

A. The ten pair item.

Q. 474. Is it not 1143 feet of 100 pair 20 gauge?

A. No, sir; 1275 feet of 10 pair making only $89.

Q. 475. Is not the smallest number of feet in the underground cable less 143?

A. In the underground there is 1842 feet of 25 pair.

Q. 476. I want the smallest number of feet in the underground system?

A. 1143.

Q. 477. That is 100 pair 20 gauge?

A. Yes, sir.

Q. 478. What is the largest number of feet in cable?

A. 100 pair 19.

Q. 479. That is the underground?

A. Yes, sir.

Q. 480. In all of it?

A. Yes, sir.

Q. 481. What value did you put on the 1143 feet?

A. I put 38 cents.

3153 Q. 482. What did Mr. Jagoe put it?

A. Forty cents.

Q. 483. Look at the aerial table and see if the largest item is not that 182,362 feet of 100 pair 22 gauge cable?

A. Yes, sir.

Q. 484. What value did Mr. Jagoe put on that?

A. Twenty-nine cents.

Q. 485. What did you put on it?

A. Thirty-one cents.

Q. 486. So that it appears on the smallest item that Mr. Jagoe stated the figures two cents larger than you, and on the largest item, you stated the figures two cents higher than he did?

A. No, sir.

Q. 487. You said on the smallest amount Mr. Jagoe had gone above you in price and on the largest amount he had gone below you?

A. I don't think I did. I think I said what would run in the largest amount in dollars and cents he stated high, and what would run into the lowest amount in dollars and cents, he placed low.

Q. 488. Now, is the difference between you and Mr. Jagoe such as engineers would not differ on?

A. Our ratios ought to be in proportion.

3154 Q. 489. Is there any difference between you more than a difference in opinion?

A. That one item is out of proportion about five cents per foot according to his other prices.

Q. 490. You have admitted you made mistakes, have you not?

A. I have made mistakes—inaccuracies,—

Q. 491. Didn't you make a mistake in drawing off and adding up your figures?

A. In transferring.

Q. 492. Don't you assume that other men may make mistakes honestly without any intention to represent or misstate?

A. I have not said it was dishonest.

Q. 493. Did you not intend to convey the idea that Mr. Jagoe was purposely over-stating the value of cable?

A. No, sir.

Q. 494. What was your purpose in calling attention to that particular thing?

A. Because he made various differences in the gross amount, dollars and cents.

Q. 494. Those various differences would appear without your calling attention to that item?

A. No, sir; not in that particular case.

3155 Q. 495. It would appear in the total, would it not?

A. It might not.

Q. 496. I will ask you this question. Do you intend to be understood as reflecting upon the good faith of Mr. Jagoe's figures in valuing this cable?

A. No, sir; I don't want to be understood as reflecting in any way.

Q. 497. You think then there is an honest difference of opinion between you and Mr. Jagoe?

A. I suppose so.

Q. 498. I hand you your deposition given in this case, and I ask you to show me where you give the price of cable per foot of the different kind?

A. It is in there somewhere and I will find it for you. He has totaled the amount and it is only a matter of division to find it out. I know I had it; there was one place, I think, where it was lumped in.

Q. 499. Please turn to your deposition, and figure out from it as therein stated the values you put on different kind of cable per foot?

A. (Examination.)

A. I guess it is not in there.

Q. 500. Then it appears that you are mistaken in assuming that Mr. Jagoe was cutting under you in the small quanti-

3156 ties, and going over you on the large quantities?

A. It appears so, for the prices do not appear in the original deposition.

Q. 501. They do not.

A. Not that I can find.

Q. 502. Then that is another mistake on your part, is it not?

A. Yes, sir.

Q. 503. Which simply goes to show that no one of us — infallible?
A. Yes, sir.
Q. 504. And that means there could have been no possible idea or sinister purpose on Mr. Jagoe's part in valuing these cables?
A. No, sir.
Q. 505. And as a matter of fact, you are the one that varies from him instead of him varying from you so far as the deposition?
A. I have used the sam eprocess as I used originally.
Q. 506. But you didn't show that to Mr. Jagoe?
A. No, sir.
Q. 507. He had no way of knowing what your processes were?
A. Evidently not, if they were not in the deposition.
3157 Q. 508. And they are not there?
A. I cannot find them.
Q. 509. You say the usual number of poles outside of the city limits to take care of a subscriber is how many per subscriber?
A. I said I allowed over a thousand poles for three hundred subscribers.
Q. 510. Is it not a fact that that is a matter that varies with each particular locality?
A. Yes, sir.
Q. 511. And therefore, no one has the right to speak with any degree of accuracy, until he knows the actual location of the different telephones outside of the corporate limits.
A. I simply figured from an experienced standpoint and I don't think you could put that amount of investment in there.
Q. 512. In the telephone business—and is it not well-known to you—it is impossible to make each particular subscriber pay the amount necessary to carry his part of the expense of the business?
A. The expenses don't prorate per subscriber.
Q. 513. And it cannot be done?
A. It cannot be done.
Q. 514. And as a matter of fact, when a line is built to a country subscriber, it is for the benefit of every subscriber in and out
3158 of the city?
A. Yes, sir.
Q. 515. So that it is unfair to say that that particular subscriber should bear an unusual expense for reaching him, when it is for the benefit of the whole body of subscribers?
A. Yes, sir; you could not make him bear all the expense.
Q. 516. So at last, those country lines ought to be connected with the city subscribers?
A. Yes, sir.
Q. 517. And it is for the general good of the community?
A. Yes, sir.
Q. 518. Therefore, the amount of expense necessary to reach a subscriber should not be figured on those subscribers?
A. The entire expense should not be figured against them when the same poles are carrying other things.
Q. 519. Now, you have stated that you looked at these particular places where Mr. Jagoe stated there were creosoted pine poles?

A. I did not say I looked at all of them. I looked at particular places.

Q. 520. Now, I will furnish you a conveyance and a man to take you to those places, and I want you to go and see if you don't
3159 find the facts?

A. I will go on the street car; you won't have to furnish a conveyance.

Q. 521. You made a statement, as I understood you, that Mr. Jagoe included guying in aerial work. Look again at your papers, and see if you are not mistaken.

A. He included messengers, and they have to guy them. He includes messengers.

Q. 522. You said he included under the head of Aerial Cables guying: Are you not mistaken? Is not the only item there Guy Clamps?

A. He has Messenger Wire there. That is a cable item. He gives an item of about one hundred thousand feet and I thought that was for guying purposes.

Q. 523. Guying refers to a hanger to hold the pole?

A. Yes, sir.

Q. 524. Mr. Jagoe didn't include any of that?

A. He includes 100,000 extra feet of wire more than the linear feet of cable, and what does he do with that 100,000 extra feet?

Q. 525. Is it not a fact you can scarcely terminate your messenger wire where the cable stops?

A. If he had done it previously in the guying, that pole would be guyed——

3160 Q. 526. Does messenger wire always stop where the cable stops?

A. If you are going to run a messenger there, you have to do a certain amount of guying with your messenger cable.

3161 Q. 537. You have knowledge, you say, of creosoted pine poles.

A. Yes, sir.

Q. 538. Did you state that they were worth no more than poles?

A. I said not any large amounts. I say they are worth about one dollar more on an average than the other.

Q. 539. What kind of poles did you figure on?

A. Chestnut poles.

Q. 540. Where are those cut with reference to Louisville and where do they grow?

A. Kentucky and Tennessee.

Q. 541. Where do pine poles grow with reference to Louisville?

A. Mississippi.

Q. 542. Where are the poles creosoted?

A. In West Pessagula or New Orleans.

Q. 543. When you get Chestnut poles they are cut in the woods of Tennessee or Kentucky and shipped into Louisville and used?

A. Yes, sir.

Q. 544. And when you get creosoted pine poles, they are cut from land in Mississippi and shipped to Passagula or New Orleans

and creosoted and then shipped from those plants to Louis-
3162 ville and used?

A. Yes, sir.

Q. 545. And the difference is only one dollar?

A. Yes, sir; the chestnut is $8.00 on the ground and you can get creosoted pine for $9.00.

Q. 546. The same length and size?

A. I figure on forty feet.

Q. 547. What do you say you can get chestnut poles here for?

A. Forty foot poles for $8.00.

Q. 548. What inch at the top?

A. Seven.

Q. 549. What can you get creosoted pine poles for?

A. $9.00, a forty foot pole.

Q. 550. And you think the illustration of the two railroad tracks and railroad beds and new engines is a fair illustration of two pole routes on the same street?

A. I think it is more so than the tobacco warehouse illustration.

Q. 551. You think it is a good illustration with reference to the two pole routes?

A. If the tobacco warehouse illustration is.

Q. 552. Aside from the tobacco warehouse?

A. Yes, sir; in a way.

3163 Q. 553. Only in a way. Well, I believe you stated the company used no number 10 wire for the subscribers in the Louisville exchange?

A. I couldn't find any.

Q. 554. How long did you look?

A. Half a day.

Q. 555. Did you ask any of the telephone people if they used any number 10 wire?

A. I supposed they would not tell me if I did and I did not ask them.

Q. 556. You did not ask them?

A. No, sir.

Q. 557. You say the B. B. Wire is as good as the E. B. B.?

A. Yes, sir.

Q. 558. I believe you stated the only difference was that the B. B. had more tensile strength?

A. The E. B. B. has a little less resistance and engineers would rather have the strength in preference to the variance in resistence.

Q. 559. Why is the E. B. B. manufactured?

A. It is more plyable.

Q. 560. Where you want plyability for testing it is better?

A. It is softer.

3164 Q. 561. It is manufactured for that specific purpose?

A. Yes, sir.

Q. 562. Copper wire has less tensile strength than iron wire?

A. Yes, sir.

Q. 563. But it is considered the best?

A. Yes, sir; it has less resistence.

Q. 564. Less resistence the better wire for telephone?
A. Yes, sir.
Q. 565. The E. B. B. has less resistence than the B. B.?
A. A very small amount.
Q. 566. So it is a matter of judgment whether the company should use E. B. B. or B. B.?
A. Yes, sir.
Q. 567. And if one uses it it is no indication of incompetency?
A. The difference in price cuts no figure.
Q. 568. You say you never heard of a conduit costing over twenty cents a foot?
A. No, sir; I said I never heard of a system costing thirty eight or forty.
Q. 569. What is the highest you ever knew of?
A. Twenty-five cents.
Q. 570. What is the lowest?
3165 A. About fourteen.
Q. 571. What caused that difference?
A. Difference in the street paving, largely, obstructions in the street.
Q. 572. How are conduits built, by the quantity or so much a duct foot?
A. So much a duct foot.
Q. 573. Regardless of paving or obstructions in the street?
A. Yes, sir; because a man takes those in consideration before he makes the price.
Q. 574. Is it not a usual thing for contractors to bid on quantity of material and number of ducts?
A. That depends upon the relationship of the contractor and the company. If he has a relationship so that he can get a contract of that kind he would like to do it. If he has not that relationship he makes the price per duct foot.
Q. 575. It is a gamble on the part of the company and contractor?
A. Any contract is a gamble more or less.
Q. 576. You say iron pipe is not usual now?
A. I say it is not considered modern construction.
Q. 577. Is it not a fact that the Western Union uses almost exclusively iron pipe?
3166 A. Because they use a comparatively small amount and only one or two ducts, and where they have only one or two ducts, the cost of making that runs pretty high.
Q. 578. I understood you to say that they had gotten accustomed to it in the past and kept it up?
A. I heard one of their officers say that.
Q. 579. How long ago?
A. Five or six years.
Q. 580. You don't know whether they kept it up?
A. I know they still use iron pipe largely.
Q. 581. Now if you will examine Prof. Jackson's report won't

you find in it that he values underground ducts in the telephone business at fifty-two cents a duct foot?

A. I don't know what he valuse it at, I don't remember. I know that Prof. Jackson is not a construction man and I don't think he ever had charge of a construction job and he takes his figures from what some one tells him.

Q. 582. You would not rely on his figures?

A. Not as construction figures. I would rather estimate myself.

Q. 583. You think more of your own opinion?

3167 A. Mr. Jackson is an electrical engineer and from a theoretical standpoint he is fine but he is not a construction man.

Q. 584. So you place a higher value on your opinion than on his?

A. Yes, sir; as to unit cost of construction.

Q. 585. Do you know anything about the physical valuation of the Enid Oklahoma plant?

A. No, sir.

Q. 586. You don't know that they allowed fifty-four cents per duct foot for underground cable there?

A. No, sir.

Q. 587. Are you familiar with the price of switchboards?

A. I am familiar with Independent manufacturers' prices.

Q. 588. You are not familiar with the Western Electric Company's prices?

A. No, sir.

Q. 589. What knowledge have you of the character of switchboards manufactured by the Western Electric Company?

A. I have seen a good many and been around where they were operated.

Q. 590. Since how long?

A. I have not been connected with the company operating

3168 one in the last ten years.

Q. 591. Whether they are making a better or worse switchboard in the last ten years you don't know?

A. Yes, I can judge from the character of the service.

Q. 592. They are all intended to give the same service?

A. Yes, sir.

Q. 593. A chestnut pole with a two inch top will give the same service as a chestnut pole seven inches at the top?

A. As long as it stands.

Q. 594. A switchboard will do the same thing?

A. Yes, sir.

Q. 595. So the mere fact that it gives good service don't determine its value?

A. No, sir; of course time must be considered.

Q. 596. I believe you stated it cost no more to maintain a Western Electric Switchboard than a switchboard of the Independent Manufacturers. Have you had experience in the last ten years maintaining switchboards made by the Western Electric Company?

A. No, sir.

Q. 597. You did not include any real estate in your valuation?

A. No, sir.

3169 Q. 598. In addition to knowing the quantity of material in the telephone plant don't you also have to know the quality of material?

A. Yes, sir.

Q. 599. Before you can get at the valuation?

A. Yes, sir.

Q. 600. Do you know the quality of material in the complainant's plant in Louisville?

A. I have assumed them to be first class all the way through and given prices for first class material.

Q. 601. How does the telephone grow, year after year or does it grow in a year?

A. It grows year after year.

Q. 602. As a matter of fact is it not impossible for a plant not to grow year after year if it serves its purpose in the community?

A. Naturally it grows as the community grows and as the population increases the telephone plant should increase in proportion.

Q. 603. And if the population doesn't increase, the number of telephone users increases?

A. Yes, sir.

Q. 604. And if the number of users increases the telephone plant must increase?

A. Yes, sir.

3170 Q. 605. When you build the plant brand new you build it with reference to where you think the business is to be found in the community?

A. Yes, sir.

Q. 606. And in building you pay no attention to corporate limit?

A. No, sir.

Q. 607. You build with reference to that community of people both inside and outside the corporate limits?

A. Yes, sir.

Q. 608. Don't local conditions vary the cost of that plant?

A. Yes, sir.

Q. 609. Now as time goes on does not every telephone management find itself in this predicament: That the business increases in places they did not expect it to and decreases in places that they expected to increase?

A. More or less so.

Q. 610. Is not this a fact that there are constantly dropping out a lot of subscribers and a coming in of new subscribers?

A. Yes, sir.

Q. 611. When you get new subscribers what is necessary to be done usually?

3171 A. Install the telephone and possibly run a drop.

Q. 612. Very often you have to run either a cable or a new wire to serve him?

A. Very seldom you would have a run a cable for an individual subscriber. Sometimes you have to run a cable from a circuit box to his dwelling.

Q. 613. Suppose you have a congested condition in cables at one place all the cables in use and you have need to install more telephones, what do you do?

A. Put in a new cable.

Q. 614. Sometimes you have a string of cable costing a good deal of money that only serves a few people to begin with?

A. Yes, sir.

Q. 615. And while these few people are the only subscribers, you have a great deal of idle capital involved in that cable construction?

A. Yes, sir.

Q. 616. Hoping that the time will come when there will others come in there?

A. Yes, sir.

Q. 617. That is the experience of all telephone plants?

A. Yes, sir.

3172 Q. 618. Now suppose an opposition plant comes in and opens up a business, does not that have a serious effect in disarranging the subscribers of the older company?

A. I don't know. I don't think I know of any case where the old company goes backward. They most increase along with the other company.

Q. 619. It does result in shifting of their patrons?

A. There may be a slight shifting. I don't think it results in any decrease.

Q. 620. I am not speaking of increasing or decreasing but with reference to the re-arrangement and shifting of its subscribers?

A. It results more of changing the character of service than changing the location.

Q. 621. It may do that but I asked with reference only to the one specific thing and if you will kindly answer that I shall be obliged: Does it not cause a re-arrangement and a shifting of the patrons?

A. I don't think it causes any shifting of the patrons. It simply causes more change of service. A man may have an individual line and then he calls for a party line. I don't think it changes the location.

Q. 622. But the old subscribers drop this and take the

3173 new?

A. Yes, sir; some of them.

Q. 623. Some of them that have not had either take the old service?

A. Yes, sir.

Q. 624. And some of the subscribers who go to the new company shift back to the old company?

A. Yes, sir.

Q. 625. All of that causes a shifting of the existing subscribers of the old company that would not take place but for the advance of the new company?

A. Yes, sir.

Q. 626. And all of that entails expense?

A. Yes, sir.

Q. 627. It often times happens that the telephone company through circumstances over which it has no control finds itself with a large amount of unused equipment either poles, or wires, or cables or switchboard space?

A. I don't know. My experience is that the old company has merely gone ahead and done as much construction as the new one.

Q. 628. After a telephone plant is built its business grows from year to year?

3174 A. Yes, sir.

Q. 629. And has to add to the construction account from year to year?

A. Yes, sir.

Q. 630. Does it cause less or more or the same to add that construction year after year over what it would have cost to put it in originally as new plant?

A. You can put it in as a whole lump at a less sum than a smaller lot.

Q. 631. Piecemeal costs more than straight construction?

A. Yes, sir.

Q. 632. Is there any way to avoid piecemeal construction?

A. No.

Q. 633. The company in existence has built up at various times small quantities of piecemeal construction whereas the Independent and new company has not any piecemeal construction?

A. No, sir.

Q. 634. Is it fair to the company that has invested its money in a plant kept up with the growth of the city and taken care of the business by piecemeal construction to say that it can only have a return on what it would cost to build a plant over again new?

A. No, sir; I don't think that is fair.

3175 Q. 635. That is an unjust and an unfair thing?

A. Yes, sir.

Q. 636. Suppose you add to your figures $150,000 for real estate which includes four exchanges and the building on them, that would bring your total valuation replacement on this property to how much?

A. $1,345,737.

Q. 637. Now on the replacement basis, that would be the amount that you would say the company would be entitled to a fair return on in the city of Louisville?

A. Yes, sir.

Q. 638. What is the fair return on telephone taking into consideration the nature of the business and the risk and the evolutions in the art, and the risk of having someone come in take your business and all the things incident to a telephone plant as you know—what is the fair return for a man to receive on the actual dollars that he puts into that plant net to him after providing for all the expenses of the business?

A. I think he should have at least ten per cent.

Q. 639. Is that what business generally, as far as you know in

this part of the country expects and intends to get on their
3176 investments?

A. Corporations have different ways of figuring. Street railway, steam railroads figure five per cent as a safe return. Of course, a concern like the telephone company I should consider has more than a fixed railroad because the nature of its business fluctuates and more risks than would be on a trunk line of railroad and I would say it would have a higher return than a trunk line railroad.

Q. 640. You think ten per cent is reasonable?

A. I said I don't think it should be less.

Q. 641. Do you think anything less than that is confiscation?

A. I would not want to make an investment without something near that return.

Q. 642. Other people feel the same way?

A. I have found that to be so as far as the investors are concerned.

Q. 643. Is it not a fact that the telephone company must keep its credit up so that it can go into the money market of the world and get new capital from year to year and take care of the growth of the business?

A. In order to get new capital it must show a return.

Q. 644. If they cannot show a fair return, they cannot
3177 induce new capital to go into the business?

A. No, sir.

Q. 645. You think they must show ten per cent net to induce capital to come in?

A. Yes, sir.

Q. 646. The telephone business is regarded generally as a precarious business?

A. In a way, on account of being so vitally connected with municipalities.

Q. 647. As a matter of fact it is regarded as a precarious business?

A. In a way.

Q. 648. And it is precarious?

A. To a certain extent.

Q. 649. Very much more so than steam or street railroads?

A. Yes, sir; I consider it so myself.

Q. 650. Telephone people now, at the present state of the art do not know when something will come out that will supercede what they have?

A. No, sir.

Q. 651. For that reason the risk is always hovering over?

A. Yes, sir.

3178 Q. 652. It is a serious problem?

A. Yes, sir.

Q. 653. It has a depreciating value on telephone securities in the mortgage?

A. Yes, sir.

Q. 654. This question of overhead loading expenses—you know what I mean?

A. Yes, sir.

Q. 655. Is there a difference in this overhead loading in piecemeal construction and original construction?

A. No, sir; I don't think there should be because in your piecemeal construction your overhead charges as it is over operating charges, as well as construction. I don't think it could run higher.

Q. 656. But there is an advantage and disadvantage with respect to overhead charges on piecemeal construction and original construction?

A. Yes, sir.

Q. 657. And one off sets the other?

A. Yes, sir.

Q. 658. And there is no difference between that and original construction?

A. No, sir.

Q. 659. But interest should be allowed during the period
3179 of construction on the money involved?

A. That is a question of finance.

Q. 660. What is usual?

A. If you go to the investor he wants interest to begin as soon as he turns over the money.

Q. 661. Which is right and proper?

A. Yes, sir.

Q. 662. So that you have to pay the current rate of interest from the minute he puts his money in?

A. Yes, sir.

Q. 663. And that much expense has to be added to your construction account?

A. Yes, sir.

Q. 664. What per cent of construction cost is usually allowed for organization and development?

A. I have covered my item with that $50,000 item.

Q. 665. Is that supposed to cover promotion charges?

A. Yes, sir.

Q. 666. The loss on tools and material, is not that considerable, and ought that not be taken into consideration?

A. Yes, sir.

Q. 667. Damages to person and property is another item?

A. Yes, sir; I have really considered that in my cost of
3180 construction, my twenty per duct foot is supposed to cover the extent of the damage.

Q. 668. What would you allow for the plant as supervision and engineering?

A. $20,000.

Q. 669. On a $1,000,000 investment?

A. I allow $20,000 for engineering and supervision. If the plant is to be constructed in one lump sum it could be done in one year to fifteen months.

Q. 670. Now executive expenses?

A. That is in general expenses.

Q. 671. What do you mean by general miscellaneous expenses?

A. My amount is $50,000.

Q. 672. Are all these other items included in that?

A. Yes, sir.

Q. 673. Is a four dollar maximum business rate in the City of Louisville a reasonable rate for a telephone plant?

A. You can not get an investor to put money in very fast at those rates.

Q. 674. What about $5.50 business rate, $4.00 for two party business rate and $3.00 direct residence and $2.00 for a party residence, are they reasonable?

3181 A. My idea of rates is they should be on a sliding scale, that there should not be any fixed rate, it should be on a sliding scale rate. If you are getting business you should get a corresponding return.

Q. 675. Do you believe a telephone plant in the City of Louisville costing $1,300,000 you have stated can make a fair return upon that money on the rates I have just stated?

A. I believe they can for a certain length of time, that is you should have a sliding scale, for instance when your exchange gets up to fifteen thousand or twenty thousand it should automatically increase. You could not operate indefinitely for those rates.

Q. 676. What would be the immediate effect on the exchange if the rates should be reduced from $8.00 to $5.50 and correspondingly on the other rates I have mentioned?

A. It would be a pretty hard question to answer.

Q. 677. Would it not result in an increase in subscribers?

A. Yes, sir.

Q. 678. And that would result in an increased capital account?

A. Yes, sir.

3182 Q. 679. And it would result in an increase in operating expenses?

A. Yes, sir.

Q. 680. And maintenance?

A. Yes, sir.

Q. 681. And depreciation?

A. Yes, sir.

Q. 682. And taxes and all other items connected with the operation of the plant?

A. Yes, sir.

Q. 683. Now then a reduction in the rates would not reduce the expenses any, would it?

A. A reduction in the rates would not reduce the expenses, no, sir.

Q. 684. On the contrary if there were increased patronage would not there be increased expenses?

A. Yes, sir.

Q. 685. And an increase per station?

A. No, I am not certain that they would increase per station. That is, the average amount. Of course, it would increase to a certain point but there is a limit to that increase. It depends on the

character of service and what proportions are private branch and party line stations and independent lines.

3183 Q. 686. Assuming that they are all subscribers at the rate I have mentioned and there was an increase in patronage would not it increase the expenses per station?

A. It all depends on what per cent of your total are party lines to the total number of circuits.

Q. 687. If every residence took the two party residence rate it would bankrupt the company in a short time, would it not?

A. It would probably cause some trouble.

Q. 688. And if all the business people took a four dollar line rate it would cause serious financial trouble?

A. Yes, sir.

Q. 689. So that it would be a mere surmise as to the patrons would become?

A. Yes, sir.

Q. 690. And as to what different rates they would take?

A. Yes, sir.

Q. 691. It would be a risk you would not like to assume if your money was involved?

A. Not any large amount.

Q. 692. Would you be willing to risk a small amount,

3184 would it not be a mere matter of degree?

A. I might be willing to take a gamble.

Q. 693. But it would be a gamble at last?

A. In a way.

Q. 694. You spoke of the Home Telephone Company plant having cost less than $1,000,000 when they had I believe 6,000 subscribers?

A. I said 6,000 working circuits.

Q. 695. How many working circuits did they have when you left Louisville?

A. The original installation was 5,000 and they had that 5,000 within four months after they began operation.

Q. 696. How much did the plant cost for the original 5,000?

A. I do not remember exactly.

Q. 697. Give it as near as you can. I want to say this, that when your other deposition was taken I did not feel that I had a right to press you on the Home Telephone Company affairs but in view of you bringing it back into the record, the second time, and giving statements of comparison——

A. I did not bring it back, Mr. Blakey did.

Q. 698. You did not decline to answer his questions and you must not decline to answer mine. I regret to bring these

3185 people in, I did not assume that they had anything to do with the case, but if one side brings it in I want to pursue comparisons and I want to ask you to answer my questions frankly as you have answered the others.

A. How many more questions are you going to ask?

Q. 699. Quite a number if I can not get answers.

A. My memory is going to get very poor suddenly.

Q. 700. If it is I shall ask the master to jog it.
A. I don't remember well.
Q. 701. In your best guess——
A. I don't like to guess on a subject of that character.
Q. 702. Let me get another line of thought. The Louisville Home Telephone Company was organized for the purpose of operating a telephone plant in Louisville?
A. Yes, sir.
Q. 703. At the time it had no plant or telephone property here?
A. No, sir.
Q. 704. This plant in Louisville was built by a construction company?
A. Yes, sir.
3186 Q. 705. Then it was sold to the Louisville Home Telephone Company?
A. Yes, sir.
Q. How much did the Louisville Home Telephone Company pay this construction company for the plant?
A. They paid them in bonds and stock.
Q. 707. How much?
A. I don't remember what the initial issue was. I think it was about $1,200,000, but I would not be sure.
Q. 708. $1,200,000, in what?
A. Bonds and stocks.
Q. 709. How much bonds and stocks?
A. Equal amount.
Q. 710. You mean $600,000, of each?
A. No, sir, $1,200,000.
Q. 711. That is approximately correct?
A. Yes, sir.
Q. 712. Within $50,000, being correct?
A. I don't know about the bond issue. I really have forgotten what the bond issue is.
Q. 713. It is within $100,000, being correct?
A. Yes, sir; there is no question about that.
3187 Q. 714. How many telephone stations did it have at that time?
A. The contract was to put in 4,000 in operation and provide facilities for 5,000.
Q. 715. And that was done?
A. Yes, sir.
Q. 716. And for that the Louisville Home Telephone Company paid, as you recollect, $1,200,000, on bonds and $1,200,000, worth of stock?
A. Somewhere in that neighborhood.
Q. 717. I presume the contractors made a reasonable profit on the work of building the plant?
A. I presume they did.
Q. 718. It was right and proper that they should?
A. Yes, sir.
Q. 719. From that time to the present time how has that exchange increased as to subscribers?

A. They had then 6,000 circuit which I referred to in operating within ten months after the beginning of the service.

Q. 720. That additional thousand circuits that they had to add was additional construction?

A. No, sir; there was 1,000 of that already there and 1,000 above the 5,000 was additional construction.

3188 Q. 721. You spoke of the Toledo plant, and of the value of its stock. Do you think the Toledo company is properly caring for its plant, and earning interest on the amount of bonds outstanding, and a dividend on its stock?

A. They are not placing by the proper reserve or Depreciation Fund.

Q. 722. They are not caring for the property, as it should be cared for, if it is to live?

A. Not according to my idea.

Q. 723. Is it not a fact that when you talk about rates in a number of subscribers to a telephone exchange, that that does not give any definite idea as to whether that is a fair rate or not the simple fact that the companies operating on those rates; Is not that correct?

A. It does not give any idea of the financial condition of the company.

Q. 724. It does not mean anything to a telephone man?

A. No, sir.

Q. 725. And no conclusion of any value can be drawn from that fact?

A. No absolutely correct conclusion.

Q. 726. Can even an approximately correct conclusion be drawn?

A. If you don't know the financial condition, you cannot.

3189 Q. 727. I mean the mere fact that a certain telephone charging a certain rate has a certain number of subscribers gives no conception of whether the rates are reasonable or unreasonable?

A. No, sir.

Q. 728. Going a little further, the fact that a telephone company is paying interest on its bonds or paying dividends on its stock, that telephone man does not give any reasonable idea as to whether the company is successful or unsuccessful or the rates reasonable or unreasonable.

A. Not unless it is known how long they have been doing those things.

Q. 729. Over a period of a few years, I say. If that situation has existed only for a year?

A. Only a short time, it would give no accurate idea of the true situation.

Q. 730. No man conversant with the telephone affairs would undertake to buy securities on those facts alone?

A. No, sir.

Q. 731. If he did, he would be gambling, just as you spoke of certain rates being a gamble?

A. Yes, sir.

Q. 732. So that at last it depends entirely upon many items and elements whether a rate is reasonable or unreasonable more than

upon the mere fact that a company is charging certain rates
3190 and paying dividends and interest on its bonds with a certain number of subscribers?

A. Yes, sir.

Q. 733. In other words, it depended to a very great extent as to whether or not the property is being properly cared for?

A. Yes, sir.

Q. 734. Telephone property, like a good many other kinds of property can be milked?

A. Yes, sir.

Q. 735. You know what I mean by that?

A. Yes, sir; I have an idea.

Q. 736. In other words, it is practically liquidation?

A. Yes, sir.

Q. 737. And the interest on the bonds and the dividends on the stock is a liquidating process, that is correct?

A. In a way.

Q. 738. The result is the same after a few years, that property ceases to earn anything?

A. Yes, sir.

Q. 739. I will ask you whether you think the Cumberland Telephone Co. has purposely or intentionally purchased and put into the city of Louisville, its plant here more property than is right and proper?

A. I would say it has as far as the cable system is con-
3191 cerned. I would say this: As far as the cable system is concerned I cannot see how so much cable got into the system. I cannot see how it happened.

Q. 740. There are many things that are not clear to a man that could be made clear by the party who did it giving his reasons for doing it.

A. That is possible.

Q. 741. As a matter of fact, have you not often times been asked your reason for doing certain things in the telephone business?

A. Yes, sir.

Q. 742. When you gave the reasons for it, they were accepted as reasonable and proper?

A. No, sir; not always accepted as proper.

Q. 743. But they understood why you had done it?

A. It might have been looked on as a good excuse.

Q. 744. All people make mistakes, do they not, telephone men, as well as others?

A. Telephone men are supposed not to make mistakes.

Q. 745. I mean in the estimation of the public, but as a matter of fact they do?

A. They do occasionally.

Q. 746. Sometimes, one man in the exercise of the same good judgment that another man exercises, would do a thing differently?

A. He might.

3192 Q. 747. Therefore, at last, the man who did it and exercised judgment on it, is the man who is best qualified as to the reason for it.

A. He probably would know better than anybody else, what his reasons were.

Q. 748. Have you had any experience in operating telephone plants in the last ten years?

A. I have not had any experience as a direct officer in authority. I have been associated with companies, and knew what they were doing, and what their expenses were.

Q. 749. You have not yourself been in the position to direct and control these matters?

A. I have for short periods of time, but not continuously.

Q. 750. That means with reference to a brand new plant just started?

A. Yes, sir.

Q. 751. Of course, when a plant is brand new, the problems are wholly different than those that will be encountered later on?

A. Yes, sir.

Q. 752. Your estimate of expenses of conducting the plant in Louisville, do you think those are to be relied on or are they your opinion?

A. It is my opinion, a sort of average of what is given out in statistics as the cost of operation per station.

3193 Q. 753. What statistics do you refer to?

A. The report that I have seen from time to time of operation and cost of operation of plants.

Q. 754. Generally throughout the country?

A. Yes, sir.

Q. 755. Different as to different cities, of course?

A. Yes, sir.

Q. 756. And from that you are making up an estimate of what you think is right?

A. From that, I have given you those figures.

Q. 757. Had you thought about the question prior to my asking it?

A. No, sir.

Q. 757½. So that is your off-hand opinion?

A. Yes, sir; in a way.

Q. 758. Are you familiar with the Government statistics?

A. I have read parts of them now and then. I am not familiar as far as this memorandum is concerned.

Q. 759. You would not be able to answer definitely any questions in regard to what they show?

A. No, sir.

Q. 760. Are you familiar or do you know anything of telephone plants at Los Angeles, Cal.?

A. No, sir.

Q. 761. Or San Francisco?

3194 A. No, sir; none of those Western properties. I have never had anything to do with them.

Q. 762. Or Enid, Okla?

A. No, sir.

Q. 763. Or the Wisconsin Company?

A. No, sir.

Q. 764. Or the New England Companies?

A. No, sir.

Q. 765. What plants are you familiar with that have been recently inventoried?

A. The Central Home Telephone, and the Long Distance of Alabama.

Q. 766. At what point is the Central Home?

A. Louisville, Ky., operating plants in Kentucky.

Q. 767. They are hardly to be compared with plants like Louisville, they are small places.

A. Yes, sir.

Q. 768. The Alabama Long Distance is the toll line running throughout the country?

A. Yes, sir.

Q. 769. Do you know why people in Louisville pay the complainant company $7.50 net for business machine, when they can get the Home Telephone for $4 a month?

A. Because they desire the Cumberland service, I suppose.

3195 Q. 770. It means that they think the service is worth the price?

A. No, sir; not necessarily so. A man in commercial business is forced to have the telephone, regardless of price.

Q. 771. Suppose he could get a Home Telephone at $4 and he takes the Cumberland at $7.50, what does that indicate?

A. It may be necessary for him to have both.

Q. 772. Suppose he only has one, what is the explanation of your mind? There is no catch in the question. I just want to know what you think about it.

A. He may have personal reasons of his own. He may have a preference for the company, and be more friendly or he may have an investment in the company.

Q. 773. Business men usually take that that they get the most for their money?

A. Yes, sir.

Q. 774. It is not a question of sentiment is it?

A. No, sir; not usually in a case of that kind.

Q. 775. Is it not a fact in your opinion because they get something from the Cumberland that they don't get from the Home?

A. There may be certain other subscribers that he may want to get and it is necessary for him to have it.

3196 Q. 776. Take it on a residence: Why is it that people at their residence will pay $4 for the Cumberland instead of $2 for the Home?

A. They might have particular members of the family who have the Cumberland, and they may be compelled to have it.

Q. 777. Why don't they all take the $2 telephone?

A. They may not agree.

Q. 778. It that the only reason?

A. That seems to be the only reason.

Q. 779. Don't you think that the comprehensive service is a very large element in the value?

A. The number of subscribers is important.

Q. 780. The one that reaches the most points and people in the general community, and the one that goes farther out in the communities throughout the country, is not that an element of value that enters into the price of the service?

A. It is an element, a very small element because there is a small percent that cares about toll connection.

Q. 781. Leaving out toll connections, take only connections that come in this general vicinity, don't you think the more comprehensive services, the more valuable?

A. Unquestionably.

Q. 782. And that is a large part of the value of the
3197 service?

A. Yes, sir; that is one of the parts of the value of the service.

Q. 783. You don't care to express any further opinion on why the people in Louisville will pay $7.50 instead of $4?

A. I don't like to go into an explanation why Louisville prefers to do one thing over another, that I don't know about.

Re-examined by Mr. BLAKEY:

Q. 784. I believe you said in 1907, that cable was about twenty percent higher than now?

A. Yes, sir.

Q. 785. How was it in 1903 and 1904?

A. Lower than now, slightly. At one time about in 1901 copper was down to about eleven cents a pound. That is cheaper than copper is now.

Q. 786. I show you a copy of Exhibit No. 2 filed by Mr. Smith in his deposition, showing the Construction Account for aerial systems from the year 1899 to the year 1908 inclusive, and I ask you whether that exhibit seems to include under aerial all of the cable systems?

A. From the amount, it would seem it does.

Q. 787. I call your attention to 1904, and I ask you how much Mr. Smith *chose* on that exhibit as the amount invested in the
3198 aerial cable up to 1904?

A. $706,077.74.

Q. 788. How much does he show up to 1908?

A. $832,364.43.

Q. 789. And that is a difference of about $126,000 in those five years, is it not?

A. Yes, sir.

Q. 790. Is 1908 the last year which appears on that exhibit?

A. Yes, sir.

Q. 791. Would it seem from that exhibit that the construction cost of aerial system included the cables during the years 1904, 1905, 1906 and 1907 amounted to only about $126,000?

A. Yes, sir.

Q. 792. And the total amount of construction is $832,000?

A. $832,364.43.

Q. 793. How was the prices generally during the years 1900, 1901, 1902, 1903 and 1904, as compared with the present prices?

A. Cables were practically the same as now or possibly a little

lower as copper at one time got down as low as eleven or twelve cents, whereas now it is fourteen cents and a fraction.

Q. 794. You stated that the cable in this system as it ap-
3199 pears on the blue prints is from 35 to 40 percent in excess of what is in use.

A. What is actually needed further than what is actually in use.

Q. 795. What do you place as the value of the cable system here in Louisville?

A. Just the aerial of the whole business.

Q. 796. The whole business?

A. 430,900.

Q. 797. What is thirty-five per cent of that amount?

A. $150,815.

Q. 798. If you deduct from the total given in your direct examination as the value of the plant, it makes a difference of how much?

A. We would value the plant at $1,044,922.

Q. 799. What does Mr. Jagoe place as the value of the cables in the Louisville plant?

A. $720,895.

Q. 800. What is thirty-five percent of that?

A. $252,313.

Q. 801. Mr. Granbery has asked you in regard to the capital required to take care of new subscribers in case the rate ordinance goes into effect. How many new subscribers will the plant, as it exists now, take care of in your opinion and first you may indicate how much the cable system will take care of in addition to what
3200 it now has.

A. The cable system will take care of 8,000 additional circuits before any additions are necessary.

Q. 802. Does that mean 8,000 or more subscribers?

A. More than 8,000 subscribers, if they were on party lines.

Q. 803. But 8,000 if they were all on single lines?

A. Yes, sir; as far as the cable system is concerned.

Q. 804. I believe you said in your former deposition the equipment was sufficient to take care of 2500 more.

—. Switchboard facilities will take care of 4,380 additional circuits.

Q. 804½. Now, what about the conduit system in this respect?

A. The cables are all in the conduits and the conduits unquestionably can take 8,000 additional. It is unlimited as to the conduits, it depends on the size installed hereafter.

Q. 805. In a general way, for what class of people do you perform service?

A. Telephone people, telephone investors and constructors.

Q. 806. Are your interests identically or substantially so with the telephone constructors?

A. No, sir; in the last two years I have been conducting an office of my own, not identified with any company, but simply as
3201 an individual engineer. Of course, during that period, I have been in th employ of people outside of the telephone

business quite a good deal, that is, municipalities and taxing commissions.

Q. 807. Prior to that time, you were employed by the telephone people direct?

A. Yes, sir.

By Mr. GRANBERY:

Q. 808. The people you have been connected with in constructing and building telephone plants were people building to sell and not to operate, were they not generally speaking?

A. Some plants they were supposed at the time to operate, but the events of the last six months, would indicate that they were building to sell.

Q. 809. Which plants have you been connected with in ten years that were built originally with a view to operating?

A. I think the Toledo was built with a view unquestionably of operating. That is, I mean the company itself. Of course, the construction company built it, to sell it to the Operating Co. but the Operating Co. was organized with the idea of operating it.

Q. 810. You were only connected with the Construction Co. or with the Operating Co.?

3202 A. Both, the first year.

Q. 811. The Construction Co. caused the Operating Co. to be organized?

A. Yes, sir.

Q. 812. And the Construction Co. built the plant, and sold it to the Operating Co.?

A. Yes, sir.

Q. 813. Then the Construction Co. sold the securities, it received for building, and went to some other place to build another plant?

A. Yes, sir.

Q. 814. That *has* in the course?

A. Yes, sir; largely so.

Q. 815. I neglected to ask you: Did you take these blue prints, I last filed, and make your computations?

A. Yes, sir; I did; I made them in my office in Toledo, and I took plenty of time.

Q. 816. You didn't do it since you have been in Louisville at the present time?

A. No, sir.

Q. 817. How long have you been in Louisville at the present time?

A. Since Tuesday morning.

Q. 818. Mr. Blakey asked you about the cable capacity,

3203 serving additional patrons, and you say 8,000 subscribers. Could 8,000 subscribers be added without additional expense?

A. No, sir.

Q. 819. You didn't mean that at all?

A. No, sir. I said the cable system would take that.

Q. 820. That would depend on whether you got the additional subscribers where the cables are.

A. Yes, sir; but the cable system covers the entire city.

Q. 821. And you don't know that the company is now confronted

with the necessity of spending $25,000 or $30,000 for additional cable?

A. No, sir.

Q. 822. If they get 8,000 more subscribers, what would be the expenses if they are right where the cables are?

A. The expense of carrying the circuit.

Q. 823. I mean per subscriber.

A. Say $20 or $25 per station.

Q. 824. That is, if the subscribers are right where they can be served?

A. So that it would take nothing but the drop to make the installation.

Q. 825. And that assumes that there is nothing but the drop to make the installation?

A. Yes, sir.

3204 Q. 826. That would bring the investment in Louisville per subscriber down to how much?

A. It would be 8,000 added to 9,000, would be 17,000—I have not got the per cent of investment per subscriber.

Q. 827. On your basis?

A. The present investment per subscriber in round figures——

Q. 828. I didn't ask the present investment, I asked what the expenses would be to add 8,000 more subscribers—what investment per subscriber?

A. $81.

Q. 829. That is a very low valuation?

A. It is.

Q. 830. Do you know a plant of that size in America that has that low a valuation?

A. I do not believe I do.

By Mr. BLAKEY:

Q. 831. What is the difference between creosoted pine poles and the other chestnut poles, insofar as breaking easily is concerned?

A. I do not consider a pine pole as good as a chestnut pole in this territory.

Q. 832. Why?

A. It don't carry the load, or stand the strain.

Here the taking was adjourned until tomorrow morning at ten o'clock.

3205 At 10 o'clock A. M., April 8, 1910, met at the office of the City Attorney.

By Mr. GRANBERY: On yesterday afternoon this deposition (deposition of W. C. Polk) was closed with the exception of the location of the pole route mentioned by Mr. Jago.

By Mr. BLAKEY: Nothing was said, as far as I know, when the adjournment was had yesterday about closing the deposition, though it is true that I had asked Mr. Polk all the questions that I intended at that time to ask him. The witness was requested to go with employés of the Telephone Company and inspect certain parts of the

plant and return at ten o'clock this morning, and the taking of the deposition was continued until ten o'clock this morning.

By Mr. GRANBERY: No such conversation occurred in my presence and I was present until the stenographer left, and left Mr. Polk and Mr. Blakey alone in the room. The taking of depositions was continued until the next day at ten o'clock, Mr. Blakey stating he had some witnesses he wanted to take the depositions of with
3206 respect to service in this section, and he asked first that they be continued until the afternoon, and I stated I very much preferred the morning as I wanted to leave on an afternoon train; and thereupon he said "Ten o'clock to-morrow morning."

W. C. POLK, on further redirect examination by Mr. Blakey deposed as follows:

Q. Did you make the trip with the employés of the Cumberland Telephone Company, as requested by Mr. Granbery, for the purpose of investigating further the creosoted pole routes mentioned by Mr. Jago?

A. I did, yes, sir.

Q. Did you find any at any of the places mentioned by you yesterday as having been visited the day before?

A. The location referred to was upon West Market, from 11th west to 22nd. We went over this route and found one creosoted pine pole.

Q. Did the employés of the Company then take you to any other sections, for instance, Bank Street and Jefferson Street,—I believe they were the two mentioned yesterday as not having creosoted poles?

A. I did not go to Bank Street but I believe they did take me on Jefferson—that is, the extreme western end—at least, they took me to several points where there were creosoted pine poles; I don't
3207 remember the exact points now.

Q. Approximately how many did they show you?

A. I suppose off-hand in the territory we covered there were a couple of hundred poles.

Q. What was the class of those creosoted poles?

A. I didn't make any examination as to ascertaining whether they were thoroughly creosoted under pressure, or whether they had been dipped. I made no attempt to investigate that.

Q. In a conversation with Mr. Granbery he told both you and me, I believe that the Cumberland Telephone Company would produce invoices showing that they paid more for the poles than the amounts designated in your direct-examination. I wish you would state in detail the reason for your saying that the creosoted poles can be purchased for the amount you designated?

A. I purchased creosoted pine poles myself and know absolutely what they cost at the factory, and in order to revive my memory since the situation came up here in Louisville I called for correspondence in connection with this matter from the Manager at Mobile, knowing that we had purchased quite a number of creosoted pine poles for that point, and had him forward me invoices with specifications that we used, and from my knowledge obtained from

this source I know absolutely that we can deliver poles in Louisville, creosoted under the most strict specifications, under pressure, at least twelve to fifteen pounds of oil per cubic foot, forty foot, seven inch top pine poles for not to exceed $9.00 each. I will state
3208 further that these prices that I used as a basis were those governing in the early part of 1907 when materials of all character, especially materials entering into the construction of telephone plants, were much higher than the current prices at this date.

Q. In giving the amount of new capital required to install eight thousand new telephone subscribers I believe you stated it would be approximately $25.00 a station. What did that $25.00 include?

A. The question, the way it was put to me, as I understand it, was, assuming that there would be no expense except that of running the drop and installing the telephone at the subscriber's station, what would it cost per station to add 8000 telephones, and I stated, assuming that those were to be the only expenses, it would cost about $25.00 per line.

Q. What other costs would there be in connection with installing 8000 new subscribers here in Louisville?

A. The cost would be increased in the switch-boards, increased in the trunking facilities between the offices—if 8000 additional subscribers were added, of course it would be unreasonable to assume there would be no expense at the outer end; there would have to be a certain number of additional cross-arms put on, a certain number of additional insulators, and a certain amount of aerial wire strung so the assumption, of course, is an impossible condition that wouldn't exist.

Q. The total figure you arrive at, I believe, on the basis of $25., and on the basis of your valuation of the plant as it now
3209 exists, would be about $81. a station. What amount, per station, in your opinion would have to be added to take care of these additional conditions you have mentioned?

A. At the present time the switchboard is valued at $203,000, approximately; 10,000 line equipment would make the present average cost of switchboard for one line twenty dollars and a fraction. In order to place 8000 more subscribers to the system, they would have to have at least 4000 additional switchboard capacity average, and as these switchboards grow, being of a multiple character, the cost per line will increase; so it is reasonable to assume that these 4000 additional lines would cost at least $22. per average. That would make an additional expense of 22 x 4000, which would be $88,000 for switchboards alone. Also, for the expense at the outer end; stringing what additional aerial wire might be necessary, putting on additional cross-arms, and insulators, we will say $5.00 a station. 8000 would make an additional of $40,000 expense. I figure that this would probably be a reasonable additional expense assuming that the cable facilities were ample.

Q. Then about how much per line would be left as the value of the plant—I mean, how much per station—in a general way—you needn't figure it out?

A. The value of the property per station at that time would be approximately $90 per station.

Q. You stated in answer to a question propounded by Mr. Granbery that you thought a Telephone Company ought to be allowed to earn 10% on the amount invested in its plant, I believe?

3210 A. Yes, sir.

Q. Take the question of the Toledo plant. Do you think the Toledo plant ought to be allowed to earn four or five per cent on its bonds and ten per cent on its stock?

A. No; I don't mean that where the bond issue precedes the stock issue that the property should earn ten per cent on the stock in addition to the bonds. What I meant was there should be a total earning of ten per cent: If there was a five per cent bond issue in advance of the stock, that the stock would be entitled to at least five per cent; if there was a six per cent bond issue in advance of the stock, the stock should be entitled to an additional four per cent, or a total of ten per cent all told on the fixed charges.

Q. On what do you base that opinion?

A. I base it on this reason: that the ordinary investor of capital can easily get a return of six per cent on safe investments such as real estate mortgages or what may be called permanent and safe investments. The telephone business being a more hazardous risk business than real estate, the investment is surely entitled to an additional return for the extra risk, and I would consider four per cent to be reasonable.

Q. If a Telephone Company had been in existence twenty years and paid seven or eight per cent during the entire time on the amount invested, had a perpetual franchise and its rates never regulated by any municipality or state or commission, but it had been allowed to charge whatever rates it saw fit to charge during the entire period, and still permitted to charge whatever rates it

3211 sees fit to make, what would be your opinion as to the amount it should be allowed to earn?

A. If a company has a perpetual franchise and no restrictions as to rates or rights in any way, I would say that it is not entiled to as high a return as a Company that might be restricted; and if it had been in business for a series of years and had its business already established, I would say that possibly six or eight per cent return in that case would be all right.

Q. Do most of the Telephone Companies have perpetual franchises or limited franchises as to duration?

A. Most of them that I am familiar with are limited as to their time, and also restricted as to their rates.

Recross-examined by Mr. GRANBERY:

Q. Where was this conversation with Mr. Granbery that you refer to?

A. I didn't refer to it. It was at the desk there, all three of us. Mr. Blakey referred to the conversation; I think it was at the desk last evening when we were all three together.

Q. What desk?

A. At the Seelbach Hotel.

Q. After your deposition had been closed?

A. Yes, sir.

Q. A purely personal conversation, wasn't it?
A. Yes, sir.

Q. Mr. Jago spoke of several places where he said there
3212 were creosoted pine poles. Did you visit all those places?

A. No; we went to this particular place under discussion on West Market from 14th to 22nd, and then being in that territory, they said there were some places near there on west, so we went to the place on west and not to the other points that had been designated in the deposition.

Q. And it simply developed that Mr. Jago had misstated this one place in giving a list of places?

A. Yes, sir, as far as we investigated. We went to none of the other places mentioned.

Q. Your deposition was closed on yesterday afternoon with the exception of investigating those places, wasn't it?

A. Yes, sir.

Q. You so understood it?

A. I did, yes, sir.

Mr. Granbery asked Mr. Blakey if he had any further testimony to offer in this case.

Mr. BLAKEY: The case for the City is now made up with the exception that I should like to have a stipulation filing the last report of the American Telephone & Telegraph Co.—said stipulation to be in accordance with the former stipulation filing other papers of similar notice in this case.

3213 Mr. GRANBERY: I remember no such stipulation in regard to such papers and I shall decline to make any stipulation in regard to the paper proposed for the reason that it is wholy irrelevant and incompetent.

Mr. GRANBERY: Do you wish to take any additional testimony, or is the City's case closed?

Mr. BLAKEY: The City's case is closed with the exception of that report. We desire to get that in in some way.

Mr. GRANBERY: Will Mr. Blakey notify Mr. Granbery when he has closed his case?

Mr. BLAKEY: Well, I close it right now.

Mr. GRANBERY: Then the case of the City is closed?

Mr. BLAKEY: It is.

W. C. POLK.

3214 United States Circuit Court for the Sixth Circuit and Western District of Kentucky.

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH CO., Plaintiff,

vs.

CITY OF LOUISVILLE, Defendant.

The Depositions of W. H. Casler and Others, Taken on the 6th day of January, 1910, at the Office of the City Attorney of the City of Louisville, in the City Hall, Sixth and Jefferson Streets, at Louisville, County of Jefferson and State of Kentucky, to be Read as Evidence on Behalf of the Defendant in the Above-entitled Action.

Present:

For Plaintiff: Mr. Granbery.
For Defendant: Mr. Clayton B. Blakey.
For the Louisville Home Telephone Company: Mr. Helm Bruce.
Judge Henry Burnett, Special Commissioner.

W. H. CASLER, called for the defendant, the City of Louisville, being duly sworn and examined by Mr. Blakey, deposed as follows:

1. What is your business?
A. I am Manager of the Vendome Restaurant on Fourth Street.
2. In Louisville, Ky.?
A. Yes, sir.
3. You live in Louisville, Ky., do you?
A. Yes, sir.
4. Have you a Cumberland telephone in your place of business?
A. Yes, sir.

3215 5. What is it, a party line or direct line?

A. It is a direct line, so far as I know. They gave it to me on the condition that they might change it later on, but they said it would possibly be two or three years before it would be a party line, and it never has been made a party line as yet. I had it since about May or June I think it was.

6. What took place when the solicitor came to you to induce you to take his telephone?

A. Well, I first wanted to put in a Cumberland telephone and I asked them their rates, and their rates were so exorbitant I refused to take it. I have forgotten how much it was. I think it was eight dollars or more, anyhow. I forget how much it was. They asked me for it, but afterwards the solicitor came to me and made me a cheaper rate and I told him at the time that I would not accept that rate with a party line, and he told me he would put that line in and possibly I would be the only one on the line for some time, possibly for two or three years, he said, and maybe we might never have a

party line out of it. So far as I know, there is still no one on the line except me.

7. Would you have taken the telephone except for the assurance that it would remain a single direct line?

A. I took it with the impression, and I told them—I impressed them with the fact that I only wanted a line by myself. That I did not want any party line.

Cross-examined by Mr. GRANBERY, as attorney for the plaintiff, The Cumberland Telephone & Telegraph Company:

8. Do you mean to say that you have no agreement or contract by which you are paying a party line rate and getting a direct telephone?

A. I have not an agreement to that effect—no sir.

9. Do you understand the Company can at any time it desires put somebody else on that line with you?

A. Yes, sir; but they led me unde- the impression that it would be some time and possibly never, you see.

10. Didn't they tell you this, that they would have to find
3216 other people in your neighborhood who would be parties on that line before they could put anybody else on it, and they might not find anybody?

A. They did not say that—no sir. They said it might be possible that they might sometime put somebody else on it, and it might be two or three years.

11. Did you sign a written contract?

A. Yes, sir.

12. And it specified it was for a party line telephone, didn't it?

A. I think it did. I won't say positively. I have the contract.

13. And you understand the Company can any time it desires put another party on that line?

A. Sure.

14. What is your number?

A. 127 South Fourth. My telephone number is 3924 Main.

15. Hasn't it a letter?

A. I think it has, "A" on it—yes sir.

16. Then it is not—then what is your telephone number?

A. I think it is Main 324*a*.

17. You know the letters are only used on party line telephones?

A. Sure. Sure, I know that.

18. What was the solicitor's name?

A. Johnson.

19. Do you know his initials?

A. I don't know his initials.

3217 CHARLES E. ARCHER, called for the defendant, the City of Louisville, being duly sworn and examined by Mr. Blakey, deposed as follows:

1. Where do you live?

A. Louisville.

2. What is your occupation?

A. Cashier of the Louisville Home Telephone Company.

3. How long have you held that position?

A. Since the telephone company has been in existence.

4. Were you Cashier during the year 1907—the year of 1907 and 1908?

A. Yes, sir.

5. Did the Louisville Home Telephone Company have any party lines during those years?

Mr. BRUCE: Mr. Commissioner, I object to any questions being asked of this witness as to the business affairs of the Home Telephone Company. My position being that neither party to this litigation has a right to bring into this record the affairs of an outside third party, to-wit, the Louisville Home Telephone Company, that has no interest in this litigation; and I therefore object on behalf of the witness as the employé of the Louisville Home Telephone Company, and on behalf of the Louisville Home Telephone Company, and I will ask you to refer the question to the Court in which this case is pending for determination.

The COMMISSIONER: I read a case cited to me by Mr. Blakey in 148 Federal, decided by a District Judge in St. Louis, Judge Falkenburg, in a controversy between the United States and the terminal association of railroads in St. Louis, a suit brought under the Sherman Act, charging fourteen steam-railroads with the ownership and control, at least,—the ownership I believe and control of this terminal association, and charging that they had conspired together to destroy competition in Interstate traffic in and out of St. Louis. The matter was referred to a Special Master to take proof after the issues were made up and certain traffic associations, among others
3218 the St. Louis and Cincinnati Traffic Association were called on through their officers to produce their books and to disclose what their business relations were with this Terminal Association, what their contracts were and so on. Objection was made by everybody to the competency of the testimony. Judge Falkenburg ruled, after argument, that it not appearing that any particular harm would result, no special harm would result to these companies of which the witnesses were officers, that he would compel them to bring in everything that the Government wanted. I tried to see whether that case was appealed, that feature of it, but I have not been able to find it. I am very frank to say that the ruling was contrary to my impression of what was the right thing to do. I do not like to decide a question of this kind off hand, and I would suggest that you submit to me some authorities.

Mr. BRUCE: Have you the power to pass on this question?

The COMMISSIONER: That is one of the things I would like to hear you on. I would say I have not.

Mr. BRUCE: As a general rule, it is perfectly well settled that a Commissioner has no power to pass on questions.

The COMMISSIONER: That is the way I understand it.

Mr. BRUCE: That is the reason that I suggest we refer the matter to the Court and be heard before the Court.

The COMMISSIONER: Is that satisfactory to you, Mr. Blakey?

Mr. BLAKEY: Entirely satisfactory.

Mr. GRANBERY: I would suggest that Mr. Blakey ask the questions to the witness and the objections noted so that the matter can be brought squarely before the Court.

6. Do you know how many instruments the Home Telephone Company had in service in the City of Louisville during the year 1907?

Mr. BRUCE: For the same reasons heretofore given on behalf of the witness, and the Louisville Home Telephone Company, his employer, I object to that question and suggest to the witness to decline to answer it until the Court passes upon the question.

7. What were the average number of telephones in service connected with the Home Telephone Company's plant in Louis-
3219 ville during the year 1907?

Mr. BRUCE: The same objection and the same suggestion.

8. What were the average number of telephones in service during the first four months of the year 1908?

Mr. BRUCE: Same objection and same suggestion.

9. How many telephones did the Home Telephone Company have installed in the town of New Albany, Indiana, during the year 1907 and the first four months of the year 1908?

Mr. BRUCE: Same objection and same suggestion.

10. How many did the Company have installed in the town of Anchorage during the year of 1907 and 1908—I mean the average number?

Mr. BRUCE: Same objection and same suggestion.

11. How many in Pewee Valley?

Mr. BRUCE: Same objection and same suggestion.

12. What were the receipts of the Home Telephone Company representing its earnings for the year 1907, from what might be termed its toll department or long distance messages?

Mr. BRUCE: Same objection and same suggestion.

13. What were those receipts for the first four months of 1908?

Mr. BRUCE: Same objection and suggestion.

14. During the year 1907, if you state the number of telephones in service in the City of Louisville, please state how many of them were residence telephones and how many were business telephones.

Mr. BRUCE: Same objection and suggestion.

15. How many were residence telephones and how many were business telephones for the first four months of the year 1908?

Mr. BRUCE: Same objection and suggestion.

To each of the foregoing questions the witness declined to answer until the Court could pass upon the question as to whether or not he must.

The COMMISSIONER: The Commissioner rules that the witness should not be required to answer the questions, and the questions herein propounded are certified to the Judge for determination.

3220 The further taking of the deposition of this witness was adjourned until 3 o'clock P. M.

At 2 P. M. Jan. 6, 1910, the parties appeared before the Judge in Chambers and the Complainant by its counsel also entered and urged its objections to the questions asked the witness Archer, and the matters were argued.

The Court after consideration was of opinion that whether the testimony sought to be elicited was or was not competent as between the actual parties to the suit if the witness were willing to give it, yet as he is not willing, the defendant has no right to extort in this action information as to the private workings of the Company of which witness is an officer.

If, in order to show the percentage of earnings which are realized on other investments, persons were compelled to disclose their business secrets, there would hardly be an end to this case, especially if the book-keeping methods of each person or corporation be gone into.

The order of reference contemplates no such inquisitorial proceedings in case of persons unwilling to disclose their own private affairs which have no connection with the litigation between the parties to this suit.

The ruling of the Special Master was correct, and the questions asked are excluded upon authorities like Southern Railway Co. vs. North Carolina Railroad Commissioner, 104 Fed., at pages 703-4.

WALTER EVANS, *Judge.*

3221 CHARLES MERIWETHER, called for the defendant, the City of Louisville, being duly sworn and examined by Mr. Clayton Blakey, deposed as follows:

1. Where do you live?

A. City of Louisville, State of Kentucky.

2. What is your occupation?

A. Accountant.

3. How long have you been engaged in the business of accounting and examining books?

A. About thirty odd years.

4. What has been the nature of your business in this connection?

A. I made examinations from Maine to California, from the Gulf to the Lakes, for firms and surety companies upon bonds of public officials.

5. Did you ever make an examination of the books and records of the Louisville Home Telephone Company?

A. Yes, sir.

6. When did you make that examination?

A. If my memory serves me correctly, I think it was last May a year ago.

7. May, 1908, or May, 1909?

A. 1908. Last May a year ago would be May, 1908.

8. Over what period did you examine those books and records?

A. We went back—we made a monthly report to his Honor, James F. Grinstead, Mayor, for the months embraced in the year 1907, and for the four months embraced in the year 1908, the four first months of the year 1908.

9. Did you ascertain from the books of the Louisville Home Telephone Company what its income was from the operation of its exchanges at Louisville, New Albany, Anchorage and Pewee Valley?

A. Yes, sir.

10. Did you ascertain that income separately for each of those cities, or as a gross from all of them?

3222 A. Took it as a whole. Did not eliminate any one of those places that you have mentioned.

11. Have you any knowledge of what the income was from New Albany, Anchorage and Pewee Valley?

A. No, sir, because it is embraced in the income—my report embraced the income from the City of Louisville, New Albany, Anchorage and Pewee Valley, and in order to report what the income was from each one of these respectively, each one of these places respect*fully*, it would necessitate a separation of the income for the months as indicated by my report to his Honor, the Mayor.

12. Have you any idea how many telephones the Company had installed in the City of Louisville at that time?

A. I have not, because I was not instructed to ascertain the number of phones. I was only instructed to ascertain the income and the expenses for the conduction of the plant.

13. Have you any idea about how many telephones were installed by the Company at that time in either New Albany, Anchorage or Pewee Valley?

A. No, sir, I have not.

14. What size place is New Albany, or was New Albany at that time?

A. I should think New Albany is a place of about 25,000 people.

15. What size place is Anchorage?

A. Anchorage is a village, probably 2,500 I reckon.

16. What size place is Pewee Valley?

A. Probably the same.

17. Have you before you the records showing the gross income of the Home Telephone Company—the Louisville Home Telephone Company for the year 1907?

A. Yes, sir.

18. Derived from Louisville, Anchorage, New Albany and Pewee Valley?

A. Yes, sir.

3223 19. What was that gross income?

A. Gross income for the year 1907, $382,104.47.

20. Did you ascertain the amount of expenses for Maintenance, Operating and General for that year?

A. Yes, sir.

21. Was that for all of those places, Louisville, New Albany, Anchorage and Pewee Valley?

A. Yes, sir.

22. What did those expenses amount to?

A. $204,646.53.

23. Did you ascertain the amount of income from those four places for the first four months of the year 1908?

A. Yes, sir.

24. What did that amount to?

A. That amounted to $134,035.18.

25. And what did the expenses for maintenance, operating and general, for those four places amount to for that year?

A. $63,359.96.

26. Did you ascertain how much the receipts of the Louisville Home Telephone Company for the year 1907—what the receipts were for 1907 from rental, toll and advertising?

A. Yes, sir.

27. How much did that amount to?

A. The receipts as shown by their records for rental, toll and advertising for the year 1907 was $18,980.06.

28. Do you know how much the receipts were from each of those three items, rental, toll and advertising?

A. No, sir; that asset was based under one heading.

29. Now, did you ascertain what the earnings of the Louisville Home Telephone Company were for the years 1903, 1904, 1905 and 1906, after paying the expenses for maintenance, operating and general and the interest on the bonds?

A. The net earnings for the year 1903 were $69,326.76.

30. What were they for 1904?

3224 A. $75,988.77.

31. What were they for 1905?

A. $96,487.60.

32. What were they for 1906?

A. $102,237.24.

33. Was that the net earnings, after paying the expenses, maintenance, operating and general expenses, and interest on the bonds?

A. That was the net earnings of the company—yes, sir.

34. After paying those items I have mentioned?

A. Yes, sir. You did not ask me for 1907.

35. You have got that for 1907?

A. I wanted to show the net earnings there. I didn't show the net earnings in there.

36. Now, I'll ask you to file with your deposition a statement embodying the facts about which you have testified, showing the income of the Louisville Home Telephone Company from the Louisville, New Albany, Anchorage and Pewee Valley exchange for the year 1907, and the first four months of the year 1908, and also the expenses for maintenance, operating and general, for the year

1907 and the first four months of the year 1908, also embodying in that exhibit a statement showing the amount derived by the Company from Rental, Toll and Advertising.

A. I do so.

(The paper in question was thereupon furnished by the witness and was filed with his deposition and marked by the stenographer "Exhibit Meriwether No. 1 for identification.")

37. I'll ask you also to file with your deposition the statement showing the net earnings of the Louisville Home Telephone Company for the years 1903, 1904, 1905 and 1906, after paying the expenses of Maintenance, Operating and General, and the interest on the bonds.

A. I do so.

(The paper in question was thereupon furnished by the witness and was filed with his deposition and was marked by the stenographer "Exhibit Meriwether No. 2 for identification.")

3225 38. Did you at the request of the Mayor of the City of Louisville, make any effort to ascertain the receipts derived by the Louisville Home Telephone Company from its exchange at New Albany, Anchorage and Pewee Valley?

A. No, sir; only as a whole.

39. I will ask you if you did not go to the Louisville Home Telephone Company with a letter, a copy of which I show you, and request permission to look at the books of the Louisville Home Telephone Company and ascertain the facts contained in that letter.

A. Yes, sir; Mr. Blakey, the City Attorney, gave me this letter, of which this is a copy, and I presented it to Mr. Helm Bruce in his office sometime during the early part of October, in the afternoon. He read the letter and he told me that the Board would have a meeting either that afternoon or the next afternoon. I am not certain, but I rang him up by telephone on Saturday morning, or the next afternoon, I am not certain, but to ring him up by telephone on Saturday morning I think it was, and he would give me an answer. I did as I was instructed, and I was informed by Mr. Helm Bruce that he had written a letter to Mr. Blakey, which letter Mr. Blakey showed me after he had received the same.

40. Were you permitted to investigate the books of the Company and ascertain the facts requested in that letter?

A. I was not.

41. Will you please read that letter into your deposition?

A. Yes, sir.

"OCTOBER 7*th*, 1909.

Louisville Home Telephone Co., City.

GENTLEMEN: The bearer of this letter, Mr. Charles Merriwether, is instructed by me to examine your books for the purpose of ascertaining the following facts:

1. Number of telephones your company had in use in the City of Louisville at the beginning of 1907.

3226 2. Average number of telephones your company had in use for the year 1907.

3. Number of telephones your company had in use in the City of Louisville on April 30th, 1908.

4. Average number of telephones your company had in use in the towns of New Albany, Anchorage and Pewee Valley for the year 1907 and the first four months of the year 1908.

5. Your company's receipts from the Toll Earnings for the year 1907 and the first four months for the year 1908.

6. Average number of telephones your company had in each of the classes of service for the year 1907, and the first four months of the year 1908.

7. Amount of telephone rentals uncollected for the year 1907.

8. Whether your company allow any discounts for prompt payments of telephone rentals.

You will please give Mr. Merriwether access to your books for the purpose of ascertaining the above facts.

Very truly yours,"

Cross-examined by Mr. GRANBERY, as attorney for the plaintiff, the Cumberland Telephone & Telegraph Company:

42. Are you connected in any way with the City of Louisville?

A. I was appointed by Mr. R. W. Bingham when he assumed the duties of Mayor of the City of Louisville. I was confirmed by Mr. Grinstead and I have been under Mr. W. O. Head, Mayor, since he assumed the duties of Mayor for the purpose of completing several investigations which I had under way. I am not employed regularly by the City. My services in the capacity which I am now serving will be at an end by the latter part of this month.

43. In making your investigation of the books of the Louis-
3227 ville Home Telephone Company, did you have any assistants, if so, how many?

A. Mr. Wilhite and myself.—Mr. S. M. Wilhite is the Comptroller of the City of Louisville. He and myself were requested to come to the Mayor's office, as he desired to talk to us upon a matter of investigating the income of the Home Telephone Co. After receiving our instructions from Mr. Grinstead, Mayor, and a letter to the gentlemen at the telephone company we proceeded right there and asked for their books, and we were assisted by Mr. Archer, the book-keeper, who furnished us with the books, and who was in our presence during the time we made our investigation.

44. How long were you engaged in that investigation?

A. We made several trips there. I could not tell you the exact number of hours we were required to execute the work, but we took their figures in order to ascertain this report from which I am now testifying. We did not go over each and every item separately in order to ascertain the correctness of his cash book, taking his cash book as an evidence of correctness, showing his receipts, as he certainly would not charge himself with something he was not the recipent of.

45. That does not answer my question. How long were you engaged in this investigation?

A. I stated I could not give you the exact number of hours. We

went there four or five times, and we were there probably three or four hours at a time, no, probably two hours and a half, sometimes in the morning and in the evening.

46. Give us your best estimate as to the number of hours or days that you and Mr. Wilhite were employed in making this investigation?

A. I have stated it would be an estimate, because we would get some data and report—make our report and then we would leave and go to lunch and come back in the afternoon. Probably the whole time consumed, if it was embodied into one continuous period would not probably take over three or four days.

3228 47. What do you mean, counting so many hours to the working day, or counting the whole twenty-four hours?

A. Oh, no, no man ever works twenty-four hours. No accountant works twenty-four hours.

48. I am still trying to get your estimate of the hours.

A. Working, I should say, about six or seven or eight hours a day, probably.

49. Three days?

A. I should think so. That would be a fair estimate of it.

50. Did you look at any original vouchers?

A. Never looked at a voucher, sir.

51. In looking at the books, you merely copied what the books showed with respect to income and disbursements?

A. Taking it as a correct and absolutely true basis of the condition of the company's affairs.

52. Exactly.

A. Naturally, if I had been sent there for the purpose of ascertaining if a defalcation had occurred in there, I would have taken each and every voucher separately, ascertained for what purpose he authorized it, and seen if it was properly charged to its respective account.

53. I am not undertaking to criticize what you did. I am merely trying to find out what you did, and if you will kindly just answer my questions I think we will save a great deal of time. In making your investigation, did you ascertain what amount, if any, had been spent on reconstruction from the first of January, 1903, to the first of May, 1908?

A. The first of January, 1903, to the first of January, 1908?

54. I said the first of May, 1908.

A. I did not go back in the year 1903 for the purpose of ascertaining what the Construction Account had cost.

55. I am not asking you about Construction Accounts. I am asking you about reconstruction.

3229 A. Reconstruction—for the purpose of furnishing the Mayor with what we did, only the two years or the year and four months which we were requested to do, and we did not go back beyond that period.

56. Then I'll ask you this: For the year 1903, did you ascertain how much the Louisville Home Telephone Company had spent in reconstruction of its plant?

A. No, sir, I did not.

57. Did you ascertain that fact for 1904?

A. No, sir; nor five nor six.

58. Did you ascertain it for 1907?

A. 1907, we show here that they had spent $69,563.05 on account of the construction.

59. Was that Reconstruction or Construction?

A. Construction.

60. That is not my question. I want to know what amount, if any, you ascertained that the Louisville Home Telephone Company spent in the year 1908 on reconstructing parts of its plant.

A. I don't think, if my memory serves me right, that they had a Reconstruction Account, though I am testifying now—the time having elapsed of nearly eighteen months, and my records here show Construction, hence I base it upon this being correct.

61. What is the difference between Construction and Reconstruction?

A. Well, the construction, the original construction of the thing is the first to put it into execution. The reconstruction is to go and do something after it has been constructed.

62. Suppose an addition is put to the plant, new lines run, how would that be charged, to Construction or Reconstruction?

A. It depends on how they conduct their accounts there. If they count it Construction, it would be charged to the Construction Account. If it was Reconstruction, and they kept it all under one head, it would be charged under that.

63. Take the accounts for 1907, you state in your Exhibit No. 1 that the expense for Maintenance, Operating and General for that year was $204,646.53. What is included in that?

3230 A. That Expense Account consists of the maintaining of the plant as a whole, the Operating Expenses and the General Expenses.

64. Does it include any Reconstruction?

A. Well, as I state, I can't tell you whether they had a Reconstruction Account or not, but they had a Construction Account, I am pretty certain.

65. Do you know whether they had any other accounts showing expenses of other kinds or not?

A. They might have had, which we might have embraced in this General Expense Account or the Maintenance and Operating Expenses and the General Expense for the conduction of the business.

66. Why do you state that this expense is for Maintenance, Operating and General if it includes something else?

A. We took that caption as a whole, to cover the thing.

67. What does it include?

A. I think it includes the entire expenses, as I stated, or the Maintenance, Operating and General Expenses of the Company.

68. Does it include any other expenses that the Company had?

A. I could not tell you right from my memory now, without I would go and make an investigation.

69. You really don't know *where* the $204,000 for the year 1907 was a total expense of the Company or not, do you?

A. Yes, sir; I think it is.

70. Do you know that?

A. I think I do.

71. How do you know it?

A. From the report that I gathered from their records.

72. Why did you put down, then, only Maintenance, Operating and General? Is that the only expense the Company ever incurs?

A. They may incur a great many other accounts which we embraced under this caption, might have been twenty or thirty more and we took this as a general heading, the Maintenance and Operating and General Expenses. We took that, and I think it is sufficient to cover the whole thing.

3231 73. Does it include taxes?

A. Of course it includes taxes, because that is one part of the expenses of the Company.

74. Under what heading would you put taxes?

A. If I was keeping the books I would keep a separate account for the taxes, and if I was going to make a general statement, a statement to you, I would embrace it under one caption and embody all those accounts together.

75. What would you put for the heading of that statement if you were going to embrace all those things in one item?

A. I would take out the principal accounts and use that as a caption. If I paid my taxes I would keep an account for State, County and City taxes.

76. Do you know now, and can you testify, that this $204,000 is the total expense incurred by that Company in the operation of its plant for the year 1907?

A. I think I can, and when I do it, I do it with all truthfulness.

77. Can you tell me whether that includes any expense for Reconstruction for that year?

A. As I stated, I could not give you that answer because I don't know whether they had a Reconstruction Account or not.

78. Is Reconstruction an expense, or is it a Capital Account?

A. That depends on where you want to use it. Now, the reconstruction of that street is an expense, and it is paid for by the City, for instance, drawing this as a comparison,—the original construction would be paid for by the property abutting on that street.

79. We are not talking about streets. We are talking about telephone plants. Now you state that this $204,000 is, in your opinion, the total expense. I now ask you if any part of that was for Reconstruction, and I understood you to say that you did not know.

A. I said that I do not think that there was a Reconstruc-
3232 tion Account. I think it was kept under the heading of Construction. Now, it might have been, and I might have just used the word "Construction."

80. Suppose that they did charge Reconstruction into Construction Account, would this exhibit correctly show the expenses of conducting the business that year?

A. Yes, sir.

81. That is your idea of it?

A. In my opinion, yes, sir.

82. Now, do you know whether this $204,000 includes any legal expenses?

A. I should think it would, because, as I stated, we tried to get all of the expenses incurred for the conduction and the operation and General Expenses; and attorney's fees, etc. would naturally be embraced in what I state in this caption, which amounts to $204,-646.53.

83. Do you know that fact, or are you assuming it?

A. I don't know it now, no. It would be a matter of impossibility for me to testify absolutely, because I have—it has been eighteen months since this investigation was made.

84. Didn't you keep any working papers?

A. I made my data from these records.

85. Isn't this exhibit just simply a copy——

A. It does not show in this expense Item here for the Maintenance, Operating and General Expenses—it does not show attorney's fees under this caption.

86. Do you know whether they are included in that or not?

A. I am pretty certain it is, because I would embrace it.

87. How do you know?

A. From my general knowledge of how I have handled and conducted things on a line just like I am testifying.

88. What *was* the amounts of outstanding bonds upon which interest was paid during the year 1907?

A. They had a bonded indebtedness of $1,800,800.00 and the outstanding fund of indebtedness—I don't think all of the
3233 bonds had been sold. I think they were retained, if my memory serves me correctly, by a syndicate that lived either in Chicago or St. Louis, and as they would put up telephones they would withdraw from that so much of those bonds that they held. Now, that amount of bonds remaining in their hands, I did not take that into consideration as to show the outstanding bonds that had not been disposed of, but I showed the interest on the bonds for 1907 which they paid, amounting to $79,700.04. That is for the year 1907, and for the year 1908 they paid the interest of $26,785 on those bonds.

89. For what part of 1908?

A. For the first four months, January, February, March and April.

90. Now, is that interest on bonds a part of this $204,000?

A. No, sir; that is a separate item.

91. Did you find that a separate account on the books of the Company?

A. Yes, sir; they kept their Interest Account separately.

92. Do you know whether they kept any other account separate?

A. Oh, yes sir; they kept a great many accounts separate. They kept a Plant Account and they kept a Building and Real Estate

Account, and Furniture and Fixture Account, Stable Building and Equipment, and Tool Account, and they kept the Stock and Material Account, which consisted of wiring, poles, etc., and they had a Sinking Fund which they had for the redemption of bonds, and they had open accounts which consisted of parties who were indebted to them, which I would treat as Accounts Receivable; and they had Bills Receivable, where they would take a person's notes for certain things, and unexpired insurance which they treated as an asset, insurance policies on their plant. When they would make a statement, if there was only a portion of that policy used, say the policy had only been in force one month, they would be entitled to eleventh twelfths to make up their statements which would be treated as a part of an asset, don't you see? Those accounts
3234 consisted principally of showing the assets and liabilities. On the other hand, they had a Bonded Indebtedness Account, Capital Stock Account, Bills Payable Account and sundry accounts payable for different people who they purchased things from, and accounts for advertising, etc.

93. How did they keep their expense? Their Expense Accounts? How were they sub-divided?

A. Those Expense Accounts were subdivided for the expenses for the Maintenance of real estate and betterments to the properties in the way of repairs and things of that kind.

94. Is that all you remember about the different items of the Expense Accounts?

A. I think that embraces it pretty fully.

95. Didn't they have an Operating Account?

A. If they did, we must have embraced it under one of these other captions.

96. Did they have a Reconstruction Account?

A. As I stated previously here, they might have had, but I could not state definitely if they had a Reconstruction Account. Their Construction Account——

97. Did they have a Legal Account of expenses?

A. I could not say positively whether they did. They might have charged it under the head of Expenses.

98. What did they charge under the head of Expenses?

A. I show here—the principal caption I show here is the expenses for the Maintenance, which would embrace any Legal Account, and the Operating Expenses and the General Expenses.

99. Did you copy that heading from the book that you saw in the Home Telephone Company's plant?

A. No, sir; I think we ran through his Ledger to ascertain the accounts, and then we embraced our figures all under one heading, as I stated, thinking it would be suffice to say that the expenses for the Maintenance, Operating and General Expenses—the General Expenses would naturally take in any legal fees or any other small accounts, Taxes and Insurance.

3235 100. What expenses have you embraced under this heading of Expense for Maintenance, Operating and General?

A. All the expenses incurred for the conduction of their business.

101. Itemize it for me.

A. It would be a difficult thing for me to tell you whether they put an attorney's fee——

102. I am not asking you for specific items. I am asking you for the different classes of expenses that you have embraced under that heading.

A. I could not do that.

103. Give it to us as near as you can.

A. I could not possibly do it, because my memory don't serve me in such a way as to say that they kept a Taxes and Insurance Account, or whether they kept a Premium Account on insurance.

104. How do you know, then, that you embraced all these Expense Accounts under this heading?

A. Naturally from the careful examination I made of it so as to get it, in order to present it with some degree of intelligence, as I have a record, I think, showing that I am pretty painstaking in trying to get the things in such a condition to present it intelligently by which it will impart nearly all the information that any one might require.

105. What part of the work did you do, and what part did Mr. Wilhite do?

A. We worked jointly, side by side. Sometimes I would take one end of it and sometimes he would take the other end of it.

106. How was the Expense Account compiled? Who did that, you or Mr. Wilhite?

A. I think we did it jointly.

107. Did you examine some of them and he examine some?

A. Yes, sir.

108. And then put your figures together?

3236 A. Yes, sir.

109. How did you know whether or not all the Expense Account *were* included under this heading?

A. Well, we worked there jointly together. I am pretty certain what is embraced in here, that we got everything showing the amount as indicated.

110. Isn't that merely an opinion on your part, or a surmise?

A. No, sir; I hardly think it is.

111. If you state it is of your own knowledge, I want you to tell me whether you investigated and examined each and every Expense Account that the Company had for the year 1907.

A. No, sir; I cannot testify to that.

112. Then you don't know whether all of them are embraced or not, do you?

A. I only know that we took one—the Ledger at one time and called certain things to him that we would treat in this thing. I don't know whether I took an account of attorney's fees, or whether I saw one or not at this speaking.

113. Do you know whether you saw an Account of Reconstruction or not?

A. I can't say definitely whether I did, as I testified; it has been quite a time since I made this investigation.

114. What was included under the heading of Maintenance?

A. The maintenance of the plant in general, keeping it in proper condition, in running order, by which you might earn something.

115. Did you include any material used in maintenance?

A. We only took their figures. They might have made a Journal entry, crediting their Stock Account and then charging it up here to this.

116. Did they? Do you know?

A. No, sir; I can't testify to that.

117. Did you include in your item of Maintenance, as you have given it in Exhibit 1, did you include any material used in maintaining the plant for the year 1907?

3237 A. We did not take any item except what was shown by him in his Ledger, because he might have made the Journal entry, as I stated, crediting the stock on hand, which was wires and poles and something else, and giving this account the charge and giving the stock credit for it, thereby reducing the stock on hand and charging it up for the maintenance of the plant. That would be shown in his Ledger and would be embraced in the aggregation of the amount disposed of for either Reconstruction or Construction.

118. And it might not have been that way?

A. And it might not have been that way.

119. So you don't know how it was, isn't that correct?

A. I know we took his Ledger Account.

120. Now, did he have an account on his Ledger called Maintenance?

A. I think he did.

121. What was embraced in that account?

A. I did not go into the details of it to ascertain from the opening of that account up to the time I brought my investigation of what it consisted. I simply took his Ledger as a basis of correctness to furnish the information, as I was requested to do.

122. You took the account on his Ledger called "Maintenance" and you put that down. Then, did he have another account called "General?"

A. General Expense—yes, sir.

123. And you took that and put that down?

A. Yes, sir.

124. And added that to Maintenance?

A. Yes, sir.

125. And you took an Operating Account. Did he have an Operating Account on his Ledger?

A. I am pretty certain he did.

126. You added that to the other two?

A. In fact, I took all of his Disbursement Accounts.

3238 127. Wait a minute, don't get too fast: Let's get one at a time. You have stated he had a Maintenance Account and you put that down, and you stated he had a General Account

and he put that down, and you stated he had an Operating Account and you put that down?

A. I think I did.

128. Did you add those three up?

A. I took the sum total of his disbursements.

129. What other accounts did he have that you added to that?

A. The accounts he showed on the books.

130. What other accounts did he show?

A. I can't tell you from memory what accounts he had. You might send me over there now to ascertain, and still he might change them and I would not know.

131. He might not show you all his accounts, might he?

A. That is true.

132. Did you undertake to verify the books to see whether or not they balanced, whether or not all the expenses were included?

A. Had I been sent there with a view——

133. Answer the question and then make any explanation you please. Did you or did you not?

The last question was read to the witness by the stenographer.

A. I was instructed, in connection——

134. Answer the question and then make any explanation you please.

A. No, with the exception to my answer which will be as follows: I was not sent there with a view of ascertaining any defalcation having occurred in the conduction of the affairs of the Home Telephone Company. Had I been instructed to go there to ascertain any shortage existing, I naturally would have taken each and every voucher and ascertained from that for what purpose that check was drawn, what account it was charged to, who ordered it, who O. K.'d the bill and what disposition was made of it. I was simply sent there to ascertain, taking their books and records as being correct and being conducted in a business-like manner, and being a competent accountant, Mr. Archer, and gather from that the
3239 necessary information that might impart the income from the Home Telephone Company's plant, in order that the Mayor might be acquainted with the condition of the Company, as I stated in my report which I filed as an exhibit. I think I have been very explicit in furnishing the information requested as far as I was instructed to do.

135. I don't give a baubee whether you are a competent expert accountant or not, whether you did your work efficiently or not, or what your instructions were. I am trying to get at the fact as to whether or not these exhibits you have filed show all the expenses of the Louisville Home Telephone Company for the year 1907.

A. I think it does, and I am trying to give you——

136. Do you know it?

A. I am pretty certain I do know it, because I am testifying from the record,—my report here taken from their record, and I am trying to give it to you in the best way possible. I am not trying to

evade any question that you are putting to me. I have no object in view except to answer with intelligence the best I can.

137. Now, how did you get the figures showing the net income for the year 1903 to the year 1906, inclusive?

A. We took them right from his own books which he kept for that purpose, which he furnished to the Directors.

138. In other words, you simply copied that literally from the entries on the books?

A. Exactly, thinking it was a true and accurate statement.

139. Whether it was a true and accurate statement, you don't know anything about, do you?

A. No, sir, except I want to finish that, if you please—except we took that as a true and accurate and correct statement as he furnished the Directors in order to acquaint them with the net earning capacity of the plant whenever he, Mr. Archer, was called upon to do so.

140. So that, so far as those figures are concerned, you have no knowledge or information as to whether they are correct or
3240 not, do you?

A. No, sir, because I did not go into the detail of it.

141. Do you know how much interest is included in each of those years, 1903, 1904, 1905 and 1906?

A. No, sir.

142. I mean interest on bonds.

A. No, sir.

143. Or interest on borrowed money?

A. No, sir.

144. You don't know whether any depreciation is included or not?

A. No, sir.

145. Take the year 1907, is there any depreciation included in this $204,646.53?

A. In 1907?

146. Yes.

A. I show by this report that they applied for the purpose of de-

147. Was that amount a part of the $204,646.53?

A. No, sir; they take that every month and set aside so much every month for the deterioration. The plant, as I was informed—the switchboard, as I was informed, cost about $180,000, and after ten years' service becomes almost useless, and they are called upon to rebuild or replace this switchboard, and they have been setting aside a deterioration fund for the purpose of having sufficient funds on hand to meet this whenever the time comes for them to replace it.

148. If you are through I will ask you to answer my question. Are those figures of one hundred and odd thousand dollars set aside for depreciation and contingency fund a part of the expense of $204,646.53, or is it an accition?

A. That is not an expense. They set that aside.

149. What is it?

A. That reserve, they set that aside. They take it out of their

earnings and set it aside for the purpose of meeting any con-
3241 tingency that might hereafter arise.

150. You don't think that is an expense item?

A. I know it is not an expense.

151. What is the amount set aside?

A. The amount set aside for the contingencies was $125,186.55.

152. How much did they pay interest on bonds that year?

A. $79,770.04.

153. Now, you don't know what that $125,000 was set aside for, other than it was Depreciation and Contingencies?

A. Other than what we were informed by Mr. Archer. We took his word for that. I don't know what disposition they have made of it.

154. Let me see your papers again. What did you find that the plant had cost up to December 31st, 1906?

A. We did not, I think, figure the cost of the plant, but we showed the cost of the plant as was shown on their books. The Plant Account stood them $2,851,030.76.

155. You have no reason to doubt that, have you?

A. None in the world. I haven't any reason to doubt the accuracy of Mr. Archer's accounts at all, his book-keeping.

156. Exactly. Now let me have that again. Do you know whether the item of $18,980.06 which you state is an item derived from Rental, Toll and Advertising,—do you know whether that is the net amount or the gross amount.

A. That is the net amount as I am almost positive. That advertising account is derived from——

157. I don't care what it is derived from. I want to know whether or not it was the net or the gross. You did not go into that, did you?

A. No, sir; I was only telling you—the reason I am telling you what information I gathered was, that I asked about it myself.

Mr. GRANBERY: I don't want hearsay. I want facts.

3242 158. By the COMMISSIONER: In 1907 it shows here that the net earnings were $97,687.90.

A. Yes, sir.

159. And that in that same year there was set apart—

A. They set aside $125,000 which they—

160. $125,186.55.

A. Yes, sir.

161. And that they paid in dividends $13,100?

A. Yes, sir.

162. Now, do I understand that those three items aggregate what you have got over here, $204,646.53?

A. They put aside for reserve $125,186.55. The net earnings was this, $97,000 and something. You see, the net earnings, as I show here, are $97,687.90. They applied this to the Reserve Account for contingencies in 1907.

162. Out of that year's earnings?

A. Out of that year's earnings, when the net earnings did not

amount to but $97,000. They placed to the credit of that account more money than what they were earning, and as I show it here, a deficit of $27,000. Now in these two months, January, 1908, the net earnings was that amount. The reserve for depreciation was that. The excess over the earnings was that, $1,544. They gained something there, don't you see, but there was a deficit after they put the $125,000 up in here for the Maintenance and Contingent Fund to buy that switchboard, as I have stated.

163. By Mr. GRANBERY: Now it appears that for the year 1907 you report net earnings of $97,687.90.

A. Yes, sir.

164. You report reserve set aside applicable for depreciation and contingencies of $125,186.55?

A. Yes, sir.

165. And you report dividends paid of $13,100?

A. Yes, sir.

3243 166. Now those three items added together make how much?

A. $235,974.45.

167. Now, in your Exhibit No. 1 you state that the gross income is $382,104.47.

A. Yes, sir.

168. And you state the Expense for Maintenance, Operating and General is $204,646.53?

A. Yes, sir.

169. What is the difference between those two amounts?

A. $177,457.94.

170. Now it appears from your examination of the books that while the gross net profit for the year 1907 was $177,457.94 the Company expended $235,974.45.

A. Yes, sir.

171. Is that correct?

A. Those figures are right. Now, there is another expense to come up against this now. They paid the interest on the bonds, remember, that is nearly $80,000.

172. Now then, in addition to that expense of $235,974.45, the interest on the bonds for that year is to be added to that, making a total of how much?

A. $315,744.49.

173. Do you regard that as a very prosperous year's work?

A. Not where you go and take and charge of $125,000 when your net earnings are only $97,000.00.

174. Suppose that $125,000 was necessary to be charged off. You have no reason to doubt the correctness of that charge, have you?

A. Well, I don't see—yes, I don't see why a man wants to charge off more than what he is earning, and lives beyond his income.

175. Did you ask Mr. Archer to explain that to you when you were making this examination?

A. I don't know whether I did or not.

176. Did it excite your suspicion?

A. I am pretty certain I said to him "I notice where you
3244 place to the credit of the Deterioration Fund more money than what you earned."

177. What did he say to that?

A. I could not tell you what his answer was, but he made me a reply.

178. Was it satisfactory?

A. It could not be when you are going to put $125,000 and only earned $97,000.

179. Didn't you report to Mayor Grinstead that that Company was making money hand over fist and was in a very prosperous condition?

A. I told him the condition of the Company, that it was a money-making concern if you would not go to work and charge off something more than what you had earned.

180. In other words, it was a prosperous concern if its expenses was not what they said they were, is that correct? It comes down to that, doesn't it?

A. It comes down to this, yes, he would not go to work and charge off $125,000 when you only earned $97,000.

181. You don't know what is necessary to be set aside for these depreciation and contingencies?

A. No, sir; I am not an electrician.

182. You assume that Mr. Archer does know his business?

A. He is an accountant. I don't know that he is any more of an electrician than any other accountant.

183. Do you have to be an electrician to know how much to set aside for depreciation in telephone plants?

A. Connection with plants of that character would familiarize him with duties along that line.

184. Did you ever have any connection with plants of that kind to familiarize yourself with what is necessary to be set aside?

A. No, sir.

185. Then why do you doubt the accuracy of Mr. Arch-
3245 er's figures?

A. I doubt the accuracy of anybody's figures in charging off $125,000 when they had not earned but $97,000.

186. Don't they simply show that the Company made a deficit instead of a profit for that year?

A. No, sir; I don't think it did. I only would have charged off about what I would have earned.

187. Suppose you had not earned enough to meet your charges.

A. This is a fund that you are building up to meet something that is going to happen in the future.

188. It has got to be met?

A. Yes, sir; but it don't have to be met that very minute. If you keep on applying it at that rate, the rate you are going you would have the plant not costing you anything.

189. How did you figure that out?

A. By the way he is doing it.

190. If the plant deteriorates $125,000 a year, have you not to

get that money from somewhere to replace that plant when the time comes?

A. Yes, sir; or issue another bonded indebtedness.

191. That means you would have to increase the cost of the plant, wouldn't you?

A. I cannot understand why he would want to place to the credit of that fund more than what he earned.

192. Notwithstanding the fact that you cannot understand that, you made no investigation to see whether it was right and proper or not.

A. I did not think it come in the purview of my investigation. When I saw a thing confronted me, when he was crediting that account with more than what he earned, I thought Well, now, no need of my going and asking something like that. It is perfectly plain to me he has done something there and placed to their credit more money than what he has made.

193. And that simply made you lose confidence in the whole set of books that you investigated, didn't it?

3246 A. No, sir, it did not; it made me lose confidence in that one item.

194. And you didn't see anything suspicious about the others, and, therefore, you did not lose confidence in them?

A. I did not lose confidence in Mr. Archer, and have not yet.

195. The whole statement you have made is based exclusively upon the books kept by some men who made an item that you could not understand, and he could not explain it to you?

A. That one item is a little bit confusing.

196. A little bit confusing. Have you ever been able to straighten that out?

A. No, sir; I have not given the matter much thought since. I have other matters to take up.

197. You discussed it with him?

A. Yes, sir; and he gave me an answer and I wish I could tell you what his explanation was.

198. Was his explanation satisfactory to you?

A. Might have been. I can't say definitely whether it was or was not.

199. By Mr. BLAKEY: How much did the books of the Home Telephone Company show that they earned, gross amount of its earnings for the year 1907?

A. $382,104.47.

200. How much does its books show that it expended for maintaining its property, operating its property and other expenses which were legitimately chargeable against the earnings, which might appear under the head of General Expenses—the total of those three items?

A. $204,346.53.

201. What is the difference between those two items?

A. $177,957.94.

202. What per cent is that on a million dollars, assuming that the plant is worth a million dollars?

A. About seventeen and three-quarter per cent.

203. If the plant depreciates six per cent of its value
3247 every year, and six per cent is set aside to take care of depreciation, how much would six per cent be on one million dollars?

A. It would be $60,000.

204. Deduct $60,000 from $177,957.94.

A. That would be $117,457.94.

205. What per cent is that on a million dollars?

A. Eleven and three-quarters.

206. When you went to examine these books, do you know what the occasion was for having them examined?

A. I think there was an ordinance being prepared, or had been prepared, for the purpose of asking them to annul the ordinance under which they now exist, or under which they existed at that time, and to have the new one passed in lieu, as they claimed that they couldn't live under the present rates that they were the recipients of.

207. That is, the Home Telephone Company claimed that?

A. I think they did claim it—yes sir.

208. Were they attempting to have their rates increased?

A. Yes sir, as I understand it.

209. Was your investigation to ascertain what they were earning, and what it cost them to operate?

A. Yes, sir.

210. Was it to the interest of the Home Telephone Company at that time to show you all of their records wherein any expense of any nature appeared?

A. Of course it was, because their object would be to show that they were losing money in order to get the new ordinance through.

211. Was the report of your investigation published in the newspapers?

A. It was.

212. Has it ever been questioned by anybody of the Home Telephone Company or any one else?

A. Never.

213. Now you stated there awhile ago some figures showing additional expense of $315,000 over and above the $204,000—I'll ask you if that was any expense at all so far as operating the
3248 plant was concerned?

A. No, sir; that figure did not represent any expense whatever.

214. Then you were in error if you said awhile ago that it was an expense in addition to the $204,000?

A. I did not intend it in that way.

215. As a matter of book-keeping, Mr. Archer could have set aside $300,000 if he had wanted to, couldn't he?

A. Yes, sir; if he so desired.

216. You talk about the Plant Account there. I will ask you what the records of the Company showed as to being the amount of their stocks and bonds outstanding.

A. The Plant Account showed—it was treated as an asset, $2,851,-030.76.

(The last question was read to the witness by the stenographer).

A. Outstanding stocks and bonds—I don't think there is any outstanding stock, as all of the stock, $1,310,000, was given away, if I am correctly informed, with the bonds.

217. I am talking about how much stock was issued by the Company.

A. $1,310,000.

218. How much bonds?

A. $1,800,800.00.

219. Do you know anything about what those bonds sold for?

A. No, sir, I do not.

220. Do you know anything about what disposition was made of the stock, of your own personal knowledge?

A. No, sir.

221. Is the Plant Account represented by the amount of stocks and bonds issued?

A. It is a little less than what the amount is shown to be the liability of stocks and bonds.

222. Did you in your investigation ascertain how much the 3249 plant had cost the Home Telephone Company?

A. No, sir.

223. During the time you were making this examination, did you examine all the books of the Company wherein any receipts were shown from operating its plant?

A. I took his Cash Book principally and his Ledger.

224. Were those the books which showed all the receipts?

A. Yes, sir; the Cash Book is the principal book to show the receipts.

225. Does the $382,000 of receipts about which you have testified here show all of the receipts as appears on the books of the Company?

A. They show it monthly—yes sir.

226. Did you examine all of the books wherein any record of disbursements was made on account of conducting the business of the telephone company here?

A. Yes, sir.

227. Does the $204,646.53 show all of the disbursements made by them on account of conducting its plant here?

A. Yes, sir.

228. By Mr. GRANBERY: Why do you make that statement in view of what you said on your cross examination, that you did not know whether you examined all of the books showing expenses or not?

A. I said I embraced all those expenses under that one caption, which would aggregate the sum of $204,000.

229. Do you know whether you did it, or you just think you did? Do you know it?

A. I said Yes, I did it.

230. What book did you examine showing the expenses?

A. I have the Ledger which is the principal book, in order to ascertain this information.

231. What additional books did you examine?

A. His Journal and his Cash Book.

232. I am not talking about receipts. I am talking about
3250 disbursements.

A. That is what I am doing, his Cash Book is bound to show the disbursements. If he would pay you a fee, he would show it on his Cash Book, if he paid you in money or check.

233. Did you add up all the different items of expense of every kind the Company had for the year 1907?

A. No, sir; I took his figures as a basis of correctness to furnish this report.

234. Did his books state in any one place that the total expenses for the year 1907 were $204,646.53?

A. No, sir; because they embraced sundry accounts which were embodied, in order to get the aggregation of that amount.

235. Exactly. How do you know you examined all of the books which show expenses?

A. I took his Ledger, and as his general ledger would indicate his account fom money paid to sundry parties for the conduction and maintenance of a plant, and as the only book which could show these things in order to get this information.

236. Did you compile that, or did Mr. Wilhite?

A. We compiled it jointly, as I previously stated.

237. Did you examine all of them, or did he examine all?

A. I did not examine all nor he did not examine all. We worked together. I would look and call to him and he would sometimes take the Ledger and look and call to me.

238. You don't know whether that $204,646.53 includes Taxes and legal expenses and Reconstruction and Directory Expense and Advertising Expense or not, do you?

A. It embraces all of the General Expense Account.

239. What do you mean by General Expenses?

A. Which would embody those accounts you have just mentioned.

240. What other expenses would it embody?

A. Any other accounts—if he wanted to make a specific charge on a specific account——

241. What about officers' salaries?

3251 A. Salaries were embraced under this.

242. Was that included in Operating or in the General?

A. General Expense.

243. What about Operators' salaries?

A. They are included in the Operating Expenses.

244. What else is included in the operating expenses?

A. All the expenses for the conduction of the plant.

245. What are they.

A. I could not call them to you, under what captions they were kept.

246. How do you know you got them all?

A. I am pretty certain I got them.

247. I don't care what your opinion is. I want to know fact. Let me have fact.

A. I don't know whether I got every one of them, but I am pretty certain that the report, as furnished, embraced every one of the Expense Items on his account.

248. Notwithstanding this statement you have made and published in the newspapers, the Home Telephone Company still insists that it is losing money, doesn't it?

A. I don't know; I have not given them an investigation since I——

249. Have you not read in the newspaper that they still claim that they are losing money?

A. Oh, yes; I have read that. Is everything you read in a newspaper true?

250. You know that they still insist that they are not earning any money?

A. No Director or no one connected with the Company has ever told me that, either directly or indirectly.

251. You said you saw your report published in the newspaper, didn't you?

A. Yes, sir.

252. You have seen it published in the newspaper since 3252 then that they deny making any money?

A. I saw that.

253. And notwithstanding, they do not specifically deny your figures, they have denied the results following from your figures.

A. I did not see it; I don't know whether they have or not.

254. You have not read that in the newspapers?

A. I did not see it, and I am truthful when I state it.

By Mr. Blakey:

255. Does your statement there of earnings and expenses for the period covered, embody all that the books which the Company furnished you embody in the nature of expenses or earnings?

A. Yes, sir.

S. M. Wilhite, called for the Defendant, the City of Louisville, being duly sworn and examined by Mr. Blakey, deposed as follows:

1. You are the Comptroller of the City of Louisville, I believe?

A. Yes, sir.

2. Are you an experienced accountant?

A. I have had some experience—yes sir.

3. What experience have you had as an accountant?

A. About 29 years.

4. How long have you been Comptroller of the City?

A. Eight years last December.

5. What are your duties as Comptroller?

A. General supervision of the accounting and financial department.

6. Did you ever make an examination for the City of Louisville

of the books and records of the Louisville Home Telephone Company?

A. No, sir; not an examination.

3253 7. Did you ever examine any portion of the books and records?

A. I have gone over their records.

8. In what way did you go over those records?

A. Merely took a transcript of their books that pertains to one or two years.

9. Did the transcript that you took show the earnings of the Company for the year 1907?

A. Yes, sir; so far as their books showed, it did.

10. What did their books show to have been their earnings for the year 1907, gross earnings?

A. For the calendar year of 1907, their gross earnings were $177,457.94.

11. What I mean is the gross earnings from all sources, exchange earnings, toll earnings, Louisville and New Albany, Anchorage and Pewee Valley.

A. Well, they had a column that they had titled "Louisville, New Albany, Anchorage and Pewee Valley," and their gross earnings according to that caption on their books show $177,457.94.

12. Now, when you give that amount, are you not giving the difference between $382,000 and $204,000.00?

A. Yes, sir.

13. That is the net earnings, is it not?

A. No, sir; that is gross earnings.

14. What is their receipts for the year 1907—gross receipts?

A. Well, they have not it as total receipts. They have it "total income."

15. What was their gross income as appeared on their books from those sources?

A. As shown by that column on their books, $382,104.47. You understand, I have not gone over any additions of these at all. I absolutely know nothing about it except taken from the books from the face of their Journal. I believe they call it the Tickler, which is a daily balance book.

3254 16. Did that purport to show what their total income was from operating their business in Louisville, New Albany, Anchorage and Pewee Valley?

A. I suppose it did. It says the income of Louisville, New Albany, Anchorage and Pewee Valley.

17. Did the examination you made show what their expenses were for maintenance, Operating and General Expenses for that year?

A. Yes, sir; under another column. They had it titled "Expenses for Maintenance, Operating and General Expenses," and that was $204,646.53.

18. Did you make this examination in connection with any one else?

A. Mr. Meriwether and myself were together.

19. Did the Louisville Home Telephone Company file with the City of Louisville, or with you as Comptroller, a statement showing the number of telephones installed in the City of Louisville as at any particular period, or for any particular time?

A. Yes, sir; they make a semi-annual report.

20. Are those reports filed in your office?

A. Yes, sir.

21. I will ask you to file and make a part of your deposition a statement showing the number of telephones which appear on that statement during the year 1907, and the first one which appears during the year 1908.

A. 1907 and 1908?

22. And also the last statement for the year 1906.

A. You mean for the last six months of 1906?

23. Yes.

A. I will do so.

(The paper in question was furnished by the witness and was filed with his deposition and marked by the Stenographer for identification "Exhibit Wilhite No. 1.")

3255 Cross-examined by Mr. GRANBERY:

24. That statement only purports to show the actual number of subscribers inside the corporate limits of the City of Louisville, is that correct?

A. Well, I will have to refer you to their report as to the exact wording of that.

25. Well, it is under the ordinance provision which requires them to pay a tax of so much on each subscriber over and above 6,000 located inside the corporate limits, is it not?

A. Yes, sir.

26. And that is the statement they filed for the purpose of paying that tax?

A. That is the statement they filed semi-annually.

27. How long were you and Mr. Meriwether engaged in making this examination of the books of the Louisville Home Telephone Company?

A. I don't believe we were out there but three days.

28. Were you there——

A. Parts of three days. I don't know. I don't remember that.

29. How much time in hours did you and Mr. Meriwether spend on the inside of the office of that Company in making this investigation, as near as you can remember it?

A. I don't know, that is difficult for me to remember.

30. Of course it is. You can give a better idea yourself than any one else.

A. I know that we were out there in the mornings and afternoons. As to making an examination, of course, that was foreign for us, because we absolutely had no time to go over in detail.

31. As I understand, you merely went out there and copied from certain books which they laid before you, certain figures?

A. Yes, sir.

32. Now, whether the item—you say they had one column which had a caption of "Income, Louisville, New Albany, Anchorage and Pewee Valley."

3256 A. Yes, sir. Well, now, this was captioned "Income, Louisville, New Albany, Anchorage and Pewee Valley."

33. They had another column in which they had this heading, "Expenses for Maintenance, Operating and General?"

A. No, sir; their other column was "Expense, Louisville, New Albany, Anchorage and Pewee Valley."

34. Did it show for Maintenance, Operating and General?

A. My recollection of that was, that Mr. Archer informed us that that was for Maintenance, Operating and General Expenses.

35. What additional expense they had outside of that you did not ascertain, and was not told by Mr. Archer?

A. No, sir; unless we could have made a thorough examination of the books, there was no way for us to verify these figures, you see.

36. In other words, you did not consider the information that you acquired as of any material importance in showing the financial condition of the Louisville Home Telephone Company, did you?

A. Well, the only reply that I have got to make to that is, that they claimed that it was necessary to set aside seven and a half per cent,—that was their claim—for depreciation. That is absolutely something foreign to me. I haven't any idea whether it takes seven and a half per cent or fifteen per cent, or one per cent.

37. You do, of course, agree to the proposition that in every business it is necessary to set aside something as a Depreciation Fund, do you not? You never saw any property that did not depreciate, did you?

A. No, sir.

38. Now, then, you cannot take care of this depreciation as it occurs, can you? You have to do it at periodical times?

A. No, sir; but as to what that percentage, or what the requirements are, I am absolutely ignorant on that.

39. So that the only difficulty you would have, would be in ascertaining the per cent to set aside, and not the principle of setting aside something.

3257 A. Yes, sir.

40. Now, the Louisville Home Telephone Company, ever since that investigation that you and Mr. Meriweather have made, have insisted that they are losing money in Louisville, have they not, on their present rates?

A. Well, I have only heard that in a general way. I don't know that as coming officially from the telephone people.

41. Didn't you see a card that they published in all the Louisville papers during the recent city campaign——

A. I did not read it at all.

42. You saw it but didn't read it?

A. I didn't read it.

43. Did you find an item there, or an entry on the books to this

effect: "Included in the above gross income is an item representing income from Rental, Toll and Advertising $18,980.06?"

A. That was taken from their records of assets and liabilities, and it is merely a transcript of their books.

44. And you don't know anything more about it?

A. They had one item there that read 'Rental, Toll and Advertising," $18,980.06.

45. Were you with Mr. Meriwether all the time that he was there?

A. We were both there together—yes, sir.

46. Did you have any discussion with Mr. Archer in regard to this item of Depreciation, set aside for depreciation and reserve or contingencies?

A. My recollection is, that he said it was absolutely necessary that that percentage should be set aside.

47. I am asking you if you had any conversation with him in regard to that item.

A. I don't remember.

48. Did you ask him for any explanation of it?

A. Well, in a general way we were talking about—they were insisting on this seven and a half per cent, I believe, that is
3258 the percentage that was necessary. When I submitted that statement to Mayor Grinstead, I submitted it without comment at all so far as the percentage of depreciation was concerned.

49. Where did you get the statement for net earnings for the years 1903 to 1906 inclusive, after paying interest on the bonds?

A. 1903?

50. 1903 to 1906 inclusive, after paying interest on the bonds.

A. They had a record there that read in this way: "Amount of net earnings for the year 1903, $69,326.76; 1904, $75,988.77; 1905, $96,487.60; 1906, $102,237.24; 1907, $97,687.90."

51. Did that show whether it was net profit after paying interest on bonds, or before paying interest on bonds?

A. Let me see those papers. The record that I have here, as stated before, those amounts which aggregated $441,728.27 and the amount paid in dividends—dividends of $52,400.00 was paid in 1905; $45,850.00 in 1906, and $13,119.00 in 1907, and that aggregated $111,350.00 in dividends. I would presume that there was a certain percentage set aside for Sinking Fund and interest before they could declare any dividend.

52. What I am asking you is, whether or not the amounts stated by — as net earnings for the years 1903 to 1906 inclusive, include or exclude interest on bonds.

A. My record shows here on 1907—

53. I am asking you now for 1903 to 1906 inclusive.

A. I did not go back and take that statement off.

54. Did not Mr. Meriwether?

A. That I do not know. I have not that statement here. I show their net earnings.

55. It doesn't show whether that is after paying interest on the bonds or before paying interest on the bonds, does it?

A. My statement doesn't show it.

56. To be entirely frank with you, Mr. Meriwether has filed an exhibit with his deposition, purporting to have been taken
3259 from the papers which he had before him and marked it "Exhibit No. 2," which reads as follows: "Net earnings of the Louisville Home Telephone Company for the years 1903, 1904, 1905 and 1906, after paying interest on the bonds. 1903, $69,326.76," and for 1904, 1905 and 1906 identically the same figures that you have just given.

A. Yes, sir.

57. Now, I am trying to find out, if I can, and I only want the fact, whichever way it is, whether the books of the Company show, or whether you and Mr. Meriwether ascertained those were net earnings after paying interest on the bonds or before paying interest on the bonds.

A. Mr. Granbery, I am simply taking a transcript of their books. As to the details of this matter, I absolutely know nothing about that.

58. Are you not using, and have you not before you, identically the same papers that Mr. Meriwether used in giving his deposition?

A. Well, these are my original papers, and I loaned them to Mr. Meriwether. As to whether he used them or not, I do not know.

59. Do those papers state whether or not that is before or after paying interest on bonds?

A. I would naturally suppose that when they had a caption there of net earnings, they would certainly provide something for the interest on bonds, or they could not caption it "Net earnings."

60. You don't know, then, how the fact is, do you?

A. No, sir; I do not.

61. And it would be a matter that somebody from the Home Telephone Company would have to explain. You did not ascertain that fact when you were in their office making this investigation?

A. No, sir; a thorough and detailed examination only would bring that out.

62. The papers that you have been using in this examination were made by you, were they, at the time that you and Mr. Meriwether went to the Louisville Home Telephone Company's office?

3260 A. Yes, sir.

63. Are they all in your handwriting, all the figures?

A. They are all in my handwriting, but if Mr. Meriwether used these papers I have in my hand, they were in my handwriting.

64. Did Mr. Meriwether make any figures separate from you in that investigation?

A. That I do not know. I don't remember now.

65. You worked together?

A. We were working together.

66. Was he calling off and you putting down, or you calling off and he putting down the figures?

A. I think we were both putting down figures.

67. Is this statement entirely in your handwriting, or partly in yours and partly in Mr. Meriwether's?

A. No, sir; the statements that he had and that I loaned him was in my handwriting.

68. Now then, the statement that you now have in your hand, from which you have been testifying, you say you loaned them to Mr. Meriwether. When did you do so? I mean in reference to the day, this examination.

A. I don't remember when I did give this to Mr. Meriwether.

69. Was it recently?

A. They are my original papers.

70. I understand, you don't remember whether it has been in the last week or few days?

A. It has been longer than that.

71. Last month?

A. Probably longer than that.

72. Would you say as far back as ninety days?

A. I won't say.

73. When did he hand them back to you?

A. Just a few minutes ago when I met him in the hall.

74. In other words, as he went out after giving his testimony, and you were coming in to give yours, he handed you these papers?

3261 A. Yes, sir.

75. And you have testified from those?

A. Yes, sir.

By Mr. BLAKEY:

76. What does the statement of net earnings there, about which you have been asked, show to have been the net earnings for the year 1907?

A. Net earnings for 1907 were $97,687.90.

77. And what does your statement show to have been the interest paid on the bonds for the year 1907?

A. $79,770.04.

78. What is the difference, after deducting $204,646.53 from $382,104.47?

A. That produces the gross earnings of $177,457.94.

79. And deducting from that amount the interest paid on bonds, namely, $79,770.04, leaves a balance of what?

A. Will show net earnings $97,687.90.

80. And is that the same amount which appears on your other sheet of net earnings for the years 1903, 1904, 1905, 1906 and 1907?

A. Yes, sir $97,687.90.

81. Do you know what rates are charged by the Louisville Home Telephone Company?

A. No sir, I do not.

82. Or any of the papers from which you have testified in Mr. Meriwether's handwriting?

A. Yes, sir; the paper showing the fixed liabilities and fixed assets as of January first, 1907, and as of January first, 1908.

By Mr. GRANBERY:

83. Doesn't exactly the same thing appear in your handwriting on another sheet?

A. Yes, sir; Mr. Meriwether has—his copy shows the fixed liabilities and the assets as of January first, 1907, and I show it as of December thirty-first, 1906.

84. See if the figures are not identically the same.

A. They are.

85. Which is the original taken from the books of the Home Telephone Company and which is the copy, yours or Mr.
3262 Meriwether's?

A. That is too much for me. I don't remember now which was taken first. I think I made this copy after I had gotten down to the office, the one in ink.

86. You mean the one in your handwriting, put it?

A. And then you asked me a question a few minutes ago in regard to calling. I think I was calling to Mr. Meriwether and Mr. Meriwether was copying.

87. That is, in making up that general balance sheet as of December thirty-first, 1906?

A. Yes, sir.

88. And then when you got to the office—that, then, was in Mr. Meriwether's handwriting, and when you got to the office you copied it?

A. Yes, sir; I remember now of copying it in my office.

89. So that the figures in your handwriting and Mr. Meriwether's handwriting are identically the same?

A. Yes, sir; that is, as to the assets and liabilities.

CHARLES MERIWETHER, recalled and examined by Mr. Granbery, deposed as follows:

1. You have certain figures in your hand, sheets of paper, from which you testified. In whose handwriting were they?

A. Let me see them and I will tell you. These are in Mr. Wilhite's handwriting.

2. When did you get them?

A. After Mr. Wilhite had made them.

3. Did he make all of those figures from the books of the Louisville Home Telephone Company?

A. This paper here resembles the paper Mr. Wilhite used in the Comptroller's office, and I think there are some other papers from which these figures might have been made afterwards over here, I am not certain.

3263 4. From what paper did you copy Exhibit No. 2 to your deposition?

A. I did not make a copy at all. It was made by a stenographer.

5. Did you direct it made?

A. I instructed it to be made—yes sir.

6. From what paper was it made?

A. This one (indicating).

7. Where does that paper show that the net income is, after paying interest on bonds? I will read this to you, if you would like.

A. This is for the year 1903, 1904, 1905 and 1906, and 1907 on this sheet.

8. Does it purport to be the net income after paying interest on bonds?

A. It don't mention the word "bonds" in here at all. It mentions dividends and deterioration—a fund placed to the credit of deterioration.

9. Why did you file an exhibit showing that those figures were net income after paying interest on bonds when the original does not show anything of the kind?

A. Might have been an error in that, in putting that in there. I only wanted to make a transcript of this.

10. You did not make a transcript of it, did you?

A. If it is not a transcript, it should be.

11. Do you wish to correct that exhibit by striking out the word——

A. There is no bonds stated in this exhibit at all, but the net income is embraced in there, and I am of the opinion that the interest on the bonds was included in that net statement, as all these records were taken from the books of Mr. Archer, the book-keeper.

12. Do you wish to correct your exhibit by striking out the words "after paying interest on the bonds"?

A. No, sir; let it stand as it is.

3264 13. Then, it is not a copy of what it purports to be, a copy?

A. I am willing to stand for the deposition.

14. You were asked to file an exhibit—a copy of a statement in your possession.

A. Yes, sir.

15. Now you did not file a copy of that paper in your possession, but you file another paper which is not the same, isn't that correct?

A. But, Mr. Granbery——

16. Answer the question.

A. Yes, sir; that may be correct, but let me add this along too: Mr. Archer always said that in showing us his books, these were the net figures, the net income, and that embraced, being the word net income—that everything had been taken into consideration, interest on bonds and everything else.

17. Now then, I will ask you this, to please file an exact copy of the paper which Exhibit No. 2 purports to be a copy of, and mark it Exhibit No. 3 to your deposition.

A. I will do it with pleasure.

(The paper in question was thereafter furnished by the witness and was filed with his deposition and marked by the Stenographer for identification "Exhibit Meriwether No. 3.")

The further taking of these depositions was adjourned until tomorrow morning at ten o'clock.

3265 LOUISVILLE, KY., *Jan. 7th,* 1909.

The parties met pursuant to adjournment at ten o'clock A. M.

JAMES F. GRINSTEAD, called for the Defendant, the City of Louisville, being duly sworn and examined by Mr. Blakey, deposed as follows:

1. You are a resident of Louisville, I believe?

A. Yes, sir.

2. Did you ever hold the office of Mayor of the City of Louisville?

A. Yes, sir.

3. During what period?

A. From November 12th, 1907, to November 16th, 1909.

4. During that time did the Louisville Home Telephone Company in any way attempt to have the City of Louisville increase its rates, or permit it to charge higher rates for telephone service?

A. There was an ordinance passed creating a franchise that was generally understood to be at the instance and for the Home Telephone Company.

5. Was the Home Telephone Company active in trying to get that ordinance passed and approved by you?

A. Yes, sir.

6. Did the General Council pass the ordinance?

A. Yes, sir.

7. Did it come to you for your approval?

A. Yes, sir.

8. What steps did you take, if any, to ascertain whether or not the ordinance should be approved?

A. Well, I caused an investigation to be made of the affairs of the Home Telephone Company by Messrs. Meriwether and Wilhite. They made me a report of the conditions, the earnings—the gross earnings and the net earnings.

3266 9. At whose instance was that investigation made? I mean, did the Home Telephone Company suggest it or did you suggest it, or how did it come about?

A. The Home Telephone Company consented to it and I think it was my suggestion.

10. In what way did they consent to it?

A. They permitted Mr. Wilhite and Mr. Meriwether to look at their books.

11. Was the matter discussed before Mr. Wilhite and Mr. Meriwether went to investigate the books, as to whether they would be permitted to investigate the books? Was the matter discussed before Mr. Wilhite and Mr. Meriwether went to investigate the books, as to whether they would be permitted to investigate the books? Was the matter discussed between you and any representative of the Home Telephone Company?

A. Yes sir, I think so. I think that Mr. Boone consented to the examination.

12. Do you know what position Mr. Boone held with the Louisville Home Telephone Company?

A. I don't know that I do know exactly what his title is or was.

13. Did Mr. Wilhite and Mr. Meriwether report to you the result of their investigation?

A. Yes, sir.

14. What did they report to you as being the income derived by the Louisville Home Telephone Company from operating its plant in Louisville, New Albany, Anchorage and Pewee Valley, for the year 1907?

Mr. GRANBERY: Complainant objects to that question on the ground that it is hearsay, irrelevant and incompetent.

A. $382,104.47.

15. What did they report to you, if anything, as the expenses for Maintenance, Operating and General, for the year 1907?

A. $204,646.43.

16. What did they report to you, if anything, as to the in-
3267 come of the telephone company from operating its plant at Louisville, New Albany, Anchorage and Pewee Valley for the first four months of the year 1908?

A. $134,035.18.

17. What did they report to you as being the expenses for Maintenance, Operating and General for those four months?

A. $63,359.96.

18. Now during the time that ordinance was before you for consideration and approval or rejection, did the representatives of the Louisville Home Telephone Company make any effort to induce you to approve that ordinance?

A. Well, there was no effort made excepting a request that I do it. I don't know that there was any—I was urged to do it by their representative—urged or asked, both.

19. Will you name some of the representatives of the Louisville Home Telephone who urged or requested you to sign it?

A. Mr. Helm Bruce especially urged me to approve it.

20. Was Mr. Helm Bruce the General Counsel of the Company at that time?

A. That is my understanding—yes sir.

21. Were there others representing the Home Telephone Company, either stockholders or——

A. What was that question?

(Question read to the witness by the stenographer.)

22. Either stockholders, employés or officers of the Company who urged or requested you to approve that ordinance?

A. There were stockholders of the Company that urged me to approve it. I don't know that they were representing the Company, but individuals.

23. At the time Mr. Wilhite and Mr. Meriwether examined the books of the Home Telephone Company was there any understanding between you and the representatives of the Home Telephone

Company that if the records showed that they were not mak-
3268 ing money that you would possibly approve the ordinance?

A. No, sir.

24. What was the occasion, then, for examining the books of the Company?

A. For my own satisfaction, because I felt that it was my duty to the people of Louisville to have all the facts in the case that I could before I took action, that I considered to be a very important one.

25. Was it to the interest of the Home Telephone Company at that time to show you their entire earnings and their entire expenses for the period covered by the examination?

A. The Home Telephone Company did not have to show the Examiners that I sent their books. They did so. Of course, I don't know whether they thought it was to their interest or not. I don't know why they did so. I presume it was because they were willing to that the facts should be submitted.

26. Did any representative of the Louisville Home Telephone Company discuss the matter with you after Mr. Meriwether and Mr. Wilhite had made their report to you?

A. Yes, sir.

27. What representative, if you remember?

A. Mr. Bruce.

28. Did you show Mr. Bruce the report made to you by Messrs Meriwether and Wilhite?

A. Yes, sir.

29. Did he in any manner indicate that the books did not show what Messrs. Meriwether and Wilhite had reported to you?

A. I think not.

30. I hand you a paper marked "Louisville only. December 31st 1907. Cost of plant. And signed C. E. Archer." I will ask you if you ever saw that paper before, and if you can state where you saw it and the circumstances under which you saw it.

A. That paper was in my office.

31. From what source did you get it?

3269 A. I don't believe I can say positively, but either Mr. Bruce or Mr. Boone gave it to me during the time that I was considering the ordinance.

32. I call your attention to the matter appearing immediately under what purports to be the statement of the Louisville Home Telephone Company, which seems to be a note addressed to Mr. George M. Boone, Secretary and Treasurer, and signed by C. E. Archer, and I will ask you to read that part of the paper into your deposition.

A. —

"George M. Boone, Secretary & Treasurer.

DEAR SIR: The above is a statement of facts concerning the plant at Louisville as taken from the books of the company at the close of the year 1907. Dated April 25th, 1908.

(Signed) C. E. ARCHER, *Cashier.*"

33. Now I will ask you if that paper which you have shows the same earnings and expenses as that reported to you by Meriwether & Wilhite.

Mr. GRANBERY: Complainant objects to any testimony in regard to that paper, on the ground that it is purely hearsay, and on the further ground that the plaintiff has no opportunity, and can have no opportunity, in view of the attitude of the Louisville Home Telephone Company's officials, to rebut or explain any part of the statement.

The last question was read to the witness by the stenographer.

A. No sir, it does not. Mr. Meriwether and Mr. Wilhite reported to me, as I understand, the income and Operating Expenses from the whole plant. This statement of Mr. Archer here is for the Louisville plant alone.

34. I will ask you to file that paper and make it a part of your deposition.

A. I do so.

The paper in question was thereupon filed with this witness' deposition and marked by the stenographer for identification "Exhibit Grinstead No. 1."

3270 35. Did Mr. Bruce or Mr. Boone, whichever furnished you with that paper, represent to you that it showed the true state of the book as to the operations of the Louisville plant proper of the Louisville Home Telephone Company?

A. Yes, sir.

Cross-examined by Mr. GRANBERY:

36. What were the rates provided in the ordinance which you vetoed?

A. I do not know; I haven't got it with me, but I will get it and put it in my deposition.

37. Will you ascertain and put it to your deposition the rates that the ordinance prescribed?

A. Yes, sir.

(This information was afterwards furnished to the stenographer by the witness and said answer so furnished is as follows:)

Business Direct, $7; business two-party, $4; Residence Direct, $3.50; residence, two-party, $2.50.

38. Did or not the officials and representatives of the Home Telephone Company insist to you at all times that they were losing money on the rates that they were then charging, and in order to continue business it would be necessary for them to have a higher rate?

A. Yes, sir.

39. They were consistent in that claim throughout the entire period?

A. They were persistent.

40. Persistent and consistent in that statement. Now how long

did you have the ordinance under consideration before you vetoed it?

A. I could not say, several days, though.

41. Did you send a message to the General Council in vetoing this ordinance?

A. Yes, sir.

3271 42. Will you file a copy of that message as an exhibit to your deposition?

A. Yes, sir.

(The paper in question was thereafter furnished to the stenographer by the witness and was filed with his deposition and marked for identification "Exhibit Grinstead No. 2.")

By Mr. BLAKEY:

43. Do you know whether the Louisville Home Telephone Company has been procuring subscribers since the veto of that ordinance?

A. Why, I don't know of my own knowledge, but I am reliably informed, though, that they have.

The further taking of these depositions was adjourned until two o'clock.

LOUISVILLE, KY., *Jan. 7th*, 1910.

The parties met pursuant to adjournment at two o'clock P. M.

W. C. POLK, called for the defendant, the City of Louisville, being duly sworn and examined by Mr. Blakey, testified as follows:

1. Where do you live?

A. Toledo, Ohio.

2. What is your business?

A. Telephone construction engineer.

3. How long have you been engaged in that business?

A. Fourteen to fifteen years.

4. What was your business before you went into the telephone engineering business?

A. Railroad and mining engineering.

5. Are you a graduate of any school of engineering?

A. Ohio State University, Columbus,—Civil Engineer.

6. What experience have you had in connection with the

3272 construction of telephone plants?

A. For the last fourteen or fifteen years my duties have been entirely in connection with construction work of telephone plants.

7. Have you done work in connection with constructing both bell and independent telephone plants?

A. I have, yes sir.

8. What bell plants were you connected with the construction of?

A. I was in the employ of the Central Union Telephone Company for about six years.

9. Where does that company operate?

A. Ohio, Indiana, and Illinois, with the exception of a few counties.

10. Well, working for the Bell telephone companies, what towns or cities did you do work in or supervise work in?

A. Columbus, Ohio; Toledo, Akron, Canton, Dayton, Springfield, Zanesville, and several other small places in Ohio, and Indianapolis, Terre Haute, Muncie, Anderson, Fort Wayne, several smaller points in Indiana. Peoria, Rockford and Springfield, Illinois.

11. What was the character of work you did in those cities for the Bell people?

A. I represented the Superintendent of Construction on the ground. My duties were to go from place to place, remain on the job doing reconstruction and overhauling plants, while they were putting in underground system. My employment at that time was in the construction of underground systems and the rebuilding of the cable system, overhauling it, and several cases building new buildings and cutting over from the old building to the new building.

12. What part of the work did you do?

A. I had general charge of the work, representing the Superintendent of Construction who was located in Chicago.

13. Were you the man in charge of the work?

A. Yes, sir.

14. What experience have you had in connection with con-
3273 struction work for independent telephone companies and installing independent telephone plants?

A. For the last eight years I have been connected with the Independent Construction, having charge of, as engineer, for the Construction Company work at Toledo, Ohio; Louisville, Kentucky; Kansas City, Utica, New York; Mobile, Alabama, and several other smaller places.

15. Did you have anything to do with the construction of the Louisville Home Telephone Company's plant at Louisville, Ky.?

A. I did.

16. What was your connection with the construction of that plant?

A. I was Chief Engineer for the Construction Company who built the plant.

17. Did you spend any time in Louisville, Kentucky, during the progress of the construction of that plant?

A. I lived here with my family practically for about eighteen months, and I was in and out of here myself probably two years at various times.

18. When was it that you lived here, and when was it that the plant was being constructed?

A. The plant began construction in the late summer of 1901, and was put in operation in the fall of 1902.

19. You were thoroughly familiar with the telephonic conditions at Louisville, Kentucky, at that time?

A. I was—yes sir.

20. Were you familiar with the area of Louisville?

A. I was.

21. Were you familiar with the distances from east to west and north to south embraced in the city limits?

A. Yes, sir.

22. Have you been to Louisville any since 1902?

A. Yes, sir.

23. How often?

3274 A. Well, for the first couple of years afterwards I was back here quite frequently. I also was in the city here quite frequently during 1906 and 1907. I have not been in the city much in the last year, that is probably two or three times during 1908.

24. Are you familiar at the present time with the telephonic conditions and the growth of the city since you were living here?

A. Well, I naturally would be, as much time as I had spent here I would naturally be familiar with general conditions.

25. Has there been any change here in the telephonic conditions since you were engaged here in supervising the construction of the Home Telephone plant?

A. There is an increased development, that is, the development has increased quite materially—that is, I mean the number of telephones, per number of inhabitants.

26. Has the growth of the city been the healthy growth of the average city of the size during the period——

A. Well, as far as the growth of the city is concerned, I can only state that from hearsay. Of course, I have no absolutely knowledge as to the number of inhabitants there are here at the present time.

27. So far as your observation at the present time is concerned, what would you say about the difference between the city at the present time, telephonically speaking, and the condition as it was at the time you were constructing the Home Telephone plant?

A. Well, I would judge that Louisville probably will claim the same ratio of increase as other cities are claiming of the same size, especially Toledo. Toledo claims they have gained about 75,000 since the 1900 census.

28. Now, at the time you were in charge of the construction work of the Home Telephone Company, please explain just what the character of your duties were, and what you did.

A. Well, my duties were those that usually fall to the lot of an engineer, making up the plans and specifications, general supervision of the foreman, looking after supplies and material—in general charge of the work.

3275 29. Did you make the plans and specifications under which the Home Telephone plant was built?

A. I did.

30. Was it built by independent contractors, or by the owner of the plant?

A. It was built by a construction company, that is, they were investors also in the company. The construction company had a contract with the Home Telephone Company for the construction

of the plant, but these contractors were financially interested with the company.

31. Did the construction company do the work through its own laborers, or through independent contractors?

A. With its own laborers.

32. Did you have anything to do with the employing of those men, the purchase of material for the construction of the company?

A. I did—yes sir.

33. What did you have to do with that phase of the business?

A. I had direct charge of the purchase of all smaller supplies. Of course the purchase of the larger supplies, such as the switchboards and cables, was usually handled by one of the members of the Construction Company, but I was familiar with the prices paid and what those things cost.

34. Were you consulted about the price paid for all items going into the plant, and all labor?

A. I was—yes sir.

35. Did you have charge of the construction work until the plant was finally completed and placed in operation?

A. I did.

36. Now at that time, were you familiar with the extent of the plant of the Cumberland Telephone Company and the character of construction done on that plant?

A. I was as a person would ascertain by a general observation in going over the ground.

3276 37. Was it one of your duties as Construction Engineer to locate the routes for poles, cables, conduits, etc. of the Home Telephone Company?

A. Yes, sir.

38. Did you, in making those locations, ascertain the location of pole lines, cables and conduits of the Cumberland Telephone Company?

A. As a general rule we were familiar with their location—of the location of their property in advance of our construction.

39. Now, have you made any inspection recently of the plant of the Cumberland Telephone & Telegraph Company at Louisville?

A. I simply made a casual examination the last couple of days in a general way.

40. Did you inspect the switchboards in the central offices, Main, South, East and West?

A. I can't say that I inspected them. I simply visited the offices to ascertain their size and their capacity.

41. You saw them, did you?

A. Yes, sir.

42. And did you ascertain their size and capacity?

A. Yes, sir.

43. Under what heads does the construction part of a telephone plant naturally fall, and under what head is it usually treated by engineers and telephone companies?

A. Well, it is divided usually into what you might say the Equipment, including the central office apparatus and switchboards, the conduit systems or underground plant, cable system, the pole line and aerial plant, the sub-station equipment, which includes the telephones and private branch exchanges.

44. Now, Mr. W. H. Crumb has filed with his deposition blue prints representing the conduit system of the Cumberland Telephone Company in the City of Louisville, which maps have been made a part of his deposition and marked "Crumb Exhibit No. 1."

I'll ask you if you have examined those blue prints.

3277 A. I have—yes sir.

45. What are the terms, what are the parts of the conduit system? What are the terms used in connection with speaking of a conduit system?

A. The conduits proper and the man-holes.

46. Of what do the conduits consist?

A. They represent the tile or pipe that is supposed to contain the cables extending from one man-hole to the other.

47. Do they include the cables themselves, that is, in fixing the value on a conduit system do you include the cable which the conduits enclose?

A. No, sir; in fixing the value of a conduit system you simply consider the cost of the conduit system itself.

48. Now, in letting contracts, or constructing a conduit system, what is the basis on which a telephone company arrives at what a conduit system is going to cost?

A. Well, the estimates are based upon so much per duct foot. After you ascertain the size of the system and approximate the number of feet you propose to construct, you can very closely estimate the probable cost per foot, knowing the character of street in which they are to be constructed.

49. Well, you know the character of streets in which the conduit system of the Cumberland Telephone Company is placed do you?

A. Yes, sir.

50. Did you ascertain from these blue prints the number of duct feet included in the conduit system of the Cumberland Telephone Company?

A. I did—yes sir.

51. How many duct feet were there in that system?

A. 436,990 feet.

52. How did you ascertain that fact?

A. By going over the blue prints in detail and taking out the length of each section as designated upon the print, and the number of ducts indicated, and made by calculations accrodingly.

3278 53. Do you know what it would cost at the present time to install that system as it is, with that many duct feet, and in the locations where it is now installed, new throughout?

A. I have estimated the cost—yes sir.

54. On what basis did you estimate the cost?

A. On my judgment and past experience as to what it would cost under like conditions in cities of similar character.

55. Is it based on your knowledge of what it cost to install the conduit systems here for the Home Telephone Company?

A. That guided me to a certain extent—yes sir.

56. What estimate do you place as the cost of reproducing that conduit system new throughout?

A. You mean the total gross cost?

57. Yes.

A. $94,900.00.

58. How do you arrive at that figure?

A. By estimating a certain cost per duct foot.

59. What cost do you place per duct foot?

A. Twenty cents, and then I had added an arbitrary amount of $7500 to offset a certain amount of iron pipe they have used, which the original cost of the iron pipe would exceed over the original cost of ordinary conduits.

60. What is the conduit usually made of?

A. Vitrified clay is the usual thing.

61. Which is the better, iron pipe or vitrified clay?

A. In my opinion, I think vitrified clay.

62. Which is universally used now?

A. Nowadays it is almost universally used, except there is what is called fibre conduits, coming into general use now in some localities.

63. You mean vitrified clay is almost universally used?

A. Yes, sir; with the exception of what they call Fibre conduits that has come into use also in connection with the vitrified clay.

3279 64. Is your estimate based upon placing that conduit system in the street where it is now located?

A. Yes, sir.

65. And the same size conduits?

A. Yes, sir.

66. And the same position?

A. Yes, sir.

67. Please state whether the conduit system here of the Cumberland Telephone Company is built in a scientific manner, a manner that first-class engineers usually construct conduit systems, or otherwise.

A. Well, in answer to that question I would say that the branch offices are. The main office, I do not believe, if it was to be constructed today it would be constructed as it now exists. It undoubtedly shows evidence that it has been built at different times, probably at various periods, and has been added to now and then, and the growth of the city not anticipated originally, as to what would be required, which accounts, probably for the arrangement of the present system in the main office.

68. In what way does it differ from the system which would be pursued now by a first-class engineer?

A. Well, the routes that are parallelling each other on adjacent streets, and parallelling each other on adjacent alleys, for instance; and the routes parallelling each other, a small number of ducts,

where it would be more economical to reconstruct or reproduce by confining these routes to larger trunk lines and not having so many smaller ones.

69. In what ways do engineers usually, at the present time, construct underground conduits as regards parallelling adjacent streets?

A. The usual custom is to construct trunk lines on alternate streets, with laterals either way, and not have the trunk lines paralleling each other on adjacent streets.

70. What about the man-holes? Did you ascertain the number of man-holes connected with the conduit system?

3280 A. I did not count them particularly, because I know from my experience—that is, this price per duct foot includes the cost of man-holes, so I did not make any estimate to consider the cost of the man-holes separate from conduits. I estimated it per duct foot. This would include the cost of the man-holes.

71. Did the blue print which you had before you, and about which you testified, show you where the man-holes were located?

A. Yes, sir; and indicated the size of the man-holes as a usual thing.

72. And did you consider the location of those man-holes and the size of them in making your estimate?

A. Yes, sir.

73. Now, I will ask you if you have before you the blue prints showing the cable system of the Cumberland Telephone plant, being those blue prints filed with Mr. Crumb's deposition, and marked "Exhibit Crumb No. 2" with his deposition.

A. I examined them—yes sir.

74. Of what does a cable consist?

A. Cables consist of the wires or conductors which form the connecting link between the subscriber's station and the switchboard.

75. What is the difference between a cable and aerial wire?

A. A cable is made up of a number of wires twisted together and insulated from each other in a small compact lead sheath.

76. You mean they are encased in a lead sheath?

A. Yes, sir.

77. Are those cables over head and under ground?

A. They are both; some are in conduit underground and some are on poles.

78. Now, in determining the cost of constructing a cable system, how do engineers deal with the cable system, I mean so far as the part of the cable system is concerned?

A. The cable—its cost price per duct foot is estimated, and so much per duct foot for labor installing, connecting and terminating.

3281 79. Does the estimate per duct foot apply to the lead sheath and the wire in the lead sheath?

A. It means it is the lineal length of the cable. For instance, a cable one thousand feet long, it means you would pay so much per duct foot to lay it, splice it and connect it.

80. That would include the cost of the wire in the lead, the insulating of the wire?

A. Of course the original purchase price of the cable is a separate item, that is, in connection with the labor cost, which is so much per duct foot. There are two items considered, the labor cost per duct foot and the purchase price per duct foot.

81. Did you ascertain the number of duct feet in the cable system as it appears in those maps?

A. Yes, sir.

82. How many duct feet were there appearing on those maps?

A. I did not separate the underground and aerial cables, you understand. I have gone ahead and figured the total cable capacity of the plant regardless of whether underground or aerial cable. You pay so much per foot per cable. You might put it underground or aerial. I made no distinction so far as underground and aerial cable is concerned. I have made my distinctions and taken them off the map as far as their size is concerned, and the gauge of the wire. It is immaterial as long as the size and the gauge of the wire is considered. It makes no difference whether it is on the pole or in the conduit.

83. Do you estimate the number of duct feet in the cable system?

A. Number of cable feet.

84. The number of cable feet?

A. Yes, sir.

85. Is that the usual way of making an estimate as to the cost of a cable system?

A. Yes, sir.

86. How many cable feet were there?

A. The 22-inch gauge cables were as follows:

3282 Ten pair, 5,050 feet; twenty-five pair, 54,042 feet; fifty pair, 110,494 feet; one hundred pair, 352,456 feet; two hundred pair, 112,486 feet; four hundred pair, 52,417 feet. Nineteen gauge cable as follows:

Fifty pair, 37,630 feet; one hundred pair, 87483 feet; two hundred pair, 34,467 feet. Now, I will say in this connection I noticed a small amount of twenty gauge cable and some little apparently—it was not very plain on the map, say possibly five pair cable. The amounts being so small, I did not think them worthy of consideration as separate items, and I split it and divided it into the two amounts and applied a little of it to the 19-gauge and a little to the 22-gauge so as to figure on those two amounts. As far as the general result is concerned, it would be immaterial.

87. What is the character of wire in those cables?

A. Well, I might say in this connection I have figured these cables all to be first-class cables, that is what we call double wrapped, paper insulation, copper wire, with .08 capacity, standard lead sheaths, one-eighth of an inch in thickness, for hundred pairs, and above, seven sixty-fourths lead sheaths for fifty pairs and less than one hundred, and three thirty-seconds lead sheaths for less than fifty pair, with three per cent tin.

88. Is that the highest class of construction wire for cables?

A. That is the highest class cables.

89. Do you know whether they are of that character of construction?

A. No, sir; I have no way of knowing whether they are of that character or not.

90. Well, have you made an estimate to ascertain the cost of constructing that cable system new throughout and placing it in the position where it now is?

A. Yes, sir.

91. What does that estimate show?

A. The entire total cost of the cable system, $384,400.00.

3283 92. How did you arrive at that figure?

A. I first take into consideration the geographical area of the city, which is approximately twenty-one square miles, being East and West about seven miles, and North and South about three and a half and used that in arriving at the number of poles, and comparing that with other cities of similar area or comparative areas, and getting a proportion that would compare with the geographical area and the number of stations.

93. Did you take into consideration your knowledge of the number of poles used by the Home Telephone Company in its plant?

A. I did, yes sir.

94. How many poles did you estimate as being the number installed by the Cumberland Telephone Company in the City of Louisville and in the adjacent territory sufficient to take care of the Company's country lines which you have mentioned?

A. Eleven thousand.

95. Is that a liberal or a parsimonious estimate, in your opinion?

A. It is a liberal estimate.

96. What is your basis for saying there are 11,000 poles?

A. I am familiar in a general way that the Cumberland has the city pretty well poled, and it would be necessary to consider a liberal estimate, for there would be a likelihood of underestimating. My past experience has indicated that the poles were very numerous.

97. How many poles are usually considered as the number sufficient to take care of a given number of instruments?

A. In a city where it is what you would say built up solid from the center out, where there are no large vacant areas and intervening vacant space, it will average pretty nearly a pole per station. Some places it will run a little less.

98. Is Louisville built compactly?

A. Yes, sir; there is no large open territory that would interfere with that conclusion.

99. Are you familiar with the cost of purchasing and

3284 placing in position telephone poles in the City of Louisville?

A. I am, yes sir.

100. What, in your opinion, would be the cost of reproducing 11,000 poles and placing them in position in the plant of the Cumberland Telephone Company where they now appear at Louisville?

A. I estimate it at the rate of $15 per pole.

101. What character of pole do you take into consideration in that estimate?

A. Chestnut, largely.

102. How does that compare with the other classes of telephone poles?

A. Chestnut poles in this territory are largely used by all the companies. The territory usually governs the character of pole that is in use, and chestnut prevails in this territory.

103. Do you know what character of poles the Cumberland Telephone Company has in use in the City of Louisville?

A. Yes, sir.

104. What are they?

A. Mostly chestnut; a few cedar.

105. What, then, would be the total cost of reproducing those telephone poles and placing them in the position where they are?

A. $248,000.00.

106. Does that include the aerial wire on them, or is that the poles alone?

A. That includes the pole lines also including messenger wiring and guying and aerial strung, ready for service.

107. How did you arrive at the value of the aerial wire?

A. I estimated that at 3,500 miles of wire.

108. How did you reach that figure?

A. Taking the average amount that is ordinarily used in plants of this size, and my knowledge of the wire that is used.

109. Is it based at all on the number of stations installed by the Company?

A. Yes, sir.

3285 110. What amount of wire do —— estimate as being the amount necessary to take care of each station?

A. From one eighth to a half a mile per station.

111. How much have you used in this estimate?

A. I sort of split the difference. I have forgotten just what I did figure it at. I figured 3,500 miles of wire.

112. In what classes of cities is the half a mile to the station figured?

A. Where there is not much cable. I took into consideration that this plant now is largely a cable plant. I do not believe the proportion of aerial wire is as large as it was at the time I was here in 1902. That is the reason I cut under the half a mile per station, because there has been considerable cables erected, I notice.

113. I believe you said that you placed a value on the entire aerial system as a whole?

A. Yes, sir.

114. What value did you place on that?

A. 248,000.

115. Does that include the cost of labor in placing the poles in position and the wires and cross arms and gallasses and other apparatus connected with the proper placing of a telephone pole, and the wire in position for use by the subscriber?

A. Everything complete—yes sir.

116. Is that based at all on your actual experience in building the Home Telephone Company plant at this place?

A. It is. That is, I came to my conclusion from my knowledge of what those things cost here.

117. What character of wire did you assume the Company had, or do you know what character of wire it uses with its aerial system?

A. Iron wire.

118. Are there grades of iron wire?

A. Yes, sir.

119. What grade did you assume it to be?

A. B. B. galvanized, the best telephone wire.

3286 120. Do you know whether they have that grade of wire in their system here?

A. I do not, no sir.

121. What value did you place on the wire?

A. The present price is—I divided that wire. I figured 500 miles of No. 12 and 3,000 miles of 14 gauge. I figured the 14 at four cents per pound—no, four and a quarter cents per pound, and the No. 12 at four cents per pound.

122. Are those current prices for that character of wire?

A. Yes, sir.

123. Now, when you were engaged in constructing the Home Telephone plant, did you ascertain whether the Cumberland Telephone Company had constructed any telephone lines of pole and aerial wire that were apparently useless?

A. I did at that time, yes sir.

124. Just explain in what way those wires and poles were erected and the circumstances under which they were erected.

A. On the West Side of the city they had lines paralleling each other in streets and adjacent alleys; that is, there would be a line in an alley and there would be a line in the street on either side which would naturally increase the number of poles over the usual number.

125. How about Frankfort Avenue, what was the situation there?

A. Pole lines on either side of Frankfort Avenue, and also a line on Frankfort Avenue.

126. I beg your pardon.

A. There were pole lines on either side of Frankfort Avenue and also a line on Frankfort Avenue, paralleling each other.

127. How about Ormsby Street?

A. I don't remember the details, that is, as far as locations, but those conditions existed quite frequently; that is, there would be a pole line in an alley and then lines on both of the side streets, on either side of the alley; parallel lines in the alley and adjacent streets.

3287 128. Would pole lines be on both sides of a street in any instance?

A. In some instances, yes sir.

129. Do you know what the occasion for that was?

A. Why, there seemed to be a sort of a belief that if one line existed on one side of a street, it would be impossible to have another line on that same side.

130. Was the second line on the same street erected by the Cumberland Telephone Company after the Home Company began to construct its plant?

A. In some cases, yes.

131. Do you know whether any permit for such second line of poles was obtained from the Board of Works of the City of Louisville after application had been made by the Home Telephone Company had been made for similar permits?

A. I don't remember specifically the details of those things now; I know we had considerable trouble in getting a permit sometimes.

132. Was there any litigation between the Home and the Cumberland Companies over this duplication of telephone poles on the streets?

A. Yes, sir.

133. Was that litigation in more than one case, and, if so, to what extent?

A. I know there was more than one case, but I could not say how many cases there were.

134. Is there any occasion for a telephone company having a line of poles out each side of a street?

A. I don't think so, no.

135. Have you observed and ascertained whether that situation, namely, a duplication of pole lines out both sides of the same street, has been discontinued since the Home Telephone Company was constructed?

3288 A. Before making up this estimate of the poles I did verify it in three or four cases, to find out whether those conditions existed on the West side, running west there where those lines are now paralleling each other, and found that they were not.

136. You found that the pole lines had been taken down?

A. Yes, sir; one of them; that is, if there was a line on the street, the one in the alley was taken down, and if now on the alley the one on the street was taken down.

137. I believe you said you examined the switchboards in the four Exchanges of the Cumberland Telephone Company, did you not?

A. Yes, sir.

138. What did you find to be the capacity of those switchboards?

A. I do not think I have my notes here, but I believe I can give it to you from memory all right. The main office board has 4,800 lines installed, a multiple board—4,800 multiples on each section. The East office has twelve hundred lines installed with the necessary multiples in each section, and the west office has 1,080 installed with 1,200 multiples per section. The South office has 3,100 lines installed with necessary multiples. Also all offices have the usual B board with the same multiple equipment thereon, and the necessary equipment for handling the trunk service.

139. What do you mean by B. boards?

A. The Boards that are necessary where you have branch offices to take the calls coming from another office.

140. What was the character of the switchboards installed?

A. They are what is known as Central Energy, Lamp Signal, Multiple type switchboards.

141. Common battery switchboards?

A. Common battery—yes sir.

142. Do you know by whom they were erected?

A. The Western Electric Company.

143. Are you familiar with the current prices of switchboards of that character?

3289 A. Well, I am not familiar with the Western Electric Company prices, but I am familiar with the prices of the boards that are manufactured by independent manufacturers of the same size and capacity as those boards.

144. Have you made an estimate of the amount it would cost to purchase and install switchboards of the character which the Cumberland Telephone Company has at its various exchanges?

A. I have, yes, sir.

145. What does that estimate show?

A. Switchboards of all of the offices, $203,000.00.

146. On what basis do you reach that conclusion?

A. I have not my notes. I think I can give you from memory, however, the figures per board. The total is all right. I cannot get at my original figures because I cannot remember just exactly, but these figures will come close enough to right for you. The main board $105,000; the South board, $60,000; the East board, $20,000, and West board, $18,000.

147. You say you have misplaced your figures which you used in making up your total estimates?

A. My detailed figures in getting at the totals. I have my total here, all right. My total is $203,000 for all boards.

148. Was that made up from detailed figures representing each board?

A. Yes, sir.

149. Does that include the cost of the switchboard itself and the labor and material in installing it ready for use?

A. Ready for service with all the necessary apparatus, including the machines, batteries, chief operators' desk, etc.

150. Does that include the power plant?

A. Yes, sir.

151. Does that include the telephone instruments installed in the subscriber's residence or place of business?

A. No, sir.

152. Have you placed any value on those instruments?

3290 A. I have placed the telephone instruments, private branch boards and pay stations all under one item.

153. What value did you place on those?

A. $102,500.

154. How do you reach that figure?

A. By placing a value on each telephone, by placing a value on the private branch boards and placing a value on the pay stations.

155. What value do you place on each instrument?

A. I place $6.50 for wall sets and $7.50 for desk sets, I believe it was, and I place an average of $275.00 for private branch boards, assuming that there were seventy-five of them, as I understood that was the number, and placed a price of $8.00 for pay stations as an average price.

156. You mean $275.00 each for the private branch exchanges?

A. For the seventy-five private branch exchange boards——

157. That is, for each individual branch exchange.

A. Yes, sir.

158. Private branch exchange?

A. Yes, sir.

159. Is that based on first-class instruments and private branch exchanges, or otherwise?

A. First-class.

160. What is the difference between the switchboard and the subscribers' equipment furnished by the Western Electric Company and The Independent Manufacturing Company, which manufactures first-class equipment?

A. I don't think there is any difference, that is, they both answer the same purpose, do the same work, reach the same result.

161. What result is sought by a telephone company when it installs exchange equipment and subscribers' equipment?

A. To give satisfactory commercial service.

162. What do you mean by satisfactory commercial service?

A. Something that the people will pay for.

163. What is the object of the telephone plant, what is it
3291 supposd to accomplish?

A. Furnish service to the public—telephone service—intercommunicating—furnish telephone service to the general public commercially.

164. Is it for the purpose of permitting one subscriber to the system to talk with any other subscriber to the system?

A. Yes, sir.

165. And will the equipment furnished by The Independent Manufacturers of equipment furnish the same service in the same way and equally as well as that furnished by the Western Electric Company?

A. I think so—yes sir.

166. Is that proposition questioned by the commercial world?

A. I don't believe it is.

167. Is there any difference, so far as you know, in the cost of manufacturing the equipment which the Bell Company manufactures and that which The Independent Company manufactures?

A. I don't believe there could be any difference in the manufacturing cost.

168. Is there any reason why The Cumberland Telephone Company should not use the equipment which The Independent Company uses, that you know of?

A. Not that I know of.

169. What part of the telephone is included in the transmitter and receiver? What is meant by the transmitter and receiver?

A. The transmitter is the part you talk into, transmits the voice, and the receiver is the part that you receive with.

170. On the desk in front of you is a metal stand which seems to have a gutta percha mouth piece, and to it is attached a green cord, at the end of which green cord seems to be a gutta percha attachment about six inches long, which is used for placing to the ear. Which one of those pieces is the transmitter and which is the receiver?

A. The top is the transmitter. The Long portion hanging at the side is the receiver.

3292 171. When you speak of a transmitter, just what do you include in that? Just what part does that desk stand in front of you?

A. Just the top portion.

172. Do you mean the part that seems to be on a pivot at the top of the metal stand?

A. Yes, sir.

173. Is that the transmitter, or is the disc shaped metallic instrument on the top of the stand and enclosed in the metal, the transmitter?

A. The operating portion of the transmitter is inside, enclosed.

174. Is that only spoken of as the transmitter, or is the entire pivotal part of the instrument which is at the top of the stand spoken of as the transmitter?

A. Usually when you speak of a transmitter, you mean its entire case and everything combined, everything complete, ready for attaching it to a stand.

175. Do you know the cost of that part of the telephone which is spoken of as the transmitter and receiver?

A. Yes, sir.

176. What is that cost, what can it be purchased for?

A. Approximately, a dollar and a half.

177. Do you know the approximate life of that transmitter and receiver?

A. The approximate life is usually considered to be an average of about eight years.

178. Under what estimate did you estimate the value of the drop wire and wire inside of a building in which the telephone is installed?

A. That is the drop wires, or what is known as drop wires, that go from the cross-arm to the residence on the outside of the building, that I consider is a portion of the pole line. The inside wiring in the office buildings I consider part of the cable plant, and included it in my cable system cost.

3293 179. Do you know, and can you tell from your knowledge of the telephone plant of the Cumberland Telephone Company, how many new instruments could be installed by that Com-

pany and used in connection with its present system, present equipment and plant generally?

A. In the main office, for instance, it has a cable capacity of nine thousand, two hundred incoming cable pairs, and forty-eight hundred line equipment. The main exchange could therefore approximately be increased about eighty per cent. It would be impossible to increase to the full capacity of the cable, because you can't get your business where you might want it. You cannot figure a cable system to be utilized up to exceed eighty per cent of its capacity, therefore, forty-eight hundred from ninety-two hundred would leave forty-four, for the cable pairs. You could possibly use half of those. By the time you would use half of those you would have to commence giving release. Therefore, I should say that the main office has a cable capacity for practically two or three thousand more telephones. The South office has an incoming cable capacity of sixty-four hundred lines; switchboard capacity, thirty-one hundred, it has a capacity, therefore, for two thousand or twenty-five hundred additional lines. The East office has an incoming cable capacity of twenty-eight hundred lines; switchboard capacity, twelve hundred. You can make an increase there of approximately a thousand lines. The West office has 1,080 lines, with twenty-eight hundred incoming capacity; it could probably be increased there twelve hundred lines.

180. What about the switchboards? What additional capacity, unused capacity, have they?

A. The branch office switchboards all have additional capacity, exceeding the cable capacity that I have named, but the main office has not. The board at the main office is practically exhausted. It has a capacity of forty-eight hundred lines.

181. Do you know what would be the result as to increasing or decreasing subscribers of the lowering of the rates charged by the telephone company?

A. The lowering of rates would tend to increase a number
3294 of subscribers, I should think.

182. Do you know what telephone rates are in use in Toledo, Ohio?

A. Yes, sir.

183. Please state what they are.

A. $48,00 for individual business. $30.00 for individual residence.

184. Is that the Independent rate or Bell rate?

A. Independent rate.

185. Have they a Bell system in Toledo?

A. Yes, sir.

186. What are the rates of the Bell Telephone Company, if you know?

A. I think they claim their Independent business rate is $72.00, and their individual residence rate $36.00, I believe.

187. Do you know what number of telephones the Independent Company has in Toledo?

A. They have approximately 13,000.

188. Do you know how many the Bell has?

A. About the same number.

189. What does the 1900 census give as the population of Toledo, if you know?

A. About 125,000, I believe.

190. Do you know about how many—what the population of Toledo at the present time is?

A. They claim over 200,000.

191. How much over 200,000?

A. Anywhere from two hundred thousand to two hundred and twenty-five thousand.

192. Do you know what the rates of the two companies in Columbus, Ohio, are?

A. I would not be positive about those rates—no.

193. Now, can the construction of a telephone plant, insofar as the exchange part of it is concerned, be separated, and the
3295 books so kept as to show the cost of constructing the exchange part proper and the toll part of the plant?

A. You mean the long distance construction separate from the—

194. Yes.

A. Yes, that can be very easily ascertained, I should think.

195. Do you know anything about the operation of a telephone company? Have you ever had anything to do with the operating of a telephone plant?

A. I have not been what you might say in the office of the manager in operating the plant. I have been associated and around offices for the past fourteen or fifteen years and familiar with the manner of operating and how they are operated.

196. Do you know whether it is a custom to keep the receipts and disbursements of operating the long distance part of the business separate and distinct from the exchange proper?

A. That is the usual custom.

197. Can that be done?

A. It can—yes, sir.

198. Can it be done economically?

A. I think so.

199. Do you know anything about the automatic telephone and its operations?

A. Yes, sir.

200. What experience have you had with the automatic companies and the automatic switchboards?

A. My experience has simply been more in an observation way, not in direct operation of a plant.

201. Is the automatic telephone system considered a success by telephone men and telephone engineers?

A. Yes, sir.

202. Are you sufficiently familiar with the telephone properties to know what the telephone plant depreciates each year, and what percentage of its value should be set aside for depreciation to replace the plant as it wears out?

A. Yes, sir.

3296 203. From your knowledge of the Cumberland Telephone Company plant at Louisville, Kentucky, what percentage of its value would you say should be set aside each year to take care of depreciation?

A. You desire the real estate to be considered as a portion of the plant in fixing that ratio?

204. No, eliminating the real estate entirely,—eliminating the real estate and the buildings.

A. I would say in view of their cable systems, its extensive cable system and conduit system, that six per cent would be a reasonable amount and a safe amount.

205. What do you take into consideration in reaching that figure?

A. I take into consideration the general conditions in the city and the proportion of the plant that is under ground and in cables; that is, ordinary depreciation is figured anywhere from four per cent to eight per cent. In this case I would take a middle ground.

206. What does the amount that should be set aside to take care of depreciation depend upon?

A. Depends upon the character of the plant, how it is exposed and its manner—how it is constructed and what its tendency is to depreciate, and how it is maintained, kept up.

207. If the records of the telephone company show that it expended in 1905, $49,000.00 in 1906, $52,000.00 for maintenance; in 1907, $65,000.00 for maintenance, and in 1908, $54,000.00 for maintenance, and expended for maintenance reconstruction in 1905, $41,000.00; in 1906, $40,000.00; in 1907, $41,000.00, and in 1908, $31,000.00 and that for a plant which has been in operation for over twenty years, and if the records also show that the same plant had in 1905 an average number of telephones of eight *eight* hundred; in 1906, an average number of telephones of 98,000; in 1907, an average number of telephones of 10,800, and in 1908 an average number of telephones of 9,900, what would be your conclusion as to the amount of depreciation fund which should be set aside, based on those figures?

3297 A. I should think if that amount of money had been expended each year in maintenance and maintenance renewal, the plant would be in fairly good condition, and no additional amount would be necessary, no large additional amount would be necessary.

208. Would that alter your conclusion at all as to placing the amount to be set aside for depreciation at six per cent of the value of the plant?

A. What I mean by setting aside six per cent for maintenance, if that is not expended, whatever portion is not expended should be carried forward. If it is actually expended, why, there should be no additional amount. What I mean to say is, that six per cent should not be set aside in addition to what is actually spent on maintenance.

209. Please explain what is the scientific theory of a telephone plant providing a depreciation fund and the method in which it is treated by telephone companies generally.

A. There are really two kinds of maintenance: there is maintenance of operation and maintenance of plant. From those figures I would assume that it has all *be* included as one sort of maintenance, that that maintenance for which these expenditures had been made had gone into maintenance of operation as well as maintenance of plant, and should not be considered as a credit against this six per cent reserve I have spoken about.

The last question was read to the witness by the stenographer.

210. In other words, if a plant cost a million dollars and were beginning its operation, what course, what course should it pursue in so far as setting aside depreciation funds is concerned?

A. It should set aside $60,000.00 per year for depreciation, and carry forward each year whatever has been left unexpended during that current year as a surplus to the credit of the depreciation fund.

211. If it spent $10,000.00 the first year on maintenance reconstruction, or reconstructing parts of the plant, due to a sleet storm or what not, then, according to your answer, I understand you to mean it should carry forward $50,000.00 into the depreciation fund?

A. Yes, sir.

3298 212. Now, if, at the end of twenty years, the Company was not expending more than $40,000.00 for replacement out of that depreciation fund which it was setting aside, what would be your conclusion from that state of affairs?

A. That the plant was not being properly maintained, providing it had not been reconstructed in the meantime.

213. Well, if the plant itself showed that it had been properly maintained, and was still not spending more than that amount of money in replacement?

A. I would infer that it was not properly maintained.

214. Assuming that it had been properly maintained and had not spent more than that amount of money, would you not assume that it had been maintained at a very high state of maintenance?

A. I would—yes, sir.

215. Now, when a telephone plant is first installed, does the cost per station exceed, or is it less than the cost per instrument after the telephone company has succeeded in getting as many more subscribers as it had at the beginning?

A. The initial cost is greater. The cost per station tends to grow less.

216. Why is that?

A. Because on the original cost you have the cost of the real estate, the cost of the conduit system, the cost of the heavy trunk lines proportioned over a small number of subscribers. As your subscribers increase this permanent cost which you were forced to make originally is distributed over a larger number, and the average cost thereby is reduced.

217. Has the construction of a telephone plant reached or passed the development stage?

A. You mean from—

218. Reached or passed the experimental stage, I should have asked.

A. It has passed the experimental stage.

3299 219. Now I don't believe I asked you if you knew anything about the amount of supplies and tools and teams—knew anything about the value of the supplies, tools and teams and incidental matters connected with the conduct of a telephone plant.

A. I did not examine the amount of supplies on hand or tools and teams. I simply took Mr. Crumb's data on that, assuming that he had examined it and took his valuation. Supplies on hand, $18,000.00, furniture and fixtures, $2,000.00—in all $20,000.00.

220. Did that supplies on hand include tools and teams, do you know?

A. As I understood, it did.

221. What amount of tools, teams and supplies in value would you consider would be sufficient to operate a plant such as the Cumberland Telephone Company plant in Louisville?

A. I should think $20,000.00 would be sufficient.

222. What about the amount of cash that should be on hand, if any, to operate a telephone plant of its size?

A. Well, I would think that any extremely large amount is not necessary on account of the receipts of the Company are usually collected in advance, at the time the service is furnished, therefore they really have the cash on hand ahead of the expenditures, and if it is a prosperous and growing concern, there is no necessity of carrying any large amount on hand.

223. What do you mean by any large amount, how much would you say?

A. Nine or ten thousand dollars—I should think anywhere from twenty-five to fifty thousand would be a sufficient item to operate the plant.

224. In estimating the value of this plant of the Cumberland Telephone Company, have you placed it as the cost of reproducing it new throughout, or as it is in its present condition?

A. Reproducing it new throughout.

225. From your knowledge of the plant here, what would 3300 you say—how much less would you say is it in value than if produced new throughout?

A. The average depreciation on the entire plant, exclusively of real estate, would be anywhere from—in the neighborhood of twenty per cent.

Cross-examined by Mr. GRANBERY:

226. What was the last exchange of any size that you constructed?

A. The last one, I believe, was Mobile.

227. When was that constructed?

A. That was completed about two years ago.

228. That was completed two years ago?

A. About two years ago—yes, sir.

229. How long were you engaged in constructing that plant?

A. I would say, off hand, about eight months—eight to ten months.

230. Has your experience in the past ten years been in constructing new plants, or operating and maintaining old plants?

A. Been constructing new plants mostly, largely.

231. Have you had material experience in the last ten years in maintaining and operating existing plants?

A. Not in official capacity of manager—no, sir. I have simply been associated with the companies indirectly.

232. In other words, you have not been on the pay-roll of any company in operating and maintaining existing plants in the last ten years, have you?

A. No, sir; I can't say that I have.

233. Now, I believe you stated that you have made no investigation of the physical condition of this company's plant in Louisville with a view of testifying in this case, is that what you stated?

A. I made no physical examination of the property, that
3301 is, the property itself—no, sir. I simply made an examination of these blue prints and ascertained the quantities from those.

234. So that you are not in a position to testify as to the real condition in which this plant is at the present time, are you?

A. I am not testifying as to the condition. I was testifying as to replacing the value of this quantity of material in a new plant.

235. Exactly; but I am asking you now, as a matter of fact have you sufficient knowledge of the physical condition of this Company's plant in Louisville at the present time to be able to testify as to its condition—physical condition.

A. Yes, sir; I believe I am.

236. How did you get that?

A. Just from the general appearance of the property, and due to the fact that I recently, within the past two years, made appraisals on various properties with a view of passing upon the depreciation and ascertained that that general average does not vary much from an operating plant that has been in operation and passed the experimental stage, after it has got to the period of actual operation and on a permanent basis.

237. I am not speaking of plants in general; I am talking of this particular plant of the complaining company in the City of Louisville.

A. It does not differ materially with any other plant. I am perfectly familiar with The Cumberland's mode of construction.

238. Have you made an investigation or examination of the physical condition of the complaining company's plant in Louisville?

A. I have not,—that is, recently.

239. When did you?

A. I was perfectly familiar with the plant at the time of the reconstruction of it.

240. What reconstruction?

A. At the time of the construction of it. If I said reconstruction I did not mean to.

3302 241. I probably misunderstood you. When was that?

A. Eight years ago.

242. You mean at the time the Louisville Home Telephone Company's plant was constructed?

A. Yes, sir.

243. You spoke of having a knowledge of the automatic system. In what proportion do the Independents use the automatic system and the manual system?

A. What proportion? That would be a rather difficult question to answer.

244. Of course, I merely want your idea of it.

A. Well, four or five of the large cities are operating automatic plants. I have never installed one myself.

245. How many places do you think in America that the Independents are using the manual system?

A. The manual system is being used, and has been used, a much longer time than the automatic, and there are more of them in use as far as the individual plants are concerned.

246. State the number of plants that have been constructed since the automatic came into use, has the majority of plants since that time been automatic or manual

A. The majority in the larger cities have been automatic.

247. How many larger cities use automatic?

A. Practically all on the Western Coast, where most of the construction has been done in the last few years.

248. How many of those cities would you say?

A. Four or five.

249. How many large cities in America use the automatic?

A. Five or six.

250. Do you know of any places where the automatic has been taken out and the manual put in?

A. In rather small places. Not in cities—no, sir

251. When did you come to Louisville on this visit?

A. I came down Monday night, arrived here Tuesday morning.

3303 252. You came for the purpose of testifying, did you, in this case? At the instance of counsel for the City?

A. Yes, sir.

253. You, of course, are paid for your services, for coming and testifying?

A. Yes, sir.

254. The only investigation that you have made on this visit of the complainant's plant has been to go into each of the switchboard rooms, as you have testified, to see how many connections there were.

A. As I undertook my employment, all I prepared for was, to place a valuation on the plant and not to make a report on its physical condition.

255. You have examined Mr. Crumb's deposition in this case, have you?

A. I read it—yes sir.

256. You had there before you, in computing your estimates of the cost of reproducing this plant.

A. I knew what his costs were—yes sir.

257. Did you read any other part of the record in this case?

A. The only part of the record I saw was Mr. Crumb's deposition and the blue prints.

258. I understood you to say, and you can correct me if I am in error, if the property is damaged or injured by a sleet storm and you replace that, you charge that to reconstruction?

A. No sir, I didn't say—I don't believe I did. I did not intend to say that. I would not apply that to reconstruction.

259. What would you charge that to?

A. That would depend. Now, if that damaged was replaced with some new material, like new cable, for instance, I would charge a portion of that to construction, and if you put in a betterment on the property——

260. In other words, the difference between the old value and the new property would be charged to construction and the re-

3304 mainder would be charged to maintenance?

A. Yes, sir; if you add it to the plant in any way.

261. The value of the plant at any particular time depends on entirely, or to a very great extent, does it not, to the manner in which it has been maintained and portions of it reconstructed from time to time, doesn't it?

A. Yes, sir.

262. So that, in order to ascertain the value of a plant at any particular time you would have to know how it had been maintained and how it had been cared for, wouldn't you?

A. You would have to either know that or else make an examination.

263. That is what I mean. Now, after a telephone plant is constructed, is it a finished property? Or does it continue to grow from year to year as new subscribers come in?

A. It continually grows.

264. Now, so that practically speaking a telephone plant is never a completed property like a street railway system, for instance?

A. No sir.

265. Now, then, in the growth of that plant, do not engineers often times make an error in their judgment of where they will get new growth and where they will need new facilities?

A. Yes sir, that frequently happens.

266. In other words, the cities grow in different directions other than that contemplated or believed at the time the plant was constructed.

A. Yes, sir.

267. So that as time goes on a plant must, of necessity, adapt itself to the changed conditions?

A. Yes, sir.

268. With reference to new constructions and additions to the plant?

A. Yes, sir.

3305 269. Now, I believe it is usual and proper, is it not, in constructing a telephone plant, to look into the future and

provide surplus facilities with reference to the future growth of the plant?

A. Yes, sir.

270. That is the proper thing to do, and telephone engineers usually try to do that, do they not?

A. Yes, sir.

271. Now you spoke of a telephone plant costing less per station in getting new subscribers. You mean by that, do you not, where the surplus facilities provided in the instance are utilized?

A. What I mean by that was, for instance, you construct a plant for five thousand telephones, and eventually it grows to ten thousand, that the cost per station will be less at ten thousand than it was at five on account of certain fixed charges and extra facilities you put in, like conduits and real estate, will apply over a larger number and reduce your average.

272. When you reach your capacity of your exchange as it was originally contemplated, and you had to begin a supply of additional facilities for a new growth, then that expense is out of proportion, is it not, and much heavier?

A. Well, that depends largely of how you proceed to take care of that increased business.

273. I mean taking care of it in a proper way, providing surplus facilities.

A. I believe that there is a limit to the increased cost per station, myself.

274. When do you think that is reached, what number of stations?

A. Just at the proper moment when it is advisable to start in the branch office proposition. The minute your branch offices are established, then your cost per station will reduce. If you would continue to operate from one central office all together, it would continue to grow on you, but going into the branch office proposition, you can start it the other way.

3306 275. The question of the cost and value of a private branch exchange depends very largely upon each particular company's method of installing those private branch exchanges in each particular place, does it not?

A. Are you referring to business houses as private branch exchanges, or operating exchanges?

276. I mean business exchanges.

A. What was the cost?

277. The cost of that depends largely, and will have to be determined, by each particular installation, would it not?

A. The cost would vary of course, depending upon the size and branch.

278. And also of the equipment and material used in installing the private branch exchange?

A. To a certain extent.

279. How many stations were installed at the time the Louisville Home Telephone Company first opened its service commercially?

A. They opened service with forty-five hundred in operation with switchboard facility for five thousand.

280. Do you know the cost of that plant at that time?

A. I did—yes, sir.

281. Will you tell us what that was?

A. No, sir.

282. Do you decline to give that information?

A. I do.

By Mr. BLAKEY:

283. Do you know now how much it costs to construct the Home Telephone Company's plant in Louisville, Kentucky?

A. You mean do I know the present cost of the plant as it exists today? Is that what you mean?

284. Yes.

A. No sir, I don't know the present cost.

285. Do you now remember the exact figures that the plant cost the Home Telephone Company at the time it began opera-
3307 tion?

A. No sir, not exactly.

286. Do you know the exact cost of it at any time?

A. Not the exact cost, no, sir.

By Mr. GRANBERY:

287. What do you mean by the exact cost? Do you know within a few hundred dollars?

A. I mean down to the dollars and cents, the exact cost.

288. You know within a few hundred dollars?

A. It is a kind of a hazy recollection.

289. Well, your recollection could have the haze dispelled within a few hundred dollars if you wanted it, couldn't it?

A. Well, I might go wrong. I would not want to trust my memory entirely.

290. In other words, you do not want to give that information. That is the truth, is it not?

A. It is not my policy to give out private information if it possibly can be avoided, where I have been employed by a corporation.

291. It is not a question of recollection. It is a question of inclination on your part to disclose that information.

A. Well, I say I do not want to disclose private information if it can be avoided.

292. As a telephone engineer, do you add anything to the value of a plant or a going business, franchise and good will, in estimating the value of the plant?

A. Not good will—no sir. I estimate the value on a franchise, that is, the actual cost of procuring the franchise.

293. Do you think there is anything to be added on account of the going business?

A. I don't know as I exactly understand your question.

294. Well, the difference between a new manufacturing concern, for instance, that has just started, and one that has been in exist-

ence several years and has built up a fine business and in prosperous condition. Isn't there an added value over the mere building and machinery of the plant?

3308 A. There would be an additional value there, yes sir.

295. And in each case it would depend entirely on conditions, what that value would be.

A. Yes, sir.

296. Now do you think it proper and right to add anything for organization, interest on the money that is being used while the plant was being constructed?

A. I had it all here, but nobody asked me for it.

297. I am asking you now. I don't know what they are. I am going to take a chance on you telling me. What do you think about it? What do you think ought to be added?

A. I had some additional items here as to the cost of reproducing this property as follows: Soliciting and right of way, $15,000.00; taxes, rent and insurance, $5,000.00; engineering and supervision, $20,000.00; general, legal and miscellaneous, $50,000, making a total for the reproduction of the plant, $1,142,800.00.

298. That is exclusive of real estate?

A. Yes, sir.

299. And that is exclusive of material and working capital and things of that kind?

A. Not exclusive of material on hand. I have an item here that is supposed to cover material on hand, $20,000.00—furniture, fixtures and material on hand.

By Mr. BLAKEY:

300. Eliminating those last items you have mentioned, what do you place as the reproduction value of the plant?

A. Those last items, soliciting and right-of-way, taxes, rent and insurance, engineering and supervision, general, legal and miscellaneous, amounts to $90,000.00. That would leave it $1,052,800.00.

NOTE.—At the time of the reading of this deposition, and the signing of the same by the witness, he had procured his notes as to the cost of the four exchanges of the Cumberland Telephone Company and corrected his testimony as follows:

Total cost as given *herefore* in deposition is correct. The Division is slightly wrong, and should be:

3309

Main Board	$105,000.00
South Board	60,000.00
East Board	20,000.00
West Board	18,000.00
	$203,000.00

3310

		Income Louisville, New Albany, Anchorage, Pewee Valley.	Expense For Maintenance Operating & Gen.
Jan.,	1907	$30,688.43	$16,029.58
Feb.,	"	31,112.97	17,152.92
Mar.,	"	30,701.87	16,460.30
Apr.,	"	30,682.36	16,124.86
May,	"	32,018.94	17,758.11
June,	"	33,063.00	18,484.25
July,	"	32,406.89	18,206.96
Aug.,	"	31,744.88	17,145.90
Sept.,	"	31,398.09	16,144.34
Oct.,	"	32,745.26	18,320.72
Nov.,	"	32,729.63	17,449.18
Dec.,	"	32,812.12	15,369.53
		$382,104.47	$204,646.53

Receipts from rental, toll and advertising for the year ending December 31, 1907, $18,980.06.
(Ex. 1, Meriwether.)

3311 Louisville Only, December 31st, 1907.

Cost of Plant.

In Securities Issued.

Original issue of stock	$1,203,000.00
" " " bonds	1,203,600.00
Additional" " "	375,900.00
	$2,781,900.00

Net Cash Cost.

Original cash cost	$1,002,500.00
Additional cash	457,114.33
	$1,459,614.33

Loss & Gain for Year 1907.

Income.

Rentals	$329,876.66
Tolls	10,239.50
Miscellaneous	798.62
Total income	$340,914.78

Expenses.

Operating Ex.	$119,630.89
General "	58,095.31
Depreciation	108,467.95
Interest	78,945.00
Total expense	$365,139.15

Note.—At the close of each month 1/12 of 7½% of the net cost of the plant is charged to "Depreciation."

Number of Lines December 31st, 1907.

Business	4500
Residence	4056

Note.—This number varies all the time at the different rates.

Floating Debts December 31st, 1907.

Bills payable	$48,179.94
Accounts "	23,588.55
Total	$71,768.49

Mr. Geo. M. Boone, Secy. & Treas.

DEAR SIR: The above is a statement of facts concerning the plant at Louisville, as taken from the books of the company at the close of the year 1907.

April 28th, 1908.

C. E. ARCHER, *Cashier.*

(Ex. 1 Grinstead.)

3312

Year.	Net Earnings.
1903	$69,326.76
1904	75,988.77
1905	96,487.60
1906	102,237.24

(Ex. 2—Meriwether.)

Year.	Net earnings.	Reserve applicable for depreciation and contingencies	Dividends paid.
1903	$69,326.76	.....	.....
1904	75,988.77	$120,719.37	.....
1905	96,487.60	42,287.55	$52,400.00
1906	102,237.24	47,004.91	45,850.00
1907	97,687.90	125,186.55	13,100.00
	$441,728.27	$335,198.38	$111,350.00
4 mos. 1908	43,890.22	42,345.80	.....
	$485,618.49	$377,544.18	$111,350.00

Net amount accumulated for "Reserve applicable for Depreciation and Contingencies," $374,268.49.
(Ex. 3 Meriwether.)

3313 1906:

The Louisville Home Telephone Company reported the following telephone lines as of January 1st, 1907: 7,603 instruments.
As of July 1st, 1907, 9,426 instruments.
As of January 1st, 1908, 9,587 instruments.
As of July 1, 1908, 9,938 in instruments.
(Ex. 1 Wilhite.)

3314 UNITED STATES OF AMERICA:

In the United States Circuit Court for the Sixth Circuit and Western District of Kentucky.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

NEW YORK, *November* 29, 1909, 10 A. M.

Deposition of Mr. S. D. Levings, No. 80 Wall Street, New York City, taken on behalf of the Defendant at the office of Florence Aten Ives, Notary Public, No. 60 Wall Street, New York, adjournment having been taken to said office by agreement.

Appearances:

William L. Granbery, Esq., for the Complainant.
Clayton B. Blakey, Esq., for the Defendant.

3315 S. J. LEVINGS, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. BLAKEY:

Q. Mr. Levings, where do you live now?
A. I live in New York City.

Q. What is your business at present?
A. I am the Technical Editor of The Telephone Weekly.
Q. How long have you been engaged in your present occupation?
A. Three months.
Q. What technical education, if any, have you had?
A. I had a three years' course in Electrical Engineering at the Institute of Technology in Chicago, Ill.
Q. When did you begin your business career?
A. In the beginning of 1902.
Q. Who were you first connected with in a business way?
A. Western Electric Company.
Q. At what place?
A. Chicago, Ill.
Q. How long were you with them?
A. Two years.
Q. What were your duties with them?

3316 A. My duties consisted of testing, designing and otherwise superintending the manufacture of electrical generators and motors, primarily those used for charging storage batteries for the Telephone Exchanges.

Q. What was your next occupation?
A. I was consulting Engineer for the Edwards Railroad Electric Light Company.
Q. How long were you with that concern?
A. I was with them for six months, or up to the time that they failed.
Q. What was your next occupation?
A. My next occupation was a sub-Engineer in the Engineering Department of the Chicago Telephone Co.
Q. Was that the Telephone Company that operated the Telephone System in Chicago?
A. Yes.
Q. Bell or Independent?
A. Bell.
Q. How long were you connected with that Company?
A. I was with them for two years and ten months, to the best of my recollection.
Q. What were your duties with that Company?

3317 A. My duties with that Company consisted practically of everything connected in an engineering way with the telephone plant. I worked up from the position of a sub-Engineer to that of an assistant to the Construction Engineer of the Company. My most important duties were the designing of the distributing plant and the preparing of specifications for the material used and the methods of labor to be employed in constructing the distribution plant. My experience with them covered the operating features of the telephone business inasmuch as such figures were used in the design of the plant.

Q. Did you, in that capacity, have anything to do with the construction of conduit systems?
A. I did.

Q. To what extent?

A. I wrote the specifications by which the conduit system of the Chicago Telephone Company were constructed and I acted as Inspector during the process of construction.

Q. Were you familiar with the cost of installing conduit systems?

A. I was.

Q. Do you know what it actually cost the Chicago Telephone Company to install its conduit system?

A. Not in its entirety; I have a good recollection of the
3318 basic figures per unit.

Q. What about the cable system? Did you have anything to do with that for the Chicago Telephone Company?

A. I did.

Q. What did you have to do in connection with the cable system?

A. I planned many cable distribution layouts; I also wrote the specifications by which the work of installing these cables was performed; and I acted as Inspector during the installation of both underground and aerial cables.

Q. What about the aerial system; that is not included in the cable system? Did you have anything to do with that for the Chicago Telephone Company?

A. I did. I laid out pole lines which didn't carry aerial cables; also I wrote the specifications by which the work of erecting these pole lines was performed; and I acted as an Inspector as the work progressed.

Q. What did you do when you left the Chicago Telephone Company?

A. I was engaged by Mr. Kimpster B. Miller, a partner of the firm of McMeen & Miller, who are Consulting Telephone Engineers located at 1454 Monadnock Block, Chicago, Ill.

3319 Q. How long were you engaged in that capacity?

A. Two years.

Q. And then what did you do?

A. I was tendered the position of Technical Editor on the Telephone Journal, known as the "Telephone Weekly."

Q. And that is the position you now hold?

A. It is.

Q. During the time that you were connected with Mr. Miller had you had any practical experience in the construction of telephone plants?

A. Not in the entire construction of telephone plants, but in the design of telephone plants; I designed telephone plants for them.

Q. What telephone plants did you design for them?

A. I designed a plant in the City of Houston, Texas, for the Houston Home Telephone Company.

Q. How large a City is Houston, Texas?

A. The reports emanating from the Chamber of Commerce of that City state the population at 100,000 souls.

Q. Please explain just what you did in connection with the Houston Telephone plant for the Home Telephone people?

A. To summarize, I would say that I designed the plant
3320 in its entirety. I first made a development study which means the determination of the telephone possibilities from the time the work was begun to a period twenty years in the future, and from the results of this study show what might be expected in the way of telephones; I designed the complete conduit, cable and pole plant, together with the calculations necessary for determining their size and extent; I located Central Offices and calculated the necessary connections between these offices. I had made, under my supervision detail plans showing the location of all portions of the plant, except the subscribers' instruments and the wiring attendant thereto and I made the complete and detailed estimate of the cost of the system so designed.

Q. How long were you at Houston at this work?

A. A year and a half, as I remember.

Q. Were your plans submitted to Mr. Miller, your superior from time to time?

A. They were.

Q. And were your plans approved by him?

A. They were.

Q. Were your plans accepted by the people who proposed to build the plant there?

3321 A. They were.

Q. Had construction work begun when you left there?

A. Not at the time that I left.

Q. Has it begun since?

A. I had been informed that it was.

Q. What character of equipment was to be established?

A. Automatic equipment manufactured by the Automatic Electric Company of Chicago, Ill.

Q. For how many subscribers was that telephone plant planned by you?

A. The underground system was planned for a capacity of 18,000 lines. It was initially planned to care for 7,500 lines. The underground and aerial cable plant was designed for a capacity of 7500 lines, and the pole lines were designed for a capacity of 10,000 lines.

Q. Did the plans provide for party lines at all?

A. They did not.

Q. What did the Central Office equipment provide for?

A. It provided for the operation of 5,000 lines, which was to be the initial installation.

Q. What provision was made, if any, for the enlargement of the Central Office equipment?

A. The building was so designed that an ultimate capacity
3322 of 10,000 lines could be installed.

Q. What would be necessary in order to add additional lines to Central Office equipment?

A. To purchase the apparatus, install it and properly connect it to the already installed apparatus.

Q. Is there any difference in the cost of installing an automatic telephone system and what is known as a manual system?

A. Will you please confine that question as to whether you mean the Central Office equipment or the distributing plant.

Q. Well, if there is any difference in their costs, please state that difference?

A. There is a difference of cost of installing automatic quipment outside of the cost of the equipment and it is slightly in excess of the cost necessary to install manual equipment. The cost of installing the distributing plant is practically the same for both systems.

Q. You mean by distributing plant that part outside of the Central Office equipment?

A. I do.

Q. Over what territory did the plans you prepared provide for underground conduit?

3323 A. Owing to the absence of alleys in the City of Houston, the conduit was necessarily in excess of that necessary for the same area where alleys are present. Owing to this the conduit plant was designed in excess to include an area of approximately 16 square miles.

Q. Is that greater or less than the area of the conduit plant of the Cumberland Telephone System of Louisville?

A. From the plans which were handed me, which is all that I can use in answering this question, the Louisville underground system is less than that which I have just mentioned.

Q. What did the entire plant of the Houston plant aggregate, according to your plans and specifications?

A. $720,000.

Q. What did the underground system cost, if you remember it?

A. As I remember it, $86,000.

Q. Do you remember what the cable system was to cost?

A. As I recollect it, $175,000.

Q. And do you remember what the pole line system was to cost over and beyond the cable system?

A. I don't recollect sufficiently to give an accurate figure 3324 on that.

Q. Well, now, did the figure you have named of $720,000 include the complete installation and equipment of a plant ready for service?

A. It did.

Q. What is the difference between the construction of a telephone system for a telephone plant which is to use the Bell System of telephone and that which is to use the Independent system of telephone?

A. I will answer your question from two standpoints. First, in the distribution plant there is practically no difference in construction; as to the apparatus which, by that I mean, the subscribers' station apparatus, there is a difference in design, but both systems accomplish the same end. As to the Central Office equipment the operation of connecting telephones in both systems is completed over what is known as a switch-board, the same being different in design in the two systems, but both accomplishes the same end.

Q. What is the design of a telephone plant, what is it primarily for?

A. It is for determining the amount of plant to be installed and its location.

3325 Q. I mean what is the object of installing a telephone plant; what do the telephone people want to accomplish when they install a telephone plant?

A. They want to make it possible for one person in one locality, who is a subscriber to the system, to talk to another person in another locality, who is also a subscriber to the system, by means of various wires and appurtenances which are included in the apparatus necessary.

Q. Does either the Bell System or the Independent System accomplish this purpose any more satisfactorily than the other, where both are constructed with standard material and apparatus?

A. The efficiency of service with the same standards of apparatus and class of materials may differ between the two systems, due to the efficiency of the operators and due to the efficiency of the operating rules by which these operators are governed.

Q. If the operators are equally efficient and the construction is standard construction is there any difference in the results accomplished?

A. There is not.

Q. When did the independent telephone system begin

3326 operating?

A. The Independent system sprang into existence in the year 1895, at which time the fundamental patent held by the Bell Company automatically expired.

Q. What has been the extent of the use of the Independent System since that time?

A. The Independent Systems have grown so that at the present time I may say, from my knowledge of the Government Reports, that there are at least 25% more Independent telephones in use in the country—by that I mean the United States,—than there are Bell telephones, and in a particular locality in the State of Ohio the records show that there are practically two to one of the Independent's and Bell, respectively.

Q. You mean two to one in favor of the Independent system?

A. In favor of the Independent System.

Q. Have you been so situated as to be familiar with the success, the financial success of Independent Companies operating telephone plants?

A. I have.

Q. Have those Independent plants been successful, as a rule, or unsuccessful?

A. The large majority have been quite successful.

3327 Q. Has the construction of a telephone plant, so far as the construction proper is concerned, reached or passed the experimental stage?

A. It is considerably past the experimental stage.

Q. When a Telephone Engineer is consulted relative to preparing plans and specifications for installing a telephone plant in a

given locality, is there any recognized unit of cost which is applied by him to the construction of such a plant?

A. There is.

Q. Please explain what that unit of cost is and how it is arrived at.

A. This unit of cost is based upon the cost of installing what is known as a Station and it includes a proportionate part of all the necessary plant required to connect that Station with any other Station in the system. The unit of cost is based upon the cost of material, plus the cost of installation.

Q. When you speak of "Station," do you mean subscriber station?

A. Subscriber station. This unit of cost varies according to the class of service to be given and according to the area to be served.

As an example, there are two classes of telephone service; one
3328 known as the common battery system, and the other known as the local battery system. Local battery systems are only used in very small communities, and I should set a limit on the number of stations where such a system could economically be used at 1,000. In territories involving more than 1,000 lines or stations, it is standard practice as a rule to use common battery systems. The unit cost for the common battery system ranges from $70 to $100, according to the area to be served; the unit cost for the local battery system ranges from $50 to 70, according to the area to be served. Does this answer your question fully?

Q. Now, did you make any inspection of the plant at Louisville, Kentucky, operated by the Cumberland Telephone Company?

A. I did.

Q. Please explain in detail the extent of that inspection?

A. The portion of the plant which I inspected is that known as the aerial system. Inspection was made in three ways; one, by driving with Mr. Green, I believe his name is, of the Cumberland Company; another, by inspection from the rear end of street cars; and another, by inspection on foot. The drive which I mentioned
3329 in connection with Mr. Green was taken in a Southerly direction along one of the main pole lines to a point considerably beyond the City limits; the object of the inspection beyond the City limits was to determine the class of construction used on the rural lines which were operated by the Cumberland Company. The other inspections which I made in the ways designated were in various directions, the routes of which I do not recollect, not being familiar with the street names of the City.

Q. How did you happen to make an inspection of the Louisville plant?

A. I was instructed to do so by Mr. W. H. Crumb.

Q. Did he furnish you any data concerning the Louisville plant?

A. He furnished me with maps of the conduit system and portions of the cable system. No maps were available of the pole system in except one or two instances which only covered a very small portion of the entire pole plant.

Q. What were his instructions to you when he employed you?

A. His instructions to me were to proceed to Louisville, to
3330 obtain from the Cumberland Telephone Company additional maps and records as to the pole system, which he had not

been furnished with. I was instructed, while not working on the plans, and when I deemed it advisable, owing to the ability of the Cumberland people to furnish me with assistance, to make inspection of the underground and aerial plants. All other times I was instructed to gather such information as I deemed it necessary to include in an appraisal of the distributing plant.

Q. How long were you in Louisville making that inspection?

A. I have a record in my pocket here. (After referring to letter.) I left Chicago on August 12th and returned on August 17th, the intervening time being spent in Louisville.

Q. Did you travel between Chicago and Louisville at night or in the day time?

A. I traveled at night.

Q. Did you make any attempt to procure any sort of detailed map or plans of the aerial pole lines of the Cumberland Telephone Company?

A. I did.

Q. What effort did you make to do that?

3331 A. I consulted Mr. Blakey, the City Attorney, and in company with him called upon the local counsel of the Company, Col. Fairleigh, and propounded to him what I desired. After waiting two days, as I remember it, Mr. Blakey was informed, and informed me in turn, that no such records existed either in Louisville or Nashville.

Q. Did you talk with Mr. Green, the man in charge of the construction work, in regard to the engineering department of his telephone system?

A. I did.

Q. What did Mr. Green say in connection with any such plans or maps?

A. The substance of his remarks was this. That the records of the Company were not accurate nor up to date owing to two main reasons; first, because of more important work on behalf of those who would ordinarily prepare those records; and second, because the Engineering Department of the Company had only been in existence three years.

Q. Did you make any attempt to inspect the underground system?

A. I made an indirect attempt by making direct attempt to secure sufficient assistance from the Company to allow me to make

3332 various inspections which I proposed to do.

Q. Just explain in what manner this attempt was made.

A. I attempted to get Mr. Boardman, the local manager, to make an appointment with Mr. Green, which he did twice, the first time the appointment not being kept; the second time it was kept by Mr. Green and it occupied the better part of an afternoon driving over the pole system, which I previously referred to as having been inspected by me. I was told by Mr. Boardman that most of the information had been given to Mr. Crumb and he saw no necessity for going over any more such work. He informed me that Mr. Green

was very busy on trouble work, and it would be impossible for him to spare me any great amount of time.

Q. Well, did you inspect the underground work to any extent?

A. I did not.

Q. Why was it you did not inspect the underground work?

A. I didn't deem it advisable because unnecessary, for the reason that the only portion of the underground system which could be inspected within reason were the vaults or manholes.

Q. What would inspection of the manholes have shown?

3333 A. The inspection of the manholes would have revealed the condition of the manholes and would have shown the kind of duct used in the conduit system. It would have shown about 2% of the entire conduit system had every manhole been inspected.

Q. How do you reach that conclusion?

A. As I remember it the average length between manholes in the Louisville conduit system is 300 feet. By inspecting a vault it is possible to see into the duct a distance of 3 feet at either end. This total of 6 feet in any one section which could be inspected from the vaults situated at each end of the section inspected is about 2% of that section which could be inspected from the mannole.

Q. Did you make any request of the Telephone people for permission to enter these manholes?

A. No direct request.

Q. Then indirect request?

A. No, for as before stated, I did not think it necessary upon reflection.

Q. Did you have the map of the conduit system which Mr. Crumb furnished you; did you have that at Louisville with you?

A. I did; I had the maps with me.

3334 Q. You had. Were you able to tell from that map the extent of the conduit system at Louisville, Kentucky?

A. I was able to tell the extent, if you mean by that the area covered, yes.

Q. Was that conduit system sufficient in extent to allow for any growth of the Company over and above its then extent?

A. I believe it is.

Q. What length of time would you say the present conduit system would provide for the ordinary growth of the Company?

A. From my conclusions, as I remember them, of the capacity and extent of the system, I would say that by the installation of large cable units, which are now standard, that the system would care for at least 25,000 cable pairs.

Q. What does that mean, in so far as it relates to the subscriber stations?

A. It means that it would be impossible to determine the number of stations in such an estimate, or, rather not impossible, but improper, because in a party line system two or more telephones may be connected to the same cable pair.

3335 Q. Would your answer immediately preceding your last answer mean that the conduit system was sufficient to take care of 25,000 subscribers?

A. I mean by that that it is more than sufficient to take care of 25,000 subscribers, if party line systems are involved.

Q. How does the cost of construction in the City of Louisville compare with the cost of construction in other cities of similar size, with which you are familiar?

A. It compares favorably and in some instances should be less.

Q. Now, referring again to the unit of cost which engineers apply to the construction of telephone plants, what would you say would be the unit of cost of constructing a plant at Louisville, Ky., assuming that Louisville, Ky., has an area of 21 square miles, and that the proposed plant was to be so built as to take care of 10,000 subscribers as an initial installation, and also to be so constructed as to take care of an additional number of new subscribers?

A. Using the equipment furnished by the Western Electric Company, I would place the unit of cost at $100. per station.

3336 Q. What number of new subscribers would that unit of cost be constructed to take care of?

A. The conduit system in capacity would be constructed to take care of the number of subscribers to be expected in twenty years. The extent of the conduit system would be constructed to take care of the capacity which might be expected in ten years. The cable system would be constructed in both underground and aerial portions of a sufficient capacity to care for the expected growth within five years. The pole line system would be constructed in extent to care for a capacity that might be expected in ten years.

Q. And you mean to say that on a unit cost of $100. per station, that a plant such as you have just described could be constructed there, using the Western Electric equipment?

A. In my judgment, it is a fair figure.

Q. How much less is the plant of the Cumberland plant in Louisville—how much less in value is it as it is now than if constructed new throughout?

A. I assume that you mean to consider the plant to-day in its depreciated value, and upon that basis I should say that it would be worth 75% of what a new plant would cost, figuring that the

3337 present plant would contain the same amount of apparatus and material as would be used in a new plant.

Q. Now, did you go over the maps furnished you of the conduit system carefully?

A. I did.

Q. What, in your opinion, could that conduit system, as it appears now be constructed new throughout for?

A. A new system having the same capacity as the present system, I should say could be constructed for $100,000.

Q. Now, did you go over the maps of the cable system furnished you by Mr. Crumb?

A. I did.

Q. What, in your opinion, could that cable system be reproduced for new throughout, as it is now?

A. The underground cable system, I would say, could be repro-

duced for $175,000. The aerial system, I would say, could be reproduced for $200,000.

Q. Did you have before you at the time you made this inspection, the extent of the equipment and the number of subscriber stations installed by the Company?

A. I was familiar with the number of stations installed,
3338 which would indicate the amount of subscribers' equipment.

Q. Are you sufficiently familiar with that plant to know the approximate number of new subscribers it could take care of, as constructed at present?

A. I paid some attention to the amount of spare plant in all of its portions, and some portions would care for a great deal larger number of stations or subscribers than other portions would. The underground plant would, as I have previously stated, care for about 25,000 cable payers. The balance of the plant, which includes cables and pole lines, I should say, as a conservative figure, would allow of a growth of at least 3,000 telephones, in the same ratio between party line and straight line as now exists, with the possible addition of some very short pole lines necessary to connect new subscribers.

Q. Are you familiar with the operation of an automatic telephone system?

A. I am.

Q. Are you familiar with the operation of a telephone system known as the manual system?

A. I am.

Q. What is the difference in the cost of operating the two
3339 systems?

A. There is a wide difference in favor of the automatic system.

Q. Why is that?

A. Because in such a system no operators are required to complete the ordinary connections between one subscriber and another.

Q. Do you know of any Cities of approximately the same size as Louisville, in which an automatic system is installed?

A. I do.

Q. Name some of them, will you?

A. Grand Rapids, Michigan, Omaha, Nebraska, Columbus, Ohio, Los Angeles, California, Seattle, Washington, San Francisco, (which is larger than Louisville) and numerous other cities ranging from 75,000 inhabitants to 200,000.

Q. How many stations are installed in some of these Cities in which there is an automatic system?

A. Grand Rapids, according to the last figures which I remember, has between 10,000 and 11,000 stations. Columbus, Ohio, has 13,000 stations; Los Angeles, California, has some 23,000 stations.

Q. Can you explain just how the automatic system works?

3340 A. A detailed explanation would cover a great many pages, but I can give you a summary of its operation.

Q. Will you do so?

A. The subscriber's equipment is furnished with a rotating dial

which comprises the ten digits from 1 to 0. The exchange apparatus consists of a series of relays, connectors and contactors which operate on a digit basis. Therefore, by the subscriber operating a digit by rotating his dial, in turn operates a certain portion of the automatic equipment corresponding to that digit. The second operation of the subscriber's dial, produces a like action in the apparatus at the Exchange as does the third and fourth, the fourth operation finally determining the selection and connection to the line being called.

I might liken the automatic system to the linotype machine, inasmuch as it performs certain operations by direct control of an operator who, in this case, is the subscriber desiring to call. The connections of all lines are made, as I say, by the automatic apparatus at the will of the subscriber desiring to call and no operators are involved except where information is desired. In such a case the information operator, who is maintained by the
3341 Exchange, is given a number the same as any subscriber, in the usual manner. This involves practically a condensed description of the operations of an automatic system.

Q. If the number which the subscriber desires to call is busy, what takes place?

A. There is an automatic device or circuit in connection with this apparatus which throws upon the calling apparatus an intermittent buzzing noise which indicates that the line called is busy.

Q. If any trouble occurs on any one of the lines, how is that indicated?

A. There is an automatic trouble indicator installed in connection with the automatic system, which indicates any trouble upon the line.

Q. Do you know whether the automatic telephone system has been a success and has met with the approval of the patrons where used?

A. I do, and this fact is testified to by the installation of this system in more than forty cities in the United States.

Q. Has it any advantages over the Manual system, and if so, what are they?

3342 A. This is a question of individual ideas. To my mind it has great advantages over the Manual system from two main standpoints. First, I believe that where possible, the responsibility for telephone service should be placed on the public. In the automatic system, such responsibility, outside of the up-keep of the system, is placed upon the public, as each individual is his or her own operator. From the standpoint of economy I am thoroughly convinced that the operating costs of an automatic system are considerably less than those of a Manual system, involving the same number of subscribers.

These are two main reasons upon which I base my preference for the automatic system from the operating company's standpoint.

From the subscriber's standpoint I may say that it is more popular in every City in which I have been where automatic apparatus has been installed, and as a testimonial to this fact, I might state that in Columbus, where I was recently, several men told me that

they had two telephones, the Bell and the Automatic; that the calls over the Automatic would easily average twenty to one over the Bell and that they used the Bell telephone only when the parties whom they were calling, who also had both systems,
3343 were busy using the automatic.

Mr. Kempster B. Miller, some two or three years ago, had occasion to call up by the Automatic telephone in Grand Rapids, Michigan, one hundred subscribers taken at random from the Columbus system——

Mr. GRANBERY: Mr. Blakey, certainly you do not expect this witness to go on and say what somebody else said and what he did not hear.

I object to that as clearly incompetent and irrelevant.

Q. Did Mr. Miller write a book on the subject of "Telephony"?

A. He did.

Q. Did the facts you are now relating appear in that book?

A. They did not.

Q. You need not say anything further about what Mr. Miller did or said, but if you have anything further that you wish to say of the advantages of the automatic over the Manual, you may say it.

A. I have no more important facts to say than I have already said, which I believe to show the standing of the automatic
3344 apparatus in both the operating Company's favor and that of the Public.

Q. In the automatic system can the operator at the Central office or anyone else, hear what the subscriber is saying to the person called?

A. No; there is no operator at the Central office except the Information operator, as I previously pointed out, and she has no means of intercepting a busy line to overhear a conversation. This system provides absolute secrecy in conversation.

Q. Is there any way whereby a third person can cut in on the conversation between two subscribers?

A. There is none.

Q. How many operators are usually required to operate the Manual system, for a telephone exchange having 10,000 subscribers?

A. I cannot give you a reasonable figure on this, because it depends upon so many conditions which you have not stated.

Q. Do you know how many are used at the Louisville plant of the Cumberland Telephone Company?

A. I do not.

Q. What is the bulk of the cost which appeared under
3345 the head of operating expenses under the Manual system?

A. Operator's salaries.

Q. To what extent are the operator's salaries eliminated in the automatic system?

A. I might say, to elucidate this point, that the Columbus Citizens Telephone Company is operating 13,000 automatic telephones,

with a force of fourteen regular switchmen, and an additional force of four student switchmen, between the hours of seven o'clock in the morning and 7 o'clock at night.

Q. What do these switchmen do?

A. They are there to adjust the automatic apparatus; to keep it clean and to generally supervise its operation.

Q. What were the rates to be charged by the Houston Telephone Company, about which you have testified?

A. The single straight line business telephone was to be at the rate of $48. per year. The single straight line residence telephone was to be at the rate of $36. per year. I am under the impression that I erred in that statement, upon reflection, and I believe that the straight line resident telephone system was to be at the rate of $24. per year.

Q. Had any canvass been made at the time you left there, to procure subscribers?

3346 A. It had.

Q. How many subscribers had been procured?

A. Bona fide contracts had been obtained from forty-five hundred and some odd subscribers.

Q. Had any estimate been made to ascertain what would be the net profits to the Company on the operation of that plant?

A. It had.

Q. What did those estimates show?

A. This estimate as originally planned was intended to show a net earning power of 10%, if I remember correctly.

Q. Now, has your experience in the telephone business been such as to justify you in giving an opinion as to what rates would be sufficiently high to allow the telephone Company to earn a reasonable profit in a given community with a given number of telephones?

A. I think that my experience has been such that I can give a reasonable estimate of what such a rate should be.

Q. Now, taking the Louisville plant as an example, and assuming that the Louisville plant has from 9300 to 12,000 subscribers and is in the condition in which you found it to be, what would you

3347 say as to the earning capacity of that plant on rates fixed at $5.50, or $66. per year for straight line business telephones, $48. per year for party line business telephones; $36. per year for direct residence telephones and $24. a year for party line residence telephones.

A. Using my own valuation as to what a plant could be reproduced for in Louisville to care for the number of subscribers that you have stated, I would say that these rates are sufficient to allow of a reasonable earning on my estimated value of the plant.

Q. I do not recall whether you stated what value you placed on the Louisville plant of the Cumberland Telephone Company. By value I mean the cost of reproducing it in such a manner as to take care of the subscribers that it now has in the locality where those subscribers now have telephone stations and taking into consideration the fact that some of those subscribers are outside of the City

limits of Louisville. Will you please state what such reproduction cost or value would be?

A. I should say that if a plant sufficient to care for the present number of telephones were to be installed in Louisville, to be engineered and constructed along the now standards of practice,
3348 that such a plant could be reproduced for $1,000,000.

Cross-examination by Mr. GRANBERY:

Q. Mr. Levings, what depreciation would you allow on a plant in Louisville?

A. I usually proceed on the unit basis of depreciation and I should say for Louisville, that $5.00 per station per year would be a fair figure for depreciation.

Q. What do engineers usually figure for depreciation in percentage of the cost of plant; what per cent of the cost of plant?

A. That is a question which I might say has no standard among engineers. There is a wide difference of opinion arising from the question as to what is maintenance and what is depreciation. On a percentage basis, I would say between 12 and 15%.

Q. Well, now, how many subscribers would you figure in Louisville taking your plant as costing $1,000,000; how many would you figure that would pay $5.50, how many that would pay the other rates on which you based your estimate?

A. In my experience I have found that the business telephones bear a ratio of about 35% to the total number of telephones,
3349 which would mean that about 35% of the subscribers would pay $5.50.

Q. How many would pay the $5.50 rate, how many the party line rate?

A. I would say that 90% would pay the $5.50 rate.

Q. Well I am trying to get now your estimate of the number of subscribers in the 10,000 subscriber exchange in Louisville that would pay $5.50 per month?

A. Well, I would say that 3,000 of them would.

Q. 3,000 of them would pay the $5.50 per month rate; how many would pay $4.00 a month.

A. 5,000.

Q. How many would pay $3.00 a month, residences?

A. 1,000.

Q. And how many would pay $2.00?

A. 500.

Q. Now, out of that million dollars, cost of plant, how much per month would you allow for depreciation?

A. I would allow——

Q. I mean in dollars, now.

A. $50,000.

Q. That would be 5%, would it not?

A. That would be $5.00 per station, figuring 10,000 stations.

3350 Q. But you stated a little while ago that you figured in percentage 10 to 15%—12 to 15%.

A. And I also explained to you that a difference arose between various engineers as to what was maintenance and what depreciation.

Q. Now you allow $50,000 for depreciation—what do you allow for operating?

A. Operating—$60,000.

Q. What do you allow for maintenance?

A. $30,000.

Q. What do you allow for general?

A. $40,000.

Q. What do you allow for taxes?

A. That is included in general.

Q. Is there any other expense that you can think of?

A. The $40,000 includes the miscellaneous expenses, office force, &c.

Q. Your experience with the automatic telephone has been small or large?

A. That is relatively speaking?

Q. Well state what it has been, then we will find out.

A. I have designed a plant having an initial capacity of 5,000 telephones, with an ultimate capacity of 18,000 telephones,
3351 which involved automatic apparatus. I have, at various times, consulted with the Automatic Electric Company, who manufacture the apparatus, on the various features of their system.

Q. How many automatic telephone plants have you examined?

A. I can remember five at the present time.

Q. Where were they located?

A. They are located in Columbus, Ohio; Dayton, Ohio; Grand Rapids, Michigan; Chicago, Illinois, and a small system in Dallas, Texas, and also a small system in Houston, Texas.

Q. How many subscribers has the Manual system in Chicago?

A. Why, I don't know, but I understand that they have about 160,000.

Q. How many stations has the automatic in Chicago?

A. I don't know.

Q. Well, it is less than 5,000, isn't it?

A. I believe so.

Q. How many stations has the Manual system in Dallas, Texas?

A. That is a demonstration plant and has but ten or twelve
3352 stations in a building there, for the purpose of showing the public what the system can do.

Q. Then it is not an Exchange, is it?

A. Yes, it is.

Q. Then it is an Exchange within a room?

A. It is an Exchange within a building.

Q. Has it any subscribers?

A. It has no paid subscribers.

Q. Has the Houston plant any paid subscribers, the one that you examined?

A. I don't know as to that.

Q. So that practically the only three that you have ever seen are

the Columbus, Chicago and Grand Rapids plants, isn't that so; that is, that you would consider commercial enterprises?

A. I believe I included Dayton, Ohio. Yes, sir.

Q. How many times were you in Dayton to examine that plant?

A. Once.

Q. How long did you stay there?

A. One day.

Q. How often were you in Columbus?

A. Once.

3353 Q. How long did you stay there?

A. Four days.

Q. How many times were you in Grand Rapids?

A. Four or five times.

Q. How many days did you stay each time?

A. I couldn't tell.

Q. Can you give us an idea?

A. I should say I was there two days each trip.

Q. Now, your advent into the telephone business was when you became connected with the Chicago Telephone Company, I believe?

A. It was.

Q. You were with them how long?

A. Two years and ten months.

Q. That was a going plant when you went to them, was it not?

A. It was.

Q. And they were simply doing such work as was necessary to extend this business as new subscribers came in while you were with them?

A. Yes.

Q. What was the title of your immediate superior when you went with the Chicago Telephone Company?

3354 A. I don't know as he had any title; I don't remember if he did.

Q. Was he construction foreman?

A. No, sir.

Q. Was he a draughtsman?

A. No, sir.

Q. What was he?

A. Your speaking of the draughtsman brings to my mind that I did serve a month or two in the draughting department, awaiting a vacancy under the Construction Engineer.

Q. Your first real work was then when you were under the Construction Engineer, in the telephone business?

A. Yes, sir.

Q. What salary did you get under the Construction Engineer when you first commenced?

A. I believe it was $65. a month.

Q. Now, how long did you stay under the Construction Engineer?

A. As long as I was there.

Q. What was your salary when you quit?

A. Either $85. or $90. a month.

Q. Did you leave voluntarily or did the Company request you to leave?

3355 A. I left voluntarily.

Q. And then you took your position with the consulting engineering firm you have mentioned?

A. I did.

Q. What did they pay you?

A. They paid me at the rate of $200. per month.

Q. You say at the rate of $200. per month—did they give you that each and every month from the time you went with them until you left, or did they merely pay you for the time you were there?

A. I don't understand you.

Q. Did they pay you $2400. a year or did they pay you a less amount for your year's work?

A. Well, I have not kept books on my personal expenses, so I don't know.

Q. What I mean is: did you have a contract under which they paid you by the year or by the month, or just during the time you worked.

A. By the month, but I had no contract.

Q. So they did pay you $200. each month you were with them?

A. It averaged that.

Q. Do you mean they started you in on less?

3356 A. No, sir.

Q. What do you mean?

A. I mean that my expenses sometimes were more than others. I was compensated according to expenses.

Q. What do you mean by that; if your expenses were heavy they paid you more, and if they were light, they paid you less?

A. I was compensated according to my expenses when I was not in Chicago.

Q. Tell us exactly what the understanding or contract between you and this firm was?

A. I was to receive a salary and expenses.

Q. What were the salary and expenses; what was the arrangement that you made when you went with them and during the time you were with them?

A. The arrangement was that I was to receive $125. a month for salary and my living expenses when I was out of Chicago.

Q. Now you were with them how long?

A. Two years.

Q. How long were you designing the Houston, Texas, plant?

A. About one and a half years.

3357 Q. So that the remaining time you were with them comprises a period of about six months?

A. Yes, sir.

Q. What were you doing during that time?

A. Various other things.

Q. What were they?

A. I can't remember.

Q. Give us those that you can remember?

A. It would take me all afternoon to do that.

Q. Well, you can do it in a general way.

A. I was sent out to various points in Texas. I was sent to other places as well, on engineering work.

Q. Weren't you sent there for procuring franchises?

A. I was not.

Q. You never procured a franchise?

A. No.

Q. Did you have anything to do with procuring franchises?

A. Anything to do with the procuring of a franchise?

Q. Yes.

A. No.

Q. Now, when you went to Texas on engineering work, what was that? Were you to explain to promoters, investors, &c., what

3358 they could get the equipment for and operate a plant at?

A. It was not.

Q. What was it?

A. It was to design and put on paper actual designs for that plant.

Q. I am not speaking about the Houston plant; I am speaking of the six months when you were not engaged on that?

A. I was doing work which has no connection with the Houston plant.

Q. In Texas?

A. In Texas and other places.

Q. What was that work that you were doing?

A. I was giving advice to a company in Waco, Texas, who had a fire.

Q. How long were you in Waco on that work?

A. I don't remember.

Q. Do you know what the Houston Home Telephone Company was capitalized at?

A. I believe at $1,000,000.

Q. How many bonds in additions to the stock?

A. I don't know.

3359 Q. Was it a like amount of bonds?

A. I believe it was.

Q. And you estimated the Houston earnings at 10% net?

A. Yes.

Q. You consider that reasonable?

A. I do.

Q. You think anything less than that would be reasonable?

A. No, sir. I figure that according to the section of the country in which the plant was located, for instance, in Texas, ordinary land mortgage interest brings 12%; in Illinois it would bring 6%. Therefore, the earnings in Texas would not be as fair from a Texas standpoint as the same earnings in Illinois.

Q. Do you know anyone who has money to put in a telephone plant that will not promise at least 8% profit?

A. No; I do not.

Q. Do you regard 8% as fairly reasonable profit for a man to make on his telephone investment?

A. I should say so.

Q. Now, who employed you to go to Louisville?

A. Mr. W. H. Crumb made arrangements with my employer, Kempster B. Miller, for my services.

3360 Q. Did you go there for your firm or for yourself?

A. Well; I went there as an employee of McMeen & Miller who was loaned by them to W. H. Crumb & Co.

Q. You didn't know Mr. Crumb personally?

A. I did.

Q. Did he speak to you or did he speak to the members of your firm about your going to Louisville?

A. He spoke to my firm.

Q. They sent you to Louisville?

A. No, sir; they did not.

Q. Did you go for your firm, or for Mr. Crumb?

A. Mr. Crumb.

Q. How much did he agree to pay you?

A. I had no financial dealings with Mr. Crumb.

Q. How much were you paid?

A. I was paid my regular salary by my firm.

Q. And your expenses, of course?

A. My expenses were paid by Mr. Crumb.

Q. Now you left Chicago you say, on the night of the 12th of August?

A. I believe that was the date.

Q. And you arrived in Louisville on the morning of the 13th?

3361 A. I believe so.

Q. Now you state that you were in Louisville, and out of Chicago, from the 12th to the 17th, I believe?

A. Yes, sir.

Q. When did you leave Louisville, on the night of the 16th?

A. Yes, sir.

Q. You got there on the morning of the 13th and left there on the night of the 16th?

A. I am not positive as to whether it was the night of the 16th or 17th.

Q. You referred to a memorandum. Look at it again and see.

A. This memorandum says: "Dates of your stay at Louisville are August 12th to 17th, inclusive."

Q. What is that memorandum you are referring to?

A. It is a memorandum of my movements during that period, furnished me by Mr. Crumb.

Q. Let me see that. (Taking paper). Attach that as an exhibit to your deposition please?

A. This is a personal letter. I don't see why it should enter into the matter.

3362 Letter offered in evidence, to be incorporated in the record

"NOVEMBER 26, 1909.

Mr. S. D. Levings, 80 Wall Street, New York City.

DEAR SIR: Mr. Crumb being out of the City the writer has jus replied to your telegram regarding dates of your stay at Louisvill as follows: 'August twelfth to seventeenth inclusive.' According t our records you left Chicago on the 11th of August and returne here on the 18th.

Yours very truly,

W. H. CRUMB & COMPANY,
By KEELER."

Q. When you got to Louisville, what did you first do?

A. I went to the hotel.

Q. Now then, relate what you did on the first day which was th 13th of August, 1909.

A. I cannot tell you what I did in detail; I can give it approxi mately.

Q. Give it as near as you can.

A. I visited Mr. Blakey, the City Attorney, in his office and con sulted with him. He accompanied me to the local office of the Cum berland Telephone Company and introduced me to Mr. Boardman the manager. We had some short talk, I think about fifteen minutes

In the afternoon, if I remember correctly, I again saw Mr

3363 Boardman and asked him for an appointment with some on to show me over the plant, and not being able to obtain thei services that afternoon, I walked practically throughout the entir business section to gain a comprehensive idea of the volume of possi ble telephone business.

Q. Now, you have an impediment in your walk, have you not?

A. Not in my walk, no.

Q. Are you lame?

A. No.

Q. Now that walk the first day you were there was in the under ground area, was it not?

A. It was in the downtown district.

Q. You know whether it was in the underground area or not?

A. I think it was.

Q. Say so then.

A. I do not know that it was.

Q. Your best recollection is that it was in the underground area?

A. It is.

Q. Now that brought you up to night; what did you do the next day?

3364 A. Well, I will not be able to continue this sort of testi mony, because I do not remember what I did consecutively; I have not attempted to retain my minute movements.

Q. Well, did you put in the entire time after the first day in riding in the street cars, riding with Mr. Green and looking over the City of Louisville?

A. I did not.

Q. How much of your time did you put in in that way?

A. I should say 75% of it.

Q. Well what time in the morning would you begin that inspection and what time would you quit?

A. No set times.

Q. How many miles of pole route did you inspect?

A. I couldn't say.

Q. How many places in the City did you go to inspecting pole routes?

A. I didn't go to any particular place. I think, from my sense of direction, that I went in all directions from the downtown district along those pole leads which looked to me as being representative leads.

Q. How many miles of pole route did you inspect when you were with Mr. Green?

A. I think we drove out into the country about four or
3365 five miles.

Q. And then back to Louisville?

A. Yes.

Q. And how many trips did you take on the street car?

A. I can't say.

Q. Well, did you take a thousand or three? Give us your best estimate.

A. I can't give any estimate.

Q. You can certainly give some idea about it.

A. Well, I should say six.

Q. Now how many hours did you put in walking?

A. I don't know.

Q. Oh, well; was it one or fifty?

A. They were not consecutive, and I have no means of estimating nor answering that question.

Q. How many miles of pole route did you figure as being in Louisville in connection with the Cumberland Company's plant?

A. I didn't figure on any being there.

Q. In other words, you don't know now what plant there is there, except as shown by the blueprints which Mr. Crumb showed you?

A. Yes.

3366 Q. That is all you know about the plant?

A. That is all I know about the plant; that is, in extent and amount.

Q. What else do you know about it?

A. I know about the condition of the lines that I saw when there.

Q. What do you know about the condition of the underground cables and conduits?

A. I don't know anything about them for the reasons I stated in direct examination.

Q. What do you know about office equipment?

A. I was not told to inspect that.

Q. Then you don't know anything about that; its condition and what kind it is?

A. No, sir.

Q. Did you include in your $1,000,000. estimate the real estate and office buildings, or did you exclude that?

A. I included a sufficient number of office buildings in my estimate.

Q. How much did you figure your real estate and improvements at?

A. I don't go to that refinement in making an estimate.

Q. Well, all you figured on was $100. a station, isn't that so?

3367 A. Yes, sir.

Q. You don't know whether it includes real estate?

A. In my estimate it does.

Q. How many estimates did you ever make for a telephone plant?

A. I don't know.

Q. Did you ever make any except for the Houston, Texas, plant?

A. I have.

Q. What others?

A. Various portions of the——

Q. I am not talking about portions, I am speaking about a complete plant.

A. I have made up one estimate on a complete plant.

Q. At Houston, Texas.

A. It was.

Q. Did your employers give you any assistance?

A. Naturally so.

Q. So that you were doing that work as an employee of a firm of consulting engineers in Chicago?

A. I was doing that work as chief engineer of that particular work.

3368 Q. Under the direction and supervision of your employers?

A. Yes.

Redirect examination by Mr. BLAKEY:

Q. I wish you would explain what you meant in answer to a question of Mr. Granbery, in which you used the expression, 12 or 15%; I do not know what you mean?

A. I meant by that expression that there are two ways of considering what is commonly termed depreciation. These two ways are subjects of argument among all engineers and one way of arriving at a depreciation figure includes certain expenses which other engineers include as maintenance charges. When such a procedure is followed, the depreciation charge naturally is increased over that which is used by an engineer who does not include this disputed maintenance charge. Therefore, I say that some engineers calculate their depreciation with this disputed factor, while I do not. That is the reason why the percentage that I gave in answer to Mr. Granbery's question was more than the figure which I used as a depreciation charge.

Q. Now I would like to have you state again, what, in your

opinion, is the relative percentage of business telephones
3369 and residence telephones in a City such as Louisville, that we will assume has 10,000 subscribers?

A. My experience has shown that in a well developed City telephonically, the ratio existing between the business and residence telephones to be as 35% of the total number as to 65%.

Q. And which would have the 35 and which the 65%?

A. Business would have the 35 and residence the 65.

Q. Now, has your experience, out-side of the Chicago Telephone Company, been with independent companies?

A. It has.

Q. And did the Independent companies have party lines or direct lines only?

A. They have both classes of service.

Q. Now, if the Telephone plant at Louisville has 10,000 subscribers and 35% of them, in your opinion, would be business lines, then how many business telephones would the Telephone Company have in Louisville?

A. 3,500.

Q. And what was your opinion as to the division of those lines between party and direct lines?

A. My opinion was 90% for direct and 10% party.

Q. I think you stated in answer to Mr. Granbery's ques-
3370 tions that you would assume 3,000 direct business telephones and 5,000 party business telephones; did you intend to make any such answer as that to his question?

A. I did not.

Q. What did you intend to say in answer to that question?

A. I intended to say that 90% of 3,500 telephones would be charged for at the rate of $5.50, that is direct business telephones; that 10% of the business telephones would be charged for at the rate of business party line service.

Q. And I would like you to also state what would be the number of residence telephones under similar circumstances?

A. I would say, in my estimation, that of the 6,500 remaining telephones of the 10,000, which would be residence telephones, 5,000 would be direct line residence telephones charged at the direct line residence rate, 1,000 would be at the party line rate, charged for two party lines, I believe, and 500 at the rate charged for four party lines. These figures I have based on the class of inhabitants.

Recross-examination by Mr. Granbery:

Q. What do you know about the class of inhabitants in the City of Louisville?

3371 A. From what I have observed the class of citizens of Louisville would be that which use and require good telephone service.

Q. And that is what you mean when you say that you based your estimate on the character of people in Louisville?

A. Yes, sir.

Q. And you got your impression from your four days' visit in Louisville in August of this year?

A. That impression was obtained from the appearance of the people and the residences and the business district of Louisville.

Q. And the only time you were ever in Louisville was four days in August, 1909?

A. Only time I have made any stay there.

Q. How many times were you there in all?

A. I have passed through.

Q. Did you ever stop there before?

A. No.

Q. This was the very hottest kind of weather, in the Summer of 1909, when all the people were away. Did you form your opinion then?

A. I did.

3372 Q. And you had great opportunity of seeing the people of Louisville those four days?

A. I did not base my opinion so much on the people as on the houses in which they live.

Q. I want you to give me again the way you divided up the 10,000 subscribers in Louisville.

A. 3500——

Q. I want how many paid the $5.50 rate.

A. 90%.

Q. Never mind percentages; I want it in numbers.

A. 3,150.

Q. 3150 of the 10,000 would pay $5.50?

A. As I remember it.

Q. How many would pay the $4.00 party line business rate?

A. 350.

Q. How many would pay the $3.00 residence rate?

A. 5,000.

Q. And how many would pay the $2.00 party line rate?

A. I believe that was the lower party line rate.

Q. There is not any but $3.00 for direct line and $2.00 for party line?

A. I understood there were three residence rates—two

3373 party line rates and one direct line.

Q. If you were mistaken in that assumption, all of your estimates fall to the ground, do they not?

A. They do not.

Q. Then assume only one party line and one direct.

A. Then my figures would be 5,000 direct line residence and 1,500 party line residence.

Q. Paying the $2.00 rate?

A. Paying whatever rate is charged.

Q. And you figured on what the rates were, didn't you?

A. As I understood Mr. Blakey and yourself to say that there were a direct line residence rate and two party line residence rates, upon that I based my original calculations.

Q. You stated that on a plant costing $1,000,000 in Louisville,

that a man ought to be able to make money on the rates specified, didn't you?

A. I don't believe I answered such a question.

Q. What rates would be necessary to charge in a plant of that size, costing $1,000,000 in order to earn a reasonable return on the investment?

A. I couldn't calculate that offhand.

3374 Q. Do you think at $5.50 and $4.00 for business and $3.00 and $2.00 for residences, would make a fair return on such a plant in Louisville?

A. I do.

Q. As you have stated above you would divide the subscribers?

A. I didn't state that I thought it would make a fair return on the number of subscribers. I didn't say the town was properly developed telephonically.

Q. On that $1,000,000 plant, with your subscribers divided as you have divided them above, you would obtain how much per month gross revenue?

A. My calculations on the last division which I made, which is as follows: 3,150 business telephones at $5.50 per month; 350 business telephones at $4.00 per month; 5,000 separate line residence telephones at $3.00 per month and 1,500 party line telephones for residences at $2.00 per month. I estimate the monthly earnings gross on this basis at $49,325.00.

Examination closed.

3375 I, Florence Aten Ives, a Notary Public in and for the County of New York and State of New York, duly commissioned and qualified as such, do certify that the foregoing deposition of S. D. Levings was taken before me and was read and subscribed by him, in my presence, on the day and at the place stated in the caption and subcaption, viz: At my office in the City of New York, the deposition of S. D. Levings was taken on the 29th day of November in the year 1909, the said witness having been first duly sworn by me, the statements of S. D. Levings were reduced to writing by me.

FLORENCE ATEN IVES.

3376 UNITED STATES OF AMERICA:

In the United States Circuit Court for the Sixth Circuit and Western District of Kentucky.

CUMBERLAND TELEPHONE & TELEGRAPH CO.
vs.
CITY OF LOUISVILLE.

Stipulation.

In this cause, to obviate the necessity of taking proof, it is stipulated between counsel that the attached report of D. C. Jackson to

the Massachusetts Highway Commission may be treated as evidence on behalf of the defendant, and the facts therein stated shall be treated and considered as testimony proven by the defendant.

It is agreed that this evidence is subject to exceptions for competency and relevancy.

CUMBERLAND TELEPHONE & TELEGRAPH CO.,
By W. L. GRANBERY, *Attorney.*
CITY OF LOUISVILLE,
By CLAYTON B. BLAKEY, *Attorney.*

Louisville, Ky., Nov. 23rd, 1909.

3377 *Report to the Massachusetts Highway Commission on the Results of the Inventory and Appraisal of the Property of the New England Telephone and Telegraph Company. Made to the Commission by Dugald C. Jackson, March,* 1909.

3378 D. C. & Wm. B. Jackson, Engineers, Experts,
Chicago-Boston.

BOSTON, *March* 27, 1909.

The Honorable Massachusetts Highway Commission, 15 Ashburton Place, Boston, Mass.

GENTLEMEN: We herewith give you a summary report of the results of the inventory and appraisal of the property of the New England Telephone and Telegraph Company that has been executed for you under our supervision.

You will find at the end of this report a table marked Exhibit 1, which shows the extent of the plant of the New England Telephone and Telegraph Company within the Commonwealth of Massachusetts, according to the actual count of the inventory made last midsummer. This table shows the plant divided into different kinds of property, and gives the extent of each. The company has 247 exchange central offices which provide telephone service for substantially every part of the Commonwealth. Of these central offices 46 are housed in buildings owned by the company while the company owns 7 other buildings in the Commonwealth which are used exclusively for storage or general purposes. The number of operators' positions at exchange switchboards, which aggregate 2,367, gives a truer idea of the extent of the telephone switchboards throughout the Commonwealth than is obtained from a consideration solely of the number of central offices.

This table represents a summary of the results of the inventory of the telephone company's property, and strikingly displays the magnitude and comprehensiveness of the system in this Commonwealth and the extent of each kind of plant, but the inventory dealt with a mass of details of which the table gives only a faint idea, and which are on file for use as may be needed in further studies of the telephone situation.

3379 It will be seen from the table that the length of telephone conductors in the Massachusetts system is sufficient to provide nine complete metallic circuits of two wires each entirely around the equatorial circumstances of the earth, and still leave a little over, and that the other quantities found by the inventory are of correspondingly great magnitude.

In Exhibit 2, appended hereto, is given the total value of property of the New England Telephone and Telegraph Company relating to its business within the Commonwealth of Massachusetts, divided to correspond with the divisions of plant shown in Exhibit 1. In Exhibit 3 is given the value of the Company's property relating to its business in the adjoining states.

The value given for each kind of property in Exhibit 2 includes the values of all the collateral materials that appropriately accompany the particular main division. For example: Substation equipment includes all the cost (including installation labor) of the material and apparatus in the Subscribers' stations installed ready for service; poles and fittings include all the cost of the poles suitably prepared with their cross arms; pins and hardware, set in place ready to receive the insulators; aerial cables include the cost of the cables properly spliced, together with the messenger cables and hangers for carrying the conducting cables, the pole clamps, and the terminal boxes that are a part of the aerial cable distribution, all in place ready for service; and so on throughout the entire property.

Our appraisal shows that the total value of the physical plant used for local service in the Commonwealth of Massachusetts is $22,885,082. This is the portion of the plant that is made use of to provide local service between subscribers whose circuits emanate from the same individual exchange central office, except that the seven central offices of Metropolitan Boston are considered as the equivalent of a single exchange central office.

The foregoing total for local plant is divided in the following manner between certain important divisions of the Commonwealth:

The total value of local plant in Metropolitan Boston is
3380 $14,463,843.

The total value of local plant in the Suburban District surrounding the Metropolitan part of Boston is $6,446,838.

Of the latter total, a value aggregating $3,983,940 lies within the inner zone now receiving five per cent toll service with the Metropolitan District.

A value aggregating $2,462,898, lies in the outer zone now receiving ten cent toll service with the Metropolitan District.

The total value of local plant in the eleven cities of the Commonwealth which, besides Boston, are of substantially 50,000 inhabitants or over, is $6,872,411. These eleven cities are: Brockton, Cambridge, Fall River, Holyoke, Lawrence, Lowell, Lynn, New Bedford, Somerville, Springfield and Worcester.

The remainder of the local plant in the Commonwealth is required for service in the smaller cities and rural districts and its value amounts to $5,979,248.

In these divisions of local plant, the property in Cambridge and

Somerville comes into the total for the Suburban District and also into the total for the eleven cities.

The total value of the toll plant for use in affording intercommunication between subscribers connected with different central offices is $9,641,913. It will be observed that this is a sum equal to forty-two per cent. of the total local plant.

The average net current assets and cash on hand which enter into the capital of the telephone company amount to $1,560,000, as obtained from figures supplied to us by the auditor of the company. This amount represents the funds that are required in the current operations of the company, and is added to the value of physical plant in Exhibit 2.

There are (as of the period of the inventory, namely, midsummer, 1908), 42,749 telephones in use in Metropolitan Boston; 34,888 in use in the inner zone of the Suburban District; 19,456 in use in the outer zone of the Suburban District; 56,729 in use in the eleven aforesaid cities, and 54,540 in use in the remainder of the State. These may be distributed in a different classi-
3381 fication as follows:

20,201 main telephones, 17,143 private branch exchange terminal telephones, and 5,405 extension telephones connecting with 19,159 subscribers' circuits in the Metropolitan District;

29,672 main telephones, 2,519 private branch exchange terminal telephones and 2,697 extension telephones connecting with 16,556 subscribers' circuits in the inner zone of the Suburban District.

16,875 main telephones, 702 private branch exchange terminal telephones, and 1,879 extension telephones connecting with 8,770 subscribers' circuits in the outer zone of the Suburban District.

45,516 main telephones, 5,113 private branch exchange terminal telephones and 6,100 extension telephones connecting with 23,581 subscribers' circuits in the eleven cities.

And 48,558 main telephones, 1,892 private branch exchange terminal telephones and 4,090 extension telephones connecting with 19,399 subscribers' circuits in the remainder of the Commonwealth.

We here use the term main telephone to represent any telephones except extension telephones and private branch exchange terminal telephones. The ratio between the number of main telephones and the number of subscribers' circuits shows the average number of main telephones per subscriber's circuit, or as it is usually thought of, the average number of subscribers per circuit. The inventory shows in detail the number of each kind of circuit and each kind of telephone for each of the 241 sections of the state, comprising the Metropolitan District of Boston and 240 central office exchange districts outside of the Metropolitan District.

The data gathered are in great detail, and the figures here given are a summary of the whole. The inventory and appraisal which have been made with exceptional care show how much property the company possesses within Massachusetts and outside thereof, its distribution over the Commonwealth, its value, and the distribution of the value throughout the Commonwealth. It shows that

for each $100. worth of property the company has outstanding $83.67 of par value in stocks, bonds and notes. The aggre-
3382 gate value of the entire property of the company and a comparison of this value with the total outstanding securities of the company are shown in Exhibits 4 and 5 hereto appended. From this relation of the appraised value of the property to the par value of the company's securities, we infer that the company has been in the habit of paying for such expenses as engineering, interest, and like expenses pertaining to new construction, out of earnings instead of out of the capital account. The appraisal shows beyond dissent that the company now has no water in its securities, and the discrepancy in the other direction constituting 16.3 per cent. of the total value of the property is small enough to cause no concern. Whether the company's existing method of putting the cost of new construction on its books should be continued is a matter which your Honorable body may wish to consider. To give this a full consideration, we believe that suitable accountants should be associated with your engineers.

The appraisal affords information on which your Honorable body can decide how much money the company should be allowed as return on its investments, and how much it should be reasonably expected to expend on the average per year for reconstruction for the purpose of maintaining the plant, against the ravages of age or the obsolescence incident to inventions and other causes for improvements and changes in the art. Whether the return on investment is ultimately to be figured on the outstanding stocks and bonds of the company or on the value of the plant, the sum that must be allowed for reconstruction is unquestionably determined by the actual existing values of the different kinds of property composing the plant, which values are shown by the appraisal.

This reconstruction is called for on account of several factors. The rotting of poles so that they must be replaced, the deterioration of conduits, cables and wires so that they must be replaced, and the other effects of the elements and of use on every part of the plant ultimately bring nearly all parts of the telephone plant to
3383 a point where their further use is impracticable without rebuilding, however well cared for and carefully kept up by current repairs they may be. The part of the plant affected must then be bodily replaced. The advances occurring through improvements in the art also make an important factor in the telephone business which demands the remodeling or the bodily replacing of parts of the plant from time to time before their natural life is run. A third factor is introduced by the action of municipal and other public boards who may order improvements of streets and roads, as by ordering good pole lines removed to alleys or wires placed underground. None of these factors can be cared for out of a uniform appropriation such as may cover ordinary repairs; and the cost of making good after special attacks of the elements, such as damage of pole lines from sleet storms, the effects of forest fires, etc., is still more capricious in its occurrence. Nevertheless, these expenditures must be made out of current receipts year by year

or the capital of the company is bound to become impaired. For this purpose, the average rate of reconstruction likely to be required over an extended period of years must be figured on the basis of experience, and a corresponding sum of money should be set aside each year to be expended in reconstruction of operating plant as the conditions require it. Less than this amount may be used in some years and more in other years, but the amount to be taken from the gross receipts each year for this purpose should be fixed upon an average determined by the extent and value of each kind of plant in the complete system. As a result of our study of the complete plant, we have applied percentages to each kind of construction involved, giving consideration to first cost, rate of depreciation, probable effects of rate of changes in the art and the acts of municipal bodies, special misfortunes caused by the elements, and also giving consideration to any salvage that might be recovered from discarded plant. The consideration of these various factors is based on experience in telephony and electric lighting of the past and as much judgment of the future as may be brought to bear. In this way we arrive at a figure for the average yearly reconstruction account for the property used in Massachusetts
3384 business, which is equal to 7.3 per cent. of the value of such property exclusive of land, general supplies, and working capital (net current assets and cash on hand). This makes a sum to be thus annually taken for reconstruction purposes in Massachusetts which amounts to $2,240,000, on the existing plant. A detailed table will accompany our full report.

From the company's expenditures for current repairs and reconstruction for the whole of its system including the plant in the adjoining states, as reported to us by the company's Auditor for several years past, we are led to conclude that the company is not making charges to reconstruction at a higher rate than our estimate; and it therefore seems proved that the company is not building extensions out of annual receipts under color of the reconstruction account, and our exacting inspection of the plant leads us to say that the company is maintaining it in excellent condition.

The knowledge gained by the appraisal added to the company's records of annual operating and repair costs, puts your Honorable body in possession of standards by which to measure the reasonableness of the total sum annually collected by the company from its subscribers. This was a principal aim of the appraisal of the property and has been accomplished.

At your request we have been recently studying the company's rate schedules along with the appraisal data, and we believe that improved schedules can soon be reported to you for the Boston and Suburban District. The appraisal seems to us to indicate that the rates in the Metropolitan District of Boston may be examined and revised with advantage to the subscribers and without injury to the company's stability. Rates for service in the Metropolitan District, however, are closely associated with suburban rates, and changes in one set cannot be safely made without a full consideration of the effect on the other.

As pointed out in our report to you of March 10th, 1908, traffic data must be gathered and properly apportioned, and operat-
3385 ing and repair cost records made before it is possible to get a comprehensive or in fact a reasonably satisfactory opinion of the soundness with which the total sum annually collected by the company is apportioned amongst the various localities and kinds of communities in the Commonwealth. The company has gathered traffic data since our preceding report, especially with respect to the Boston and Suburban District, which will be of service, but we believe that fuller traffic data and apportioned cost records must be gathered and studied with extended care before recommendations in regard to this very important point (the company's relative treatment of localities and classes of customers) can be put on a firmer foundation than the foundation which has apparently been heretofore utilized, namely, business expediency and the best personal judgment of the company's officers.

The large and growing business of the company shows that the judgment used by the company in the past has worked well; but study of the service, traffic, and rates shows undeniable eccentricities in the company's existing development. We believe that our progress thus far shows that careful and full study of traffic rates and costs will bring the desired end of a more satisfactory means of comparing the company's treatment of different localities in the Commonwealth.

The great importance of a full and comprehensive telephone service and the large part which the telephone plays in the business welfare and social convenience of the Commonwealth make us believe that the expenditure for a full study of traffic, rates and costs should be made. The company ought to cooperate in such work by adding the judgment of its best experts, but we believe that your Honorable body ought to receive your advice through suitable engineers and accountants who are independent of the company.

As aforesaid, in our opinion, suitable accountants may wisely be associated with your engineers, and an early part of their joint duty should be to plan in cooperation with the company means of record keeping that will afford data for more effectually determining from time to time the effect of any changes of rates or sub-
3386 scribers' privileges which may be made. We look upon this as of primary importance. The company's records do not seem now to be sufficiently refined for the purpose. For instance, the company's present records do not seem to be capable of affording as full an exhibit as seems to us desirable for your information of the effects on the company's investments, gross earnings, and the cost of caring for the traffic, which have resulted from the change in the rate of tolls in a portion of the Boston and Suburban District which the company put in effect nearly a year ago at the recommendation of your Honorable body.

Additional complexity is imported into the rate question by the relations of the toll service to the local service. In order that local rates may be reasonably adjusted, it is desirable that they shall not be entangled with the cost of the long distance (toll) service of the

company, and the valuation of the toll plant should, therefore, be separated from the valuation of the local plant as far as practicable. This is equally necessary for a satisfactory consideration of toll rates. This principle, as indicated by the figures given earlier, has been carried out in our appraisal. The long distance toll system probably might be expected to earn its own operating expenses, reconstruction charges and return on the investment, independently of the receipts for local service, but we are not convinced that it is now doing so. In fact, figures for gross receipts seem to indicate the contrary. In case it is not doing so, it manifestly must be carried by the subscribers in general or by some particular classes of the subscribers. This needs further study of past records of traffic, receipts and expenditures, and also study more particularly based on additional records of traffic, gross receipts and expenditures kept with a fuller separation of the records for toll service from the records of local service. Such separation has been quite incomplete in the past.

In the inventory and appraisal, wires used for toll purposes are separated from those used for local service, and the supports or conduits are apportioned to toll and local plant in proportion to
3387 the actual toll and local wires carried. The values of central office equipment and land and buildings owned by the company are also apportioned between local service and toll service on actual service requirements.

In the outlying portion of the Commonwealth the difference between what may be appropriately considered toll plant and what may be considered local plant is clearly marked, as each exchange central office provides local service to a more or less distinct community, but in the Boston and Suburban District the apportionment of plant between toll and local service is much more difficult.

Owing to the closely inter-related character of the sections of Metropolitan Boston which includes the central offices called Back Bay, Fort Hill, Haymarket, Main, Oxford, Richmond and Tremont, we have considered the connecting circuits between these seven central offices as a part of local plant. We have thus considered these seven central offices, tied together as they are by connecting trunks, as the equivalent of a single exchange central office. In the Suburban District, however, we have considered as toll circuits all circuits which pass from any suburban exchange to any other exchange, following our practice in inventorying the plant in the remainder of the Commonwealth. We believe that this is a reasonable and fair way to make the assignments. Our inventory and appraisal also show the extent and value of all circuits connecting between central offices separately from the circuits extending from subscribers to central offices, so that the appraisal gives data for correcting the apportionment in case further study should indicate a desirability of changing this part of it.

The inventory and appraisal show the distribution of the property of the company through the Commonwealth, and they also show this distribution separated, as between local plant and toll

plant, thus laying the foundation for a study of local rates and of toll rates separately in each part of the state.

The only means of obtaining this separation was an inventory and appraisal, and we believe that the apportionment is satisfactory as made.

3388 The data obtained from the inventory and appraisal do not, however, include information about the company's expenditures for operating and repairs; and these ought to be carefully studied and means devised for maintaining records which will be of an analytical character, and will lend themselves to apportionment between the local and toll service. Plans should also be developed to maintain the plant valuation on a basis of appropriate continuous records.

To carry out the additional work to which we have referred and which be believe ought to be carried out for the purpose of putting the Highway Commission in possession of adequate grounds for recommendation of rates as required by law, an additional appropriation will be needed. The appropriation now being used was made according to an estimate of the expense attendant upon planning and supervising the inventory and appraisal. It will be substantially exhausted by that work, though we expect to have some additional results in the way of proposing an improved rate schedule for the Metropolitan District to accompany or precede our final report.

Of the money expended under the appropriation for planning and supervising the inventory and appraisal of the property of the New England Telephone and Telegraph Company, $9,600, has so far been paid to D. C. & Wm. B. Jackson as professional fees. The remainder expended out of the appropriation has been used to defray the expenses accompanying the making of plans, the checking of inventory figures, and reducing the data to form convenient for a report to your Honorable body and such further use as you may desire. The aforesaid expense has been largely made up of salaries and wages of inspectors, draftsmen, checkmen, etc.

We have not yet placed in your hands the great mass of maps and figures that comprise the inventory and appraisal of the plant, as we have recently had a force engaged in accordance with your directions in gathering statistics and other data relating to the matter of rates, and we have consequently delayed placing in your hands the completed report until the Boston and Suburban rate qustion is ready for your consideration.

3389 To execute your wishes as expressed to us will require carrying out in full the various branches of investigation set forth in the foregoing. We estimate that the additional should be available for expenditure by your Honorable body in order that these requirements shall be met is $35,000. This ought to cover the cost of engineering and accountants work as outlined. We believe that provisions may be made with wisdom to extend the work over not less than one year with the expectation of utilizing its results in the readjustment of rates from time to time as the data may warrant. We make our estimate of the expense of the work on the basis of

first arranging for adequate traffic and cost data, to be followed by careful study continuing for a satisfactorily extended period so that the traffic and cost records may be sufficient to draw reasonably reliable conclusions. It is also desirable that the effect of any changes proposed for the rates of the Boston and Suburban District should be carefully studied jointly by the engineers of the company and the Commission before being put into force, and thereafter as to their effect on traffic and earnings.

Respectfully submitted,

DUGALD C. JACKSON.

3390 EXHIBIT 1.

Inventory of Property of the New England Telephone and Telegraph Company.

Table Showing the Extent of the Plant in the Commonwealth of Massachusetts.

Number of buildings owned by company	53
Parcels of land owned by company	54
Number of exchange central offices	247
Number of operators' positions at exchange switchboards	2,367
Length of pole lines (approximate), miles	3,937
feet	3,100,901
Length of underground conduits miles	587
feet	14,370,649
These comprise underground ducts miles	2,721
Number of manholes in underground conduits	11,217
Aggregate length of pole lines and conduits, miles	4,424
Length of open wire on pole lines, miles	67,599
feet	5,264,160
Length of aerial cable miles	997
Length of conductors in aerial cables, miles	66,836
Total length of overhead conductors, miles	134,435
feet	6,663,360
Length of underground cables, miles	1,262
feet	52,400
Length of submarine cables, miles	10
Length of conductors in underground and submarine cables, miles	318,225
Aggregate length of aerial, underground and submarine cables, miles	2,269
Aggregate length of telephone conductors in all cables and wires, miles	452,669
Number of poles	210,138
Number of subscribers' telephones on Aug. 31, 1908	199,381

3391 EXHIBIT 2.

Appraisal of Property of the New England Telephone and Telegraph Co.

Table Showing Value of Property Belonging to Business Within the Commonwealth of Massachusetts.

Substation equipment	$3,217,240.
Drop wires leading to subscribers' premises	668,315.
Poles and fittings	4,260,173.
Conduits and manholes	7,588,632.
Wires on poles	2,724,017.
Aerial cables	1,465,273.
Underground and submarine cables	4,718,064.
Switchboards	4,094,067.
Furniture and tools	453,078.
Land and buildings	2,344,469.
General supplies*	1,040,969.
Net current assets and cash on hand**	1,560,000.
Total	$34,133,270.

*Book value, from Auditor.
**Round figure representing average condition.

3392 EXHIBIT 3.

Appraisal of Property of the New England Telephone and Telegraph Co.

Table Showing Value of Property Belonging to Business in Commonwealths Outside of the Commonwealth of Massachusetts.

Apparatus and equipment	$9,771,766.
Land and buildings	210,783.
Investment in other companies*	1,945,000.
Net current assets and cash on hand**	480,000.
Total	$12,407,549.

*At cost value, from Auditor.
**Round figure representing average condition.

3393 EXHIBIT 4.

Appraisal of Property of the New England Telephone and Telegraph Co.

Table Showing the Division of Property Value Between That Belonging to Business Within the Commonwealth of Massachusetts and That Belonging to Business in Adjoining States Together With the Total Value of Property.

Value of property belonging to business within the Commonwealth of Massachusetts	$34,133,270.
Value of property belonging to business in Commonwealth adjoining Massachusetts	12,407,549.
Value of entire property of the New England Telephone and Telegraph Company	$46,540,819

3394 EXHIBIT 5.

Appraisal of Property of the New England Telephone and Telegraph Co.

Table Showing Value of the Property Compared With the Outstanding Securities of the Telephone Company.

Appraisal value of entire property of the New England Telephone and Telegraph Company	$46,540,819.
Total par value of the company's outstanding stocks, bonds and notes, as given by the company's Auditor, for August 31st, 1909	$38,039,850.

3395 UNITED STATES OF AMERICA:

In the United States Circuit Court for the Sixth Circuit and Western District of Kentucky.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

Stipulation.

* * * * * * *

In this cause, to obviate the necessity of taking depositions, it is stipulated between counsel that the Louisville Home Telephone Company was, during the years 1907 and 1908, under the franchise granted to it by the City of Louisville, entitled to charge, and did charge, for telephone service, the following rates in the City of Louisville, and no more, to-wit:

"Forty-eight ($48) dollars per year for each business telephone on an individual wire with metallic circuit wherever located within the city limits.

"for each residence telephone on an individual wire with metallic circuit within a radius of one mile from the Court House in said city, twenty-four ($24) dollars per year;

"for each residence telephone on an individual wire with metallic circuit within a radius of two miles of the Court House, and exceeding one mile therefrom, within the City of Louisville, thirty ($30) dollars per annum;

"for each residence telephone on an individual wire with metallic circuit within the limits of the City of Louisville, and outside of said radius of two miles from the Court House, thirty-six ($36) dollars per year.

"On extension desk telephones, the rate shall not exceed twelve ($12) dollars each per annum, and for installing extension bells, five ($5.00) dollars each."

It is agreed that this stipulation may be treated as evidence on behalf of the defendant, and the facts therein stated shall be treated and considered as testimony proven by the defendant.

3396 It is agreed that this evidence is subject to exceptions for competency and relevancy.

CUMBERLAND TELEPHONE & TELEGRAPH CO.,
By W. L. GRANBERY, *Attorney;*
CITY OF LOUISVILLE,
By CLAYTON B. BLAKEY, *Attorney.*

3397 NORTON E. WESTLAKE, of lawful age, being by me first duly cautioned and sworn, deposes as follows:

Question No. 1. Will you please give us your occupation?

Answer No. 1. Contract agent of the Cincinnati and Suburban Bell Telephone Company and its associated companies.

Q. No. 2. How long have you held that position?

A. No. 2. Since 1901.

Q. No. 3. Is that one of the allied companies of The American Telephone and Telegraph Company?

A. No. 3. It is a license company of The American Telephone and Telegraph Company.

Q. No. 4. Can you tell us approximately the population of the City of Cincinnati?

A. No. 4. The population of Cincinnati, Ohio, according to the 1900 census, I believe was 325,000. It is commonly quoted somewhere near 400,000. That does not take in the suburbs including those across the river.

Q. No. 5. What, then, can be the population of Cincinnati and the surrounding towns and immediate neighborhood?

A. No. 5. The population of the Cincinnati Telephone Exchange district is approximately about 550,000 or in that neighborhood.

Q. No. 6. How many subscribers has the telephone company for which you work?

A. No. 6. The company has in the neighborhood of 53,000
3398 stations, and in the Cincinnati Exchange district approximately a little less than 50,000.

Q. No. 7. Does the number of stations represent the number of subscribers or is there a difference between the number of subscribers and the number of stations?

A. No. 7. There is a difference.

Q. No. 8. Which is the larger of the two, the subscribers or the number of stations?

A. No. 8. The number of stations represent the instruments in use and the subscribers would be less?

Q. No. 9. In other words, a single subscriber may have more than one instrument?

A. No. 9. Some have extension telephones.

Q. No. 10. How many districts or towns are there connected with the Cincinnati exchange?

A. No. 10. The Cincinnati Exchange district comprises, Cincinnati, Covington and Newport and about forty surrounding villages or towns.

Q. No. 11. What area is covered by the service furnished by the Cincinnati exchange, in other words, the area having free service with the exchanges within the given limit?

A. No. 11. About a radius of fifteen miles.

Q. No. 12. Will you please tell us the classes of service furnished by your telephone company, together with the price you charge for each of such services? Please give every class of service!

3399 A. No. 12. We furnish several classes of service, namely: Flat rate, business direct line, $100.00 per year; residence, direct line, $48.00 per year. Two party line $30 per year. These residence rates are for stations located within the two mile radius of the exchange, business rate, four miles. Outside of the two mile radius, but within four miles, the residence rate is $60.00 direct line, two party line $42.00, and four party line, $30.00. Measured service, business direct line, 600 messages per year, $48.00, each additional message three cents. Guaranteed service (slot machines), business direct line, guaranteed, $5.00 per month, four party line, guarantee ten cents per day. Residence, four party line, guarantee, five cents per day. Slot machines under about 8,000. Private branch exchange service, flat rate, each trunk line, $100.00 per year, each station on premises $20.00, switchboard and operator set, $20.00, stations off premises, subject to mileage charge of $12.00 for each half mile or fraction. Message or commutated rate, switch-board including the operator set, $24.00, each outgoing trunk, flat rate, $240.00, each incoming trunk, measured service, $36.00. Each station on premises $9.00, stations outside, subject to mileage charge as above. Each message sent from message rate trunk line, three cents.

Q. No. 13. Is there any other class of service furnished by your company, other than those you have enumerated?

A. No. 13. Extension telephones, $9.00 per year, business or

residence. We furnish what is called local service in a few
3400 small towns at the following rates:

Direct line, business, $36.00 per year, four party line, $24.00 per year. Residence direct line $24.00 per year, four party line, $18.00 per year. This service is limited to subscribers connected in that exchange. We have three or four hundred such subscribers. Any message to Cincinnati or other exchanges in the Cincinnati district, is ten cents. Subscribers in these villages may take Cincinnati service at Cincinnati prices.

Q. No. 14. Is there any difference in the rates charged the subscribers in the City of Cincinnati proper and the other municipalities, which you have mentioned as being connected with the Cincinnati exchange?

A. No. 14. With the exception of this small number of local service subscribers stated, all subscribers in Cincinnati and the suburban villages adjacent to Cincinnati, numbering about forty, have full Cincinnati service at Cincinnati prices.

Q. No. 15. What is the quality or character of service furnished by Cincinnati exchange?

A. No. 15. It is considered that Cincinnati is furnishing telephone service as good as there is in the country.

Q. No. 16. I will ask you as to whether or not there has been any reduction in the rates for telephone service in the Cincinnati exchange in the past few years?

A. No. 16. The last reduction of rates in Cincinnati, was
3401 several years ago, when the prices for residence service were reduced as follows:

Flat rate, direct line, reduced from $60.00 to $48.00 per year. Two party residence, reduced from $48.00 to $30.00 per year. At that time we were furnishing four party line service at $30.00 per year. This class of service was abandoned and all four party subscribers changed to two party lines at the same rate.

Q. No. 17. Can you tell us the amount of dividends or the rate of dividend paid by this company in the past few years?

A. No. 17. I do not know anything about the financial condition of the company. In the past few years they have been paying 8%.

Q. No. 18. Do you know the value of the stock of the Telephone Company?

A. No. 18. It is reported in the papers as being worth 185.

Q. No. 19. Can you tell us approximately, the number of operators or employees of the company?

A. No. 19. About 650 or 700 operators and as many more employees that fluctuate. We have had a great many more, but I think that is the number at the present.

Q. No. 20. Will you please tell us how you fix the number of operators and the assignment of service rendered by them?

A. No. 20. You mean the traffic?

Q. No. 21. Yes.

3402 A. No. 21. The number of lines assigned to each position is fixed entirely according to the traffic or number of messages handled, which has been held to a maximum of 2,000 mes-

sages in twenty four hours and runs from 1600 to 2,000. By a position, I mean a switchboard with the necessary operators to cover it in the twenty four hours.

Q. No. 22. What is the relative cost of service across the river compared to that of the service on this side of the river as to maintenance, etc.?

A. No. 22. There is no difference at all in the cost, it is all thrown into one business. I will state here, the business conducted across the river in Kentucky is handled by the Citizens Telephone Company, which is a company controlled by our company, but is a separate corporation.

NORTON E. WESTLAKE.

3403 UNITED STATES OF AMERICA:

In the United States Circuit Court for the Sixth Circuit and Western District of Kentucky.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

Depositions.

Deposition of sundry witnesses taken before me, a Notary Public within and for the County of Lucas, State of Ohio, in the above entitled cause, pursuant to the annexed notice and at the time and place therein mentioned, to be read as evidence in behalf of the above named defendant, City of Louisville, on the trial of the aforesaid cause.

Present on behalf of defendant, Huston Quin. Plaintiff not represented by counsel.

HOWARD P. YEAGER, of lawful age, being by me first duly cautioned and sworn as hereinafter certified, deposes and says as follows:

Q. Mr. Yeager, what is your occupation?

A. Contracting agent for the Toledo Home Telephone Company.

Q. How long have you held that position?

A. That particular position—for the last four and a half years.

3404 Q. How long have you been mixed up in telephone business generally?

A. Just about nine years lacking two months.

Q. Mr. Yeager, what is the approximate population of the City of Toledo?

A. Why, about one hundred and seventy-five thousand, I should judge from the reports, that is the approximate number.

Q. How many telephone subscribers has your company connected with the Toledo exchange?

A. We have about 14,500 in round numbers.

Q. Does that represent the same number of telephone instruments or is the number of instruments greater or less than the number of subscribers?

A. That represents the number of telephone instruments. That is a little greater, of course, than the number of subscribers.

Q. In other words, in more than one instance, the subscriber may have two or more phones?

A. Yes, sir. Take a big branch exchange, they may have thirty or forty mercantile houses.

Q. Have you any sub stations or branch exchanges in Toledo?

A. We have one.

Q. One central office and one branch exchange?

A. Yes, sir.

Q. Now, Mr. Yeager, will you please tell us the various classes of service furnished by your company to your subscribers, together with the rates charged for each class of service?

A. We furnish within the city independent and two party lines, and four party lines on our east exchange only. Business phones on independent lines are $52.00 per annum. That is gross rental. Two party lines, business phones, $44.00 per annum. Independent residence phones $32.00 per annum. Two party residence phones $26.00 and four party residence phones $20.00. Discount allowed on business phones $4.00 a year; on residence phones $2.00 a year.

3405

Q. In other words, a straight business phone would be, net $48.00 a year?

A. Yes, sir.

Q. Straight residence phones, net $30.00?

A. Yes, sir.

Q. Have you any other classes of service than those above enumerated?

A. Yes, we have lines outside the city limits. We supply the farming district, eight party lines, four party lines and individual lines, governed by mileage. We go out within a radius of seven or eight miles with our eight party and four party lines, but when it comes to furnishing individual service and two party service, then we charge on a mileage basis.

Q. Have you any residence or business pay stations?

A. We have business pay stations but not residence pay stations.

Q. On what basis are these pay stations regulated?

A. Well, at the present time we have two different propositions. We have pay stations in public places such as the Union Station, Interurban Station and such places as those. In such places we make an agreement with the proprietor or owner of that particular place, while our other pay stations are confined exclusively to drug stores, where we get one half the receipts. We expect to get these pay stations on a different basis in the next six months—they are something new for the Toledo Home Telephone Company and we are not just settled yet——

Q. What is your price for ordinary extension telephone sets from one office to another?

A. $12.00 a year for the instrument only, business phones, residence extension sets are $6.00 a year, that is for the instrument only. Push buttons, buzzers, etc., are $3.00 per annum additional. That would make it $9.00 a year for residence phones.

3406 Q. Mr. Yeager, can you tell us what, if any, dividend the Home Co. paid on its stock?

A. Six per cent.

Q. This in addition to properly maintaining its plant?

A. Yes, sir.

Q. Can you tell us how many operators you have at your plant?

A. Approximately one hundred and fifty.

Q. How do you fix the number of operators?

A. That is governed by the demand or the increase in switchboard capacity, which is the result of increase in business on the outside.

Q. How do you regulate the number of calls per position, I think that is the practical term?

A. I would not be positive about that—some positions are a little larger than others. It depends upon the factories, to a certain extent, but I think the average position has 175 to 200 lines.

Q. Do you know the salaries paid these operators?

A. Well, only in an off hand, approximate way—all the way from fifteen up to thirty. These are the prices that prevail all the way along.

Q. It depends upon the term of service, etc.?

A. Yes, sir.

Q. Now, Mr. Yeager, I understand that the Bell Company in this city is installing phones in certain places free of charge. I will ask you as to whether or not this is a fact?

A. Yes, sir.

HOWARD P. YEAGER.

3407 ALICE C. EVERETT, of lawful age, being by me first duly cautioned and sworn as hereinafter certified, deposes and says as follows:

Q. What is your occupation?

A. I am clerk in the contract department of the Central Union Telephone Company.

Q. How long have you held that position?

A. Six months the first of the year.

Q. How long have you been connected with the company?

A. Just six months—the first of the year.

Q. Are you familiar with the rates charged by the Bell Telephone Company to the Toledo subscribers?

A. Yes, sir.

Q. Can you tell us how many subscribers your company has connected with the Toledo exchange?

A. About eleven thousand instruments.

Q. Do you know approximately the population of Toledo?

A. Why, somewhere about 200,000, I think.

A. Will you please tell us the various classes of service furnished

by your company, together with the prices you charge for each of such classes of service?

A. Individual business phone, $4.50 a month net. Two party, business phones, $3.00 per month, net. Individual residence phones, $2.25 per month, net, two party residence phones, $1.50 per month, net. Business extensions are $1.00 a month, residence extensions 50 cents a month. Extra list on business phones 50 cents, extra list on residence, 25 cents. We get three months in advance and are giving no free service at all any more. We collect three months when the phone is installed.

Q. You gave free service for three months, did you not?

A. Why, yes, but we are not giving any free service whatever now.

3408 Q. Do you collect in advance for phones that are installed?

A. Most phones are paid for when they are installed. In some cases we make a bill after the phone is installed, but it is three months straight on all residence phones.

Q. Have you any pay stations?

A. Yes, sir.

Q. Residence and business both?

A. Just business.

Q. On what basis are they established?

A. Well, we get $4.50 a month in a pay station, the same as a business phone, and the subscriber gets one half the receipts, I think, but I am not sure. I don't have anything to do with that department. Mr. Adams attends to it and I know nothing about it.

Q. You don't know on what basis they are fixed?

A. Not the pay stations, no, sir. I have nothing to do with that.

Q. Have you any other classes of service? That is, any classes other than those you have mentioned?

A. Outside the city limits we charge extra rates.

Q. Based upon the mileage, I suppose?

A. Yes, sir.

Q. Now, does the number of subscribers correspond to the number of telephone instruments, or is one greater than the other?

A. Oh, yes, because a good many subscribers have a phone and an extension both and that would require two instruments. Some have two extensions.

Q. While you have the number of subscribers you mentioned, you have a greater number of telephones.

A. Yes.

Q. Can you tell us how many operators you have in your exchange?

3409 A. No, sir. That is out of my department.

Q. Can you state the salaries paid to the operators?

A. No, sir.

Q. You don't know how their number is regulated?

A. No, I don't know anything about that.

ALICE C. EVERETT.

Certificate.

STATE OF OHIO,
Lucas County, ss:

I, Earle L. Peters, a Notary Public duly appointed and qualified within and for the county and state aforesaid do hereby certify that the above named Howard P. Yeager and Alice C. Everett were by me first severally sworn to testify to the truth, the whole truth and nothing but the truth, and that the foregoing depositions respectively subscribed by them were taken down in shorthand by Edith Norton and transcribed by her and were taken at the time and place in the annexed notice specified, and in my presence.

I further certify that I am not a relative or counsel or attorney of either party or otherwise interested in the event of this action or proceeding.

In witness whereof I have hereunto set my hand and seal of office at Toledo, Ohio, this 22nd day of December, A. D. 1909.

EARLE L. PETERS.
Notary Public, Lucas County, Ohio.

3410 UNITED STATES OF AMERICA:

In the United States Circuit Court for the Sixth Circuit and Western District of Kentucky.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

The deposition of Daniel Wagner, taken on the — day of ——, 1909, at the office of —— ——, in Louisville, County of Jefferson and State of Kentucky, to be read as evidence on behalf of the defendant in an action between the Cumberland Telephone & Telegraph Company, Complainant, vs. City of Louisville, defendant, now pending in the United States Circuit Court for the Sixth Circuit and Western District of Kentucky the complainant, Cumberland Telephone & Telegraph Company, being represented by David W. Fairleigh, and the defendant, City of Louisville, being represented by Huston Quin:

DANIEL WAGNER, called for the defendant, being duly sworn and examined by Mr. Quin, deposed as follows:

Q. What is your residence and occupation?

A. I am President and Manager of Wm. Schuff & Company, Tannery.

Q. Is your company, Wm. Schuff & Co., a subscriber for the service of the Cumberland Telephone Company?

A. They are.

Q. What is the number of the telephone?

A. 1359.

Q. Main, South, East or West?

3411 A. Main.

Q. How much do you pay for your service, and what kind of service have you, a party line or a straight line?

A. When our contract ran out two years back, they wanted to put in a party line, and, of course, we would not submit to it, we would not have a party line. We would rather give it up, it was too much bother, and we came to an agreement that they put it in for the price of $15.00 for three months and a rebate of $1.50, and to use the party line name on it. A. If it is a party line I don't know it. We never had any call on it and never had any bother with it. I told them we would accept that, but if there was any bother we would not have it, we would throw it out.

Q. What did you pay before you made this change—how much a month?

A. For three months $10.00 and something. It was $12.00 and a rebate of $1.50. I had the bills here for four, five, six or seven years.

Q. Since that time you paid $15.00 a quarter with the discount of $1.50.

A. Yes, sir.

Q. And there is no one else on that line that you know of?

A. Not that I know of. We call it A. When I am outside I call up 1359.

Q. You don't have to give the letter?

A. I never did. If there was a party line, I didn't know it. We never felt anything of it.

Q. The Company asks you to call that a party line?

A. Yes, sir, a party line, and if it was necessary I said they could put it on, but I said if there was botheration we would throw it out, and we didn't sign any contract.

3412 Cross-examined by Mr. FARLEIGH:

Q. It is a party line?

A. It is named a party line.

Q. They told you they would make it a party line?

A. They said they would make it a party line, but it ain't.

Q. That is what they said they would do?

A. They said it would be a party line for that price.

Q. You said if there was any trouble you would order it out?

A. Yes, sir.

Q. But there was an understanding between you and the Company that it should be a party line?

A. Yes, that was the understanding.

DANIEL WAGNER.

M. J. DOLL, called for the defendant, being duly sworn and examined by Mr. Quin, deposed as follows:

Q. What is your name?

A. M. J. Doll.

Q. Where is your place of business?

A. Baxter Avenue, 623 new number; old number, 1219.

Q. What position do you hold with the Doll Grocery Company?
A. I own the concern. I am the proprietor.
Q. Are you a subscriber to the service of the Cumberland Telephone Company?
A. Yes, sir; I have two phones at present.
Q. What are the numbers?
A. East 219 and East 221a.
Q. East 221a is the old phone?
A. Yes, sir; and I had 219 put in probably a year ago.
Q. What do you pay for the straight line?
A. I think $7.50.
Q. Net?
3413 A. Yes sir; $8.00, with fifty cents discount?
Q. What do you pay for the party line?
A. Five dollars, less fifty cents.
Q. Have you a contract covering either one of those installations?
A. I don't remember whether I have a contract for the last year. The other one I have not. I think I did make the contract; I think that was the only way they would put it in.
Q. How many people on the East 221a?
A. None. I had the same experience this last gentleman had. I was told of other people going to them and telling them they would take the phone out, that they didn't want one. They said they would put me on the line with two parties, but would not put anybody on the line, and I gave them written notice that whenever they put anybody else on it to take it out.
Q. And no one else was put on it?
A. No, sir.
Q. How much do you pay?
A. $5.00, less fifty cents.
Q. So far as the service, it is just the same as a straight line.
A. Yes sir; I get the same service out of one as out of the other.

M. J. DOLL.

3414 CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY
vs.
CITY OF LOUISVILLE, KY.

The Deposition of T. D. Webb, taken at Nashville, Tennessee, by Consent, on This the 28th Day of December, 1909, to be Read as Evidence on Behalf of Defendant on the Trial of the Above-entitled Cause.

Caption, certificate and all formalities expressly waived.

Present, Mr. Wm. L. Granbery, Solicitor for Complainant; Mr. C. B. Blakey, Solicitor for Defendant; and Buford Duke, Stenographer and Notary Public.

3415 Said witness, T. D. WEBB, being first duly sworn, deposed and testified as follows:

Direct examination.

By Mr. BLAKEY, for defendant:

Q. Mr. Webb, are you connected in any way with the Cumberland Telephone and Telegraph Co.?

A. I am treasurer of the company.

Q. How long have you been treasurer?

A. About eighteen years.

Q. Do all of the receipts and disbursements connected with the conduct of the Cumberland Telephone Company pass through your hands?

A. Yes, sir.

Q. Do you know what amounts of money are expended each year on construction? Do your books show the amount expended on construction of the various exchanges?

A. No, sir.

Q. In what way do you pay out money?

A. My office pays out money only on vouchers, going through the various departments of the company here and coming to me from the auditing department, and is paid after the voucher comes properly signed. My books do not show a distribution of that voucher as to construction of the various exchanges. That distribution is made in the auditor's office.

3416 Q. Do your records show whether the money is for expenses, such as operating, maintenance and general, as distinguished from construction expense?

A. No sir.

Q. Do your books show the receipts from the various exchanges?

A. Yes sir.

Q. So you cannot tell how much was expended in any particular year in the way of construction work in any particular exchange?

A. No sir, I cannot.

Q. Is there any such record kept in your office as a general distribution book?

A. General distribution book, no sir.

Q. Is there any such record kept by the Cumberland Telephone and Telegraph Co., as far as you know, called the general distribution book?

A. No sir, I don't know of such a book.

Q. I call your attention to a deposition given by you in the case of W. L. Weller and Sons against the Cumberland Telephone and Telegraph Co., No. 29,356 pending for some time in the Jefferson Circuit Court, Chancery Division, Second Division, and I call your attention to question 2 and the answer thereto, the deposition having been given on the 21st day of June 1902, and I call your attention especially to question 3 and the answer thereto, which question and answer are as follows:

3417 "Q. What books would have to be examined to ascertain what have been the earnings and expenses of the Branch of the Cumberland Telephone and Telegraph Co. in the City of Louisville?

A. Well, the general distribution book would have to be examined, and the general earnings would have to be examined, and I take it the vouchers would have to be examined."

I will ask you whether that question was asked you and you answered it in that way?

A. I don't remember the question at this time, but I presume it was, and at that time the distribution may have been made in the treasurer's office, but I would have to look up the old records to determine that fact; but the distributions are not made in the treasurer's office now and that was the question I thought you asked me a few minutes ago.

Q. Do you remember whether at that time the records in your office showed the distribution of the various sums of money which were paid out by the company in the way of expenses and in the way of construction account?

A. I don't remember, but would have to look up our records to see when we opened up a separate auditing department. Prior to the auditing department, the records were kept all in one office and were distributed. The exact date the change was made, I

3418 do not remember.

Q. If the separate auditing department had not been established at the time you gave your deposition in that case, would your records show, prior to that time, what distribution had been made of the company's funds?

A. Yes sir.

Q. Then I will ask you to examine your records and tell me whether, prior to June 21st, 1902, your books did show such distribution?

A. Yes sir.

Q. Then I will ask you to look at your books and state what amounts were expended by the telephone company for the years 1900 and 1901 on construction account for the Louisville exchange?

A. Shall I stop and get that now, or later.

Q. I would rather you would get it now. Can you send for your books?

A. It may take some time to dig them out and find them. I would have to refer to Mr. Smith to whom all the books were turned over and see if I can get the amount right at once. I may have to dig through a lot of vouchers.

Mr. GRANBERY: Mr. Blakey, my understanding is that when we agreed on selecting joint accounts, each side selecting an expert,
and those experts make a joint report, that anything the
3419 experts agreed on would be accepted by the Master as conclusive and no proof could be taken to contradict or vary anything the joint report showed. Now, turning to the joint report, that shows the amount expended on construction for each of the years you ask about, and for that reason it seems to me the proof is going beyond the scope of the Master's instructions.

Mr. BLAKEY: I do not so understand the scope of the Master's instructions, to begin with, and, in the second place, the auditor has filed several statements as to the construction account, for the years about which I am asking, and the separate reports of the two accountants show a different state of affairs as to those accounts for those years, and I want to know what Mr. Webb has to say about it, who kept the books at that time and had them under his charge.

Mr. GRANBERY: The auditor's direct examination was taken before this agreement, about having experts investigate the books and make a report and after the expert accountants did unite in a report stating the construction account for each of those years,
3420 I have assumed I was bound by that joint report, regardless of anything that might have been said by the auditor prior thereto.

Mr. BLAKEY: Do I understand you then to instruct the witness not to answer.

Mr. GRANBERY: I do not. The witness may, in the absence of the Master Commissioner, and as it is immaterial, the witness may answer and take such time as necessary to get the information to make the answer, but I was merely calling your attention to what I understood the agreement to be, and the Master Commissioner's construction on that agreement, and, if you don't understand it that way, in the absence of the Master, I shall have to submit, but will call it to the Master's attention the first opportunity I have, and get a ruling on that point. Now, Mr. Webb, you can go ahead.

A. 1900 and 1901, construction in the City of Louisville.

Mr. BLAKEY: Q. Yes?

A. Mr. Blakey, I would like to say in reference to this
3421 book, I believe this has been before you before, and the Audit Company has made its audit, and everybody that has been working on this, has had this book, so it is not the first time it has been in the case. Now, I can call off these amounts by months, if you would like it that way.

Q. I would rather have it as a total for the year?

A. Do you want it in divisions, or in one sum. I can give it as to aerial construction, equipment, underground.

Q. I want the total gross sum expended and charged to construction account for the Louisville exchange for the two years in question?

A. These figures, some of them, are dim, and there may be a little difference between them and previous ones, but they are about correct. In 1900 the construction account is $166,938.93. In 1901, $167,005.45. I would like to say right here, Mr. Smith was elected auditor in 1899 and these books were in his possession in 1900 and 1901.

Q. Can you tell what the construction account for the part of the year 1899, which was expended on the Louisville exchange by the Cumberland Telephone and Telegraph Co., if anything?

A. If anything, the books should show. It is not in these books. If you wish it, I will have to go and get it.

Q. Do you remember whether the Louisville exchange was operated in part during the year 1899 by this company?

A. My impression is that it was not, but I do not remem-
3422 ber the exact date it was taken over.

Q. Do the records you have before you, show the construction account—I mean by construction account, the total amount invested by the Cumberland Telephone and Telegraph Co., in the Louisville exchange, as of the first day of January 1900?

A. These books here do not show it.

Q. I will ask you to ascertain what your records show to have been the amount expended by the company in the way of construction account for the year 1899, if anything, and also what the total construction account or amount invested by the Company in the Louisville exchange as of the first day of January 1900, the first day of January 1901 and the first day of January 1902?

A. Now in reference to that I am willing to get it, but I will have to get it from the auditor, as he was keeping the capital account at that time. I presume you have already gotten the information from him and it will, of course, be the same thing.

Q. Suppose you look at those exhibits and see if you can say from those?

A. I could not say of my own knowledge, of course.

Q. If you can, get what Mr. Smith says about it so as to have it in your deposition; that will be satisfactory.

A. Now, is this the Exhibit you have reference to. It does not say what it is.

3423 Mr. GRANBERY: Take it up to Mr. Smith, and take this, and I don't know whether he has the joint report or not. Tell him to give to you the figures to use in the deposition, as they are coming from him.

A. Mr. Smith gave me the following figures in answer to your question: In 1899, $678,354.69; January 1st, 1900, $845,293.72; 1901, $1,024,145.11; 1902, $1,237,615.43.

Mr. BLAKEY:

Q. Now, please explain your figures for 1899. What do you mean by the figure you use for the year 1899?

A. I have no explanation of them at all, for I did not handle it, but it was simply given me by the auditor.

Q. My question was whether anything was expended by the company on the Louisville exchange during the year 1899?

A. The auditor gives those figures; further than that I know nothing about it.

Q. Now, do you know how much the company earned—what the net profit earned by the company was, for the year 1901?

A. I do not at the moment. I can get it for you.

Q. In the same deposition about which I asked you a short time ago, on page 42, question 6 and the answer thereto, appears the following:

"Q. Will you state generally, from your knowledge of the books, what is the profit made by the capital employed in Louisville?

3424 "A. Well, our profit last year was a little less than seven per cent."

Will you state whether or not that question was asked you and answered in that way?

A. I don't remember; I presume it was, though I don't remember the question or the answer.

Q. Would you say that the company did, for that year, earn a little less than seven per cent?

A. I could not tell, unless I looked up the figures, it has been so long ago, I have not attempted to carry it in my mind and could not do so anyway.

Q. If you did answer that question in that way, at that time, would you say you had looked up the figures, at that time?

A. I should think so.

Q. Now, question 7, immediately following the one I have just asked you about, is as follows:

"Q. Do you recall what it was the year before?

A. The years previous, I don't remember exactly, but it would not be far one way or the other, from seven per cent I would say was between six and seven and one-eighth—somewhere in that neighborhood."

Now I will ask you if that question was asked you and if you answered it in that way?

A. I don't remember the question.

Q. Would you say the same about that question and the

3425 answer thereto, that you said about the question six and the answer thereto?

A. Yes sir.

Q. Now, do you remember what the earnings of the company were for the year 1901?

A. I do not.

Q. Do you know what the expenses were for that year?

A. No sir.

Q. I will ask you whether you remember having the following questions asked you, and whether you answered them in this way; the same appearing on page 47 of the deposition about which I have asked you, and being questions 49 to 52 inclusive.

"Q. Can you kindly furnish to Judge Humphreys the figfiures of the expense of this plant during the year 1901?

A. You mean by months?

Q. 50 No, just the aggregate for the year?

A. The aggregate—I will——

Q. 51. I would like you also to say how much was expended during that year for construction?

A. During last year?

Q. 52. Yes, 1901."

A. I don't remember the questions.

Q. I now call your attention to page 48 of this deposition, in which there appears the following statement:

3426 "Subsequent to the taking of the deposition, witness T. D. Webb furnished statements as asked for in questions 44 to 51 page 47."

And I also call your attention to three typewritten papers filed as a part of your deposition, marked, "Statement of Louisville, Kentucky, exchange of Cumberland Telephone and Telegraph Co., earnings and expenses for year 1901", in the right hand corner of the first page of which appears a notation, "Statement filed by T. D. Webb, asked for in questions 49 to 51, page 47, and I will ask you if you caused those three slips of paper to be made up and if you filed them with the stenographer who took your deposition in that case?

A. I don't remember the facts in regard to it, but presume I did.

Q. I have caused three copies to be made of the three pages about which I have asked you, and will ask you to examine them, and if correct copies, file them and make them a part of your deposition?

A. Yes, I will check them up first and file them.

(Papers marked Exhibit No. 1 to this deposition.)

Q. One of these slips appears to represent the earnings and expenses for four months of 1899, does it not?

A. Yes sir.

Q. What four months are represented in that particular

3427 statement?

A. September, October, November and December.

Q. Now, do you know from what source you obtained the information which appears in those three statements?

A. It has been so long ago it would be necessary for me to check the statements against our books to see how the results were reached before I could answer.

Q. How would you have receive them in the ordinary course of matters of a similar nature?

A. For those years they would come to me from the auditing department.

Q. Did you file them as correct copies of the records from which they were taken?

A. As I said before, I don't remember the facts with regard to this Weller case and I would have to investigate more thoroughly into it before I could answer that question.

Q. If you had not thought they were correct statements, would you have filed them?

A. No sir.

Q. Then, you did think they were correct statements at the time they were filed with your deposition in that case?

A. Yes sir.

Q. I call your attention to the paper marked "Earnings and expenses for the four months of 1899" and especially call
3428 your attention to the notation appearing at the top of the page, entitled, "Capital invested December 31st, 1899, $835,918.54, and will ask you to explain what you meant by placing that item on that statement?

A. I don't remember the occasion for it at the time, but I presume it was requested, to know the amount of capital invested, and it was so noted on the statement.

Q. Was that intended to represent the amount invested at that time in the Louisville exchange?

A. Yes sir, that about agrees with the auditor's statement which we have just read.

Q. I call your attention to the next to the last line, appearing on this statement, which reads as follows: "Amount added to construction (capital) account, and not charged to expense for the four months, $33,954.94" and I will ask you what that item was intended to represent in that statement?

A. Before I answer the question, I would like to investigate the records at the time to see just what the vouchers were. Of course I cannot recall just at this moment what they were for.

Q. I am not asking what the expenses were for, but what you intended that item to represent, when you placed it on that sheet?

A. It represents the amount, as stated, the amount added to construction and not charged to expense for the months mentioned, #33,953.94, meaning what it says, that that amount is in
3429 there, which was not charged to expense.

Q. At the time you filed that statement, did your records show that the Cumberland Telephone and Telegraph Co., had expended that amount during the four months of 1899?

A. Yes, I presume so, but I would have to investigate the records to be entirely clear on it.

Q. You thought that was the amount which it had expended for that period, at the time you filed the statement, did you?

A. Yes sir.

Q. Now taking up the next statement which appears to represent the earnings and expenses for the year 1900, I will ask you what that statement shows as the capital invested on December 31, 1900?

A. $1,002,747.62.

Q. And what does that statement show as the amount added to construction, (capital account) and not charged to expenses during the year?

A. $166,829.09.

Q. What does that statement show to have been the net revenue for that year?

A. $70,208.58.

Q. At the time you filed that statement, did you file it as representing a true statement of the facts appearing thereon?

3430 A. Yes sir.

Q. And as representing a true record of the books as they appeared in your office?

A. Yes sir.

Q. I hand you the third statement, which appears to represent the earnings and expenses for the year 1901, and I will ask you what appears on that statement as the capital invested May 31st, 1902?

A. $1,145,347.86.

Q. I will ask you what amount appears on that statement, representing the amount added to construction (capital account) and not charged to expense, since January 1st, 1901?

A. $142,600.24.

Q. Does the last item you read represent all sums expended on construction account for the year 1901 and up to and including May 31st, 1902?

A. Yes sir.

Q. At the time you filed that statement, did you file it as a true and correct record of the books as they appeared at that time?

A. Yes sir.

Q. Do you allot to any particular exchanges, any part of your capital account on your books, as treasurer of your company?

A. No sir.

Q. You file statements with the Secretary of State or

3431 Auditor or some other official of the various states, do you not?

A. Yes sir.

Q. And do those statements purport to show how much capital you have invested in each state or any part of the state?

A. It is shown, usually, as I remember, as a whole, the entire capital.

Q. During the examination of Mr. Smith, the auditor of the company, he was asked about a report which had been filed with the Secretary of State of Kentucky, in which some seven hundred thousand dollars of your capital stock had been allotted to Kentucky. Do you remember making any such statement as that to the Secretary of State?

A. We make a report every year, not to the Secretary of State, but to the State Board of Appraisers, I think they call it, composed of the Secretary of State, Treasurer and Auditor, and that report is rather a long one and asks for a great deal of information in regard to the various exchanges and asks the amount of the physical property in the various exchanges, but I do not think there is anything in those reports to show the construction account in each exchange.

Q. You file also a statement with the City Assessor of Louisville, do you not, each year?

A. Yes sir.

Q. Have you retained copies of those statements?
3432 A. Yes, sir.

Q. Will you produce some of those statements, say for the years, 1905, 1906, 1907, 1908 and 1909?

A. (Handing papers to counsel.) That is the report of the physical property and this is the report of the franchises as to the City of Louisville.

Q. I notice for the year 1905, you have itemized the real estate and improvements and placed a value on each of the exchanges, real estate and improvements occupied by each of the exchanges. I will ask you to state what value you place on those for each exchange?

A. The real estate values as reported, are as follows: No. 444 Jefferson Street, $42,000.

Q. Is that the Main Exchange?

A. Yes sir. Ormsby Street, $8,500.

Q. Is that the South exchange?

A. I think so. I don't know the location of the streets. Twenty-second Street and Jefferson, $8500; Baxter and Breckenridge, $8,000. Oak Street, $4,000.

Q. Does that represent the real estate and the improvements thereon?

A. It does not include the switchboards; it includes the buildings.

Q. Now for that year, what amount did you place as the valuation of the automobiles, tools and teams?

3433 A. I don't see any automobiles at that time, or tools and teams itemized, but it was probably included in this statement, value of all poles, wires, insulators, cross-arms, braces, switch-boards, telephones, batteries and other apparatus, $250,000.

Q. Does that include tools and teams?

A. Yes sir, includes everything else that is not itemized.

Q. Does that include switchboards?

A. Yes, sir.

Q. Does it include conduits?

A. Yes, sir.

Q. Cables?

A. Yes, sir.

Q. Wires?

A. Yes, sir.

Q. Poles?

A. Yes, sir.

Q. Office furniture and fixtures?

A. Yes, sir.

Q. Cash on hand?

A. Yes, sir.

Q. Cash in bank?

A. Yes, sir.

Q. Now, at the time you filed that statement you swore to it, I believe?

A. Yes, sir.

3434 Q. Did you consider that a fair value for the property you were listing for taxation?

A. Yes, sir, we considered it a fair value. The property was taken over by us, it was assessed at $133,000 and we added to it year by year such amounts as we thought proper for assessment, and that year, the amounts above stated.

Q. Now, for the year 1906, what is the total of the valuation placed by you on the real estate and buildings thereon?

A. $71,500.

Q. That is practically the same as the value placed on it for the year 1905?

A. Yes, sir.

Q. And what is the value placed on all other property of the nature you were asked about?

A. Well, we had automobiles, $1825; horses and mules, $2300; poles, wires, insulators, cross-arms, conduits, switchboards, telephones, batteries, office furniture and fixtures, and all other apparatus and equipment, $270,000.

Q. And did that represent all the items about which you were asked in the report for the year 1905?

A. Yes, sir.

Q. And did you consider that a fair value for the property for that year?

A. Yes, sir.

3435 Q. Now, please give the totals appearing in your statement for the year 1907 representing the realty and the other property separately?

A. Realty, $71,500; automobiles, $1850; horses, mules, etc., $1200; cash on hand, $307.00; on deposit, $2,429.14; poles, wires, insulators, cross-arms, conduits, cables, manholes, brackets, braces, switchboards, telephones, batteries, office furniture and fixtures, and all other apparatus and equipment, $286,000.

Q. And did you consider that a fair value to be placed on the property at that time?

A. Yes, sir.

Q. Now, please state the same facts in regard to your statement for the year 1908?

A. For real estate, $71,500; for all vehicles, including automobiles, $2650; horses, mules and cattle, $1150; cash on hand, $300; cash on deposit with banks, $2429.14; unpaid accounts, $14,000; all property not mentioned above, including poles, wires, insulators, cross-arms, conduits, cables, manholes, brackets, braces, switchboards, batteries, office furniture and fixtures and other office apparatus and equipment, $286,000.

Q. Did you consider that a fair valuation to place on that property at that time?

A. Yes, sir.

Q. Now, for the year 1909, please state the same facts you

3436 have been asked about in regard to the other statements?

A. Real estate, $71,500; cash on hand, $2,364.33; uncollected accounts, $7,237.22; vehicles, including automobiles, $3,200; horses, mules, $1200; apparatus, including poles, wires, insulators, cross-arms, conduits, cables, manholes, brackets, braces, switchboards,

telephones, batteries, office furniture and fixtures, and all other office apparatus and equipment, $334,400.

Q. When was that statement filed?

A. This statement, being the last one, was filed September 30th, 1909.

Q. Did you consider that a fair valuation to place on the property at that time?

A. Yes, sir.

Q. Did you swear to that statement you have just testified about, for the year 1909?

A. Yes, sir.

Cross-examination.

By Mr. GRANBERY, for Complainant:

Q. Mr. Webb, where was the deposition about which counsel has asked you, given?

A. This deposition was given, if I remember correctly, in Mr. Humphrey's office, in Louisville, Ky.

Q. Did you have the records before you at the time, in
3437 testifying?

A. I did not.

Q. Now, these statements that you subsequently sent up and filed, did you make them up?

A. I did not.

Q. You assumed they were correct when you filed them?

A. I did.

Q. Who made them up, if you know?

A. I don't know, but presume they were made up by the auditor or his chief clerk or someone in the office.

Q. You have been examined in regard to your tax returns for the City of Louisville. Is that for that part of the company's plant in the corporate limits of Louisville or the entire exchange?

A. Inside of the corporate limits.

Q. You stated that the values placed upon the physical property was in your opinion fair. Do you mean that was the actual value of the property or the taxable value?

A. I meant it is the taxable values and fair in proportion to the assessments made on other corporations.

Q. Did you investigate to see what the assessments on other public service corporations was in Louisville?

A. I did.

Q. Did you, or not, undertake to put the complainant company's property on about the same basis as the other companies?
3438 A. I did.

Q. Was that understood by the assessing authorities?

A. I am sure it was.

Q. Now, I will ask you to state what was the assessment against the physical property of the Louisville Railway Co., the Louisville Home Telephone Co., and the Kentucky Heating Co., the Water-Works Co. I believe belongs to the City and not being taxed?

Objected to by defendant.

A. The Louisville Railway, tangible, $1,948,000, eight per cent of its capitalization; Kentucky Lighting Co., no taxes for five years; Louisville Home Telephone Co., tangible, $143,000.

Q. Does that include real estate?

A. That includes everything, yes, sir, $143,400 being five per cent of its capitalization; Kentucky Heating Co., tangible assessment, $53,675, one and one-half per cent of its capitalization; Louisville Gas Co. and Louisville Light Co., the two together, $821,000, eleven per cent of capitalization; Cumberland Telephone and Telegraph Co., tangible—all of this is for 1908,—$306,000, eighteen per cent of capitalization.

Q. I will ask you to state whether or not in making your tax returns year by year, the assessment has been made upon the basis of your return?

A. The assessment has not been made altogether on the basis of our return. The tax assessor seems to have latitude in mak-

3439 ing these assessments, and he takes into consideration, no doubt, a great many more facts and matters concerning the taxation, than simply our report, and it is presumed that he equalizes the assessment of this company with the assessment of other corporations, as nearly as he can.

Redirect examination:

Q. Do you know, Mr. Webb, that the constitution of Kentucky, requires that all property be assessed for taxation at its fair cash value?

A. No, I didn't know the exact statute, but I do know that property is not assessed either to individuals or corporations, at its full cash value.

Q. Do you know the law requires you to make a return showing what in your opinion is a fair cash value of the property represented by the return?

A. Well, I have so reported in my opinion.

Q. Then you have reported what you consider to be the fair cash value?

A. Yes, sir.

Q. Do you know of your own knowledge that the assessments of the Louisville Railway and the other corporations about which you have testified, was no higher than the amounts you have stated?

A. I have only taken the records from the assessor's office and gotten the facts through our manager at Louisville.

3440 Q. You didn't investigate the facts yourself?

A. Not with my own eyes.

Q. So, you don't know whether those are the correct facts or not?

A. I wrote and asked for it, but that is what I received. I have, from time to time, not this particular year, but in fact nearly every year, I have looked at the assessments of the other corporations to see whether they were less or more than ours, and as a rule have found ours to be, as a rule, larger in percentages. I have not done it personally for this year.

Q. Some of the other companies are foreign corporations, aren't they?
A. I really don't know where they are chartered?
Q. So, you don't know on what basis they are assessed?
A. No, sir.

Recross-examination.

By Mr. GRANBERY:

Q. Whether they are foreign or domestic corporations, the physical properties in Louisville would be assessed on the same basis as any other corporation?
A. Yes, sir.

T. D. WEBB.

Subscribed and sworn to before me on this the 30th day of December, A. D. 1909.

BUFORD DUKE,
Notary Public.

3441

Statement of Louisville, Ky., Exchange of Cumberland Telephone & Telegraph Company.

Capital Invested December 31, 1899, $835,918.53.

Earnings and Expenses for Four Months of 1899.

Month.	Revenue.		Expenses.		Rental and Royalty.	Total.	Net Revenue.
	Rentals.	General.	Operating.	Maintenance.			
September ...	$18,008.32	$2,160.99	$1,689.28	$7,108.55	$1,518.24	$12,477.06	$5,531.26
October	17,996.54	1,799.65	1,694.06	5,355.86	1,529.22	10,378.79	7,617.75
November ...	18,345.36	2,384.89	2,146.31	9,664.46	1,467.10	15,662.76	2,682.60
December	18,715.90	2,807.38	2,377.70	6,026.76	1,540.00	12,751.84	5,964.06
Total	$73,066.12	$9,152.91	$7,907.35	$28,155.63	$6,054.56	$51,270.45	$21,795.67

Amount added to Expenses, for depreciation of plant, $14,210.61.
Amount added to Construction (Capital Acct.), and not charged to Expense for the four months, $33,854.94.
Total number of subscribers December 31, 1899, 3,221.

Statement of Louisville, Ky., Exchange of Cumberland Telephone & Telegraph Company.

Capital Invested December 31, 1900, $1,002,747.62.

Earnings and Expenses for Year 1900.

Month.	Revenue.		Expenses.		Rental and Royalty.	Total.	Net Revenue.
	Rentals.	General.	Operating.	Maintenance.			
January	$18,756.50	$2,250.00	$215.76	$7,026.06	$1,012.00	$10,503.82	$8,252.68
February	18,908.91	2,231.25	2,419.43	11,081.08	1,565.00	17,296.76	1,612.15
March	19,488.06	3,312.97	1,023.44	5,079.40	1,690.62	11,106.43	8,381.63
April	19,892.24	3,103.18	1,982.89	5,899.45	958.92	11,944.44	7,947.80
May	20,353.59	2,035.35	3,020.91	6,513.29	1,627.56	13,197.11	7,156.48
June	20,175.76	2,219.33	3,800.26	9,430.78	1,514.57	16,964.94	3,210.82
July	21,486.95	3,308.99	3,259.27	7,976.54	1,602.52	16,147.32	5,339.63
August	20,280.96	2,393.15	4,739.60	6,808.28	1,202.49	15,143.52	5,137.44
September ...	20,925.92	2,720.36	1,408.53	7,111.10	1,840.76	13,080.75	7,845.17
October	21,453.95	3,003.55	4,247.62	9,764.10	1,026.46	18,041.73	3,412.22
November	20,795.52	2,079.55	3,266.25	6,329.53	1,356.16	13,031.49	7,764.03
December	21,546.46	2,714.85	3,440.81	9,275.82	1,966.45	17,397.93	4,148.53
Total	$244,064.82	$31,372.53	$32,824.77	$92,295.43	$17,363.51	$173,856.24	$70,208.58

Amount added to Expenses for depreciation of plant, $42,115.40.
Amount added to Construction (Capital Acct.), and not charged to Expense during the year, $166,829.09.
Number of subscribers added during the year ending December 31, 1900, 1,667.
Total number of subscribers December 31, 1900, 4,888.

Statement Filed by T. D. Webb; asked for in Q. 49 & 51, Page 47.

Capital Invested May 31, 1902, $1,145,347.86.

Earnings and Expenses for Year 1901.

Month.	Revenue.		Expenses.		Rental and Royalty.	Total.	Net Revenue.
	Rentals.	General.	Operating.	Maintenance.			
January	$21,966.44	$3,290.85	$3,767.82	$7,977.59	$1,813.64	$16,849.90	$5,116.54
February	22,273.83	3,150.92	1,665.62	9,093.01	1,859.30	15,768.85	6,504.98
March	22,828.81	2,616.30	6,134.44	10,176.15	1,980.81	20,907.70	1,921.11
April	23,264.26	3,079.73	1,823.86	5,008.56	1,679.19	11,591.34	11,672.92
May	23,390.03	2,731.54	3,673.16	9,460.87	1,589.58	17,455.15	5,934.88
June	24,233.65	3,497.18	3,920.29	11,034.26	1,716.78	20,168.51	4,065.14
July	24,141.39	3,140.41	3,959.70	11,048.34	1,751.32	19,899.77	4,241.62
August	24,407.15	2,466.35	836.12	5,657.43	1,758.45	10,718.35	13,688.80
September ...	24,559.99	2,568.66	4,670.30	8,471.47	1,801.29	17,511.72	7,048.27
October	25,326.21	3,203.74	6,695.04	21,041.64	1,841.11	32,781.53	7,455.32
November	24,973.91	2,882.59	4,451.63	8,716.38	1,870.93	17,921.53	7,652.38
December	25,669.89	2,904.05	1,815.34	4,524.64	1,864.19	11,108.22	14,561.67
Total	$287,035.56	$35,532.32	$43,413.32	$112,210.34	$21,526.59	$212,682.57	$74,352.99

Amount added to Expenses for depreciation of plant, $39,850.00.
Amount added to Construction (Capital Acct.), and not charged to Expense, since Jan. 1, 1901, $142,600.24.
Number of subscribers added during the year ending December 31, 1901, 2,007.
Total number of subscribers December 31, 1901, 6,895.

3444 Depositions of witnesses produced, sworn and examined before me, James E. King, a Notary Public within and for the City of St. Louis and State of Missouri, at my office, 906 Third National Bank Building, Broadway and Olive Street, in said City and State, on the 15th day of December, A. D., 1909, between the hours of 9 o'clock A. M. and 6 o'clock P. M., under and by virtue of the annexed notice, in a certain cause now pending in the United States Circuit Court for the Sixth Circuit and Western District of Kentucky, wherein Cumberland Telephone & Telegraph Company is Plaintiff, and City of Louisville, is Defendant, on behalf and at the request of the Defendant.

J. W. HART, of lawful age, being produced, sworn and examined, on the part of the Defendant, testified as follows:

Direct examination by Mr. QUIN:

Q. State your name?
A. J. W. Hart.
Q. Mr. Hart, what is your occupation?
A. Solicitor, sir.
Q. For whom?
A. The Bell Telephone Company of Missouri.
Q. How long have you held that position?
A. On and off I have been with the company twenty-eight years.
Q. Did you at one time work for the independent company in this city known as the Kinloch?
A. Yes, sir; four years and five months.
Q. You were with the Bell Company prior to that time and subsequently both?
A. Yes, sir.
Q. Are you familiar with the rates charged by the Bell Telephone Company of Missouri for the various classes of service furnished by it?
A. Yes, sir.
Q. Will you please tell us the classes of service furnished by your company and the prices charged for it?

A. The Direct Unlimited is six dollars, net, per month.
3445 That is, the contract is six dollars and fifty cents, but if the bill is paid ten days after its receipt, they give fifty cents off per month, for prompt payment in ten days.
Q. Go on with the rest of them, please?
A. Now, the next contract is the Duplex Unlimited at five dollars net.
Q. What do you mean by that?
A. Party line service.
Q. Two party line?
A. Yes, sir.
Q. Give us the next?
A. Well, we have one still in force but we are trying to wipe it

out, a direct line with eighteen hundred messages at seventy-two dollars a year.

Q. These are all business 'phones?

A. Yes, sir. The next is a direct line with eight hundred messages at five dollars a month; the next is a duplex line with eight hundred messages at four dollars a month—excess calls on the seventy-two dollar one are two cents, and the same on the direct line are three cents, and the duplex line four cents. Now, the next is the Slot Machine. That is fifteen cents a day guarantee with a forty per cent. discount over and above the liability of the contract; in other words, for instance a man has six dollars in the box instead of having four dollars and fifty cents, the company would give him forty per cent on the one dollar and a half.

Q. Is that all the business 'phones?

A. The next slot machine is ten cents a day, three dollars a month, with a discount of twenty per cent. off provided, over and above the liability of the contract. Those are the business contracts.

Q. Now, please give us the residence telephones?

A. Residence, direct line, unlimited, four dollars a month; the next is the duplex unlimited, three dollars a month; the next is the four party unlimited line, two dollars a month. Then,
3446 we have a slot machine, direct line ten cents a day—there is no discount off that. Now, the next is a duplex coin machine at seven and a half cents a day; those are the rates. Each call is five cents.

Q. That's all of the classes of service furnished by the Bell Telephone Company of Missouri?

A. Yes, sir.

Q. Mr. Hart, do you know, approximately, the population of the City of St. Louis, Missouri?

A. Supposed to be seven hundred and eighty thousand, I believe.

Q. How many subscribers has the Bell Telephone Company in the City of St. Louis?

A. Forty-nine thousand.

Q. Have they that many telephones or more?—And does the number of subscribers represent the number of telephones?

A. Not altogether. There are some extra 'phones.

Q. Then, you have less 'phones than that—how many stations have you in St. Louis?

A. Forty-nine thousand.

Q. What does that include?

A. It includes all classes of service.

Q. Does that include any line outside of the city limits?

A. Yes, sir; outside the city limits.

Q. It includes all stations connected with the St. Louis exchange?

A. Yes, sir.

Q. Mr. Hart, how long have the rates you have given us prevailed in St. Louis?

A. Well, let me see. The rates of the four dollar, five dollar and six dollar service have been in use a little over a year and a half.

Q. Now, how about the others?

A. Several years. Of course, we had a different form of contract then.

Q. Has there been any reduction in your telephone rates very recently?

3447 A. Yes, sir. The rate I called off to you, direct-unlimited, six dollars, two months ago was ten dollars and forty cents.

Q. What other?

A. The duplex line at five dollars, was seven.

Q. Those are the only two in which there has been a reduction?

A. Yes, sir.

Q. They were reduced two months ago?

A. Yes, sir.

Q. Do you know why that reduction was made?

A. I suppose it grew out of the liberality of the company. They are noted for their philanthropy.

Q. Do you know anything about the dividends paid by the company?

A. My dividend is only in salary.

Q. Do you know anything about the dividends paid by the company?

A. I do not. I never was let in on the ground floor.

Mr. QUIN: That is all.

Cross-examination waived.

J. W. HART.

Subscribed and sworn to before me this 4 day of January, 1910.

JAMES E. KING,
Notary Public, City of St. Louis, Missouri.

My term expires on the 16 day of March, 1910.

3448 REUBEN G. TRAIL, of lawful age, being produced, sworn and examined, on the part of the Defendant, testified as follows:

Direct examination by Mr. QUIN:

Q. State your name?

A. Reuben G. Trail.

Q. Mr. Trail, please tell us your occupation?

A. Solicitor for the Kinloch Telephone Company, at the present time.

Q. How long have you held that position?

A. It will be four years this March.

Q. How many subscribers has that telephone company in St. Louis?

A. Do you mean both companies?

Q. The Kinloch?

A. About thirty-eight thousand.

Q. How many instruments has your company, if you know?

A. Well, do you mean that as old instruments and things of that kind?

Q. Instruments in use?

A. Instruments in use, about the same number.

Q. Do you know, approximately, the population of the City of St. Louis?

A. Over seven hundred thousand people.

Q. The number of telephone subscribers you stated, does that include all the subscribers in St. Louis, or those connected with the St. Louis exchange?

A. That is the St. Louis exchange. I don't believe we count East St. Louis. East St. Louis is the same as St. Louis service.

Q. Mr. Trail, will you please give us the various classes of service furnished by the Kinloch Company with what you charge for each of them?

A. Right down the line?

Q. Yes, sir?

A. Direct line, sixty dollars—business.

Q. How about residences?

A. Direct line, forty-eight dollars; two-party line, thirty-six dollars; four-party line, twenty-four.

3449 Q. Have you any other class of service?

A. Not outside of private branch exchanges.

Q. What do you charge for extension sets?

A. In business 'phones, eighteen dollars a year; in residences, twelve dollars.

Q. Do you know the rates charged by the Bell company in St. Louis?

A. At the present time?

Q. Yes, sir?

A. Yes, sir.

Q. Has there been any difference in their rates in the last year?

A. Yes, sir; considerable.

Q. Can you give us the reduction that was made in their rates?

A. I can give them to you exact—you want the rates they charged before they made the reduction?

Q. Either way?

A. Up to September 15th, you understand, the rate was direct line, business, one hundred and twenty-four dollars and eighty cents, Bell telephone; and a party-line was eighty-four dollars; then they had in there a coin-box at twenty and fifteen cents a day; and then they had a message-service to meet the Kinloch regular price, at seventy-two dollars, eighteen hundred calls—they paid two cents for each additional call; and then they came in with a sixty dollar service allowing eight hundred calls and charged them three cents for additional calls; and then they had an extension there at eighteen dollars, the same as ours.

Q. And, those prices have since been changed to correspond with your prices?

A. No. You understand, you sign a contract with the Bell at the present time for seventy-eight dollars, and a party line sixty-six

dollars, but they give you a rebate of fifty cents if the bill is paid before the 10th of the month, which makes it seventy-two dollars and sixty dollars.

3450 Q. When were these reductions made?

A. Effective October 1st, 1909.

Q. Do you know why those reductions were made?

A. To come in competition with the Kinloch. The Kinloch was cutting into them too heavy.

Q. What do you mean?

A. They had to do something to hold their business.

Q. Was this reduction compulsory or voluntary on the part of the Bell?

A. It looked to me like it was a case of have to.

Q. Were they compelled by ordinance, or by a matter of policy?

A. Just a matter of policy of the Bell company.

Q. What are your charges for a private branch exchange?

A. How do you mean?

Q. Price per station?

A. Per station, six dollars a year. That is on a contract of five stations and over.

Q. Is a trunk line the same as a straight business 'phone and then the stations so much extra—the 'phones so much extra?

A. No, sir—you want the Bell prices on that?

Q. What are the Bell prices?

A. This is the Kinloch, switch-board fifty dollars, unlimited trunk, one hundred and twenty-five dollars. Now, the Bell rates, switch-board thirty dollars, unlimited trunk, one hundred and forty dollars, and stations are six dollars.

Q. Now, have you in the Kinloch service any residence pay-stations?

A. We have no residence pay stations in the Kinloch telephone service that we call ours.

Q. Have you any slot-machines in the Kinloch service?

A. We have them, but you understand, not in the service. We have them in hotels, where the hotel man pays us for everything we put in there.

Q. Your contract is with the hotel man?

A. Yes, sir.

Q. Do you know anything about the dividends paid by the Kinloch company?

3451 A. Yes, sir. The only way I can answer that is, we have paid dividends in the last five years.

Q. Do you know what dividend the Bell Company has been paying?

A. Well, that I will have to answer in the same way.

Q. Well, answer that?

A. I know they have been paying dividends all the way up. I don't know whether they will have any dividends after this or not.

Q. But, up to the present time they have been paying dividends?

A. Yes, sir.

Mr. QUIN: That is all.

Cross-examination waived. REUBEN G. TRAIL,

Subscribed and sworn to before me this 4 day of January, 1910.

JAMES E. KING,
Notary Public, City of St. Louis, Mo.

My term expires on the 16 day of March, 1910.

3452 STATE OF MISSOURI,
City of St. Louis, ss:

I, James E. King, a notary public within and for the City of St. Louis, State of Missouri, do hereby certify that on the 15th day of December A. D. 1909, between the hours of nine o'clock A. M. and six o'clock P. M., at my office, 906 Third National Bank Building, Broadway and Olive Street, in the City of St. Louis and State of Missouri aforesaid, appeared before me pursuant to the annexed notice, J. W. Hart and Reuben G. Trail, the witnesses in said notice named; and W. L. Granbery, Esq., appeared as counsel for plaintiff, and J. W. Quin as counsel for defendant, and the said J. W. Hart and Reuben G. Trail being by me first duly cautioned and sworn to testify the whole truth and nothing but the truth, and being carefully examined, deposed and said as appears by their depositions hereto annexed.

And I further certify that said depositions were then and there reduced to shorthand by Thos. W. Corley, and were, after they had been transcribed by him, subscribed by said witnesses in my presence between the hours aforesaid; that the reason why said depositions were taken was that the said witnesses live at St. Louis, more than one hundred miles from ——, the place where this cause is to be tried; that the costs of taking said depositions, as taxed by me, are as follows: and that said costs have been paid by the Defendant, and that the same are just and reasonable.

In testimony whereof I have hereunto set my hand and official seal at the City of St. Louis, in the State of Missouri, this — day of December, 1909.

——— ———,
Notary Public, City of St. Louis, Mo.

3453 *Depositions.*

Depositions of sundry witnesses taken before me, a Notary Public, in and for Franklin County, Ohio, in a cause pending in the United States Circuit Court for the Sixth Circuit and Western District of Kentucky, wherein Cumberland Telephone & Telegraph Company is complaintnt and City of Louisville is defendant, pursuant to the annexed notice, at the time and place therein mentioned, to be read as evidence in behalf of the defendant on the trial of aforesaid cause:

Present:

Huston Quin, on behalf of the defendant. No one on behalf of the complainant.

3454 GANSEY R. JOHNSTON, of lawful age, being first duly sworn, as hereinafter certified, deposes and says as follows:

Q. Mr. Johnson, please tell us your present position.

A. General Manager of the Columbus Citizens Telephone Co—Secretary and General Manager.

Q. Is that *was* is known as the independent telephone Company?

A. It is.

Q. How long have you held that position?

A. Since June, 1905.

Q. How long has that company been operating in the City of Columbus?

A. Since 1900.

Q. Can you tell us approximately the population of this city?

A. Estimates vary from 175,000 to 200,000.

Q. How many telephone subscribers has your company?

A. We don't keep an account of subscribers as subscribers, but we have approximately 12,600 working telephones.

Q. Would the number of subscribers be less or greater than the number of telephone instruments?

A. The number of subscribers roughly would be about 10,000 to 11,000.

Q. Mr. Johnson, will you please tell us the classes of service furnished by your Company, together with the price for each service, both business and residence?

A. We have main line business telephones at $40.00 per year; Main line residence telephones at $24.00 per year; about 40 two-party line business telephones at $24.00 a year, net, and about 600 two-party line residence telephones at $18.00 a year; the great bulk of the service being main line service. The extension telephones are uniformly $12.00 per year.

Q. You say main line telephones—by that, you mean a single line telephone?

A. A single line telephone with only such extension on it as the subscriber may choose to have.

Q. Have you any private branch exchanges?

A. We have 60 odd private branch exchanges.

3455 Q. What are the prices charged?

A. The trunk lines are $40.00 a year; the extensions $12.00 a year, for the most part. They are a few having special stations that connect only through the private branch exchange with others in the same exchange. They don't connect with the trunk lines. Those are $6.00 a year. There are a few with special rates.

Q. Have you any pay stations or slot machines?

A. Yes. We are experimenting with them within the past few months in drug stores and other public places for 5 cents a call. There are probably about 175 of those.

Q. Have you any such service in residences?

A. Not any.

Q. Can you tell us the prevailing market price of the stock of the Citizens Telephone Company?

A. Until about November 16th, the preferred stock, as quoted on the stock exchange here, was about par, and the common stock about 80, or a little above. About the 16th or 17th of November, an offer was made to all of the stockholders of the company to take their preferred stock at par and their common stock at 97½, and on that offer, practically all of the stock was sold.

Q. What dividends are paid on these two kinds of stock both preferred and common?

A. The preferred stock, the 6% stock, has paid dividends regularly since it was issued. The issue began, I think, in 1904—perhaps the early part of 1905. Common stock has paid at the rate of 5% for nearly two years, and before that, at the rate of 4%, running back to 1904. Before that, there were some special dividends on the common stock.

Q. Are the prices charged by your Company, and received for the services which you have indicated, satisfactory prices for the telephone business under prevailing conditions in this city?

A. To my mind, the prices charged under the present conditions are sufficient to operate and maintain the property, to pay the dividends mentioned, and to allow for the depreciation of the property.

3456 Q. When you say to maintain and provide for the depreciation, you mean keepink the telephone in good working order and rendering the best service possible?

A. I do, and furthermore, to replace it when it is worn out. But in so saying, there may not be sufficient taken into account for the risks of the business, nor for changes in the business that might be compelled by authority or invention; or for continued increase in wages and price of material, or for a development that might bring in subscribers whose pay would not be so good as our present subscribers.

Q. How many operators have you in your Company?

A. In our local service, we have strictly for exchange operating, not more than 5 or 6. We have information clerks and other clerks at desks to the number of about 16 or 17.

Q. Do you mind telling us what you pay your operators, in order that may get an idea as to salaries paid?

A. The ordinary exchange operator with us will get $20.00 to $22.00 a month. The information operators and others of a special class of service are paid up to $35.00.

Q. Mr. Johnson, you have what is known as the automatic system?

A. Yes.

Q. I will ask you whether or not that system has given general satisfaction to the people of Columbus?

A. Every indication that we have is that it gives very good satisfaction ad much greater satisfaction than the manual system, which it displaced.

Q. Would you explain to us, in order that the court might understand, as nearly as you can, the operation of this automatic system?

A. Each telephone instrument is provided with a dial, which contains finger holds numbering from 1 to 9 and 0. This dial revolves on an axis. The subscriber desiring to call, say number 8111, first inserts his finger in the hole marked "8" and pulls the dial round until the finger stops and then lets it return
3457 to its original position. He repeats this with the "1" three times. With each of these operations electrical contacts are made, operating a mechanism in the exchange, which results in a connection between the calling party's line and the line numbered 8111. Then, by pressing a ringing button, a bell at that telephone is rung. If the telephone should be in use, this is indicated by a special buzzing sound, known as the "buzy buzz." On hanging up the receiver, the connection is broken, leaving the calling party free for a second call. The operation is effected by means of switches in the main exchange operating step by step with the impulses sent over the line by the operation of the dial. The operation is ordinarily more quick and I believe more certain than securing a like number through the ordinary manual telephone. The switches in the central exchange take the place of all operators, with the exception of those required for information and clerical work, toll operating and some rural party lines and pay station operators.

Q. Mr. Johnston, has the use of the automatic system in Columbus demonstrated that it renders a satisfactory service?

A. To my mind, it has.

Q. In other words, it is past the experimental stage?

A. It is. Although, in this, as in other telephone service, there has not been sufficient history to demonstrate the true life of the apparatus, the cables and other important parts of the telephone plant. My experience with the automatic telephone in operation for more than 4 years and observation of other plants in operation 5 or 6 years leads me to believe that the life of the automatic central exchange apparatus will prove to be longer than that of manual central exchange apparatus, and the life of the automatic telephone probably as long as the life of the manual telephone

3458 Q. Mr. Johnston, please tell us from your experience as a telephone man, if you were going to install a telephone

system, whether you would install one of the manual systems or one of the automatic systems. Give your reasons.

A. If I were going to install a telephone system requiring more than 1000 lines, I would not hesitate about choosing the automatic system. It is more popular, by reason of the quickness of the call, the greater certainty of getting the right call, if the system is properly maintained, and the apparent preference of most people to deal for themselves with a simple piece of machinery than to give directions to an operator what to do for them. The system is more economical in the long run than any manual system which I know, and promises very much in the way of future improvement in service and economy. This is particularly the case in large cities, which require branch exchanges, as the automatic exchanges can be constructed more economically, and in their operation, impose no greater burden in effort or delay upon the user, and no extra operation on the part of the telephone company. There are more than one automatic telephone systems on the market. The one I am speaking of is that used in Columbus and manufactured by the Automatic Electric Company, of Chicago.

Q. How many sub-stations or branch exchanges have you in Columbus?

A. We have in complete operation four sub-stations, and are getting into service this year, 5 more, making 9 in all. The automatic equipment now being sold by the Automatic Electric Company, of Chicago, should be installed and maintained by a telephone company at considerably less expense than the equipment installed in Columbus. One consideration which is an important one in Columbus is the difficulty of obtaining a sufficient force of young women to act as telephone operators, in view of the demand

3459 for such women in factories, and other lines of employment.

GANSEY R. JOHNSTON.

3460 Also, JAMES T. DANIELS, of lawful age, being first duly sworn, as hereinafter certified, deposes and says as follows:

Q. Mr. Daniels, what is your present occupation?

A. Manager of the Central Union Telephone Company at Columbus.

Q. How long have you held that position?

A. Three and one-half years.

Q. Is that one of the allied Bell companies, known as the "Bell system"?

A. It is.

Q. Can you tell us the approximate population of Columbus?

A. As nearly as I can get it, it is about 190,000.

Q. Mr. Daniels, how many subscribers has your Company connected with the Columbus exchange?

A. We have approximately 14,000 telephones.

Q. Is the number of subscribers larger or lesser?

A. Lesser. It is, I should say, 11,500—between 11,500 and 12,000.

Q. That is due to the fact that a subscriber may have more than one telephone?

A. That's right.

Q. You include, I presume, each instrument attached to a private branch exchange?

A. I do.

Q. Mr. Daniels, tell us the prevailing rates for the various classes of service furnished by your company in this city?

A. Individual business telephones, $60.00 a year; two-party business lines, $40.00 per year; single line residence telephones, $30.00 a year; two-party line residence telephones, $20.00 per year; those 4 classes of service, or rates, are subject to a 10 per cent. discount if paid on or before the 10th of the month in which the bill is due.

Q. Does that include all the service subject to discount?

A. The 4 classes only are subject to discount.

Q. What other class of service have you?

A. We have business extension telephones at $12.00 per year; residence extension telephones at $6.00 per year; private branch terminals or telephones, $12.00 per year.

3461 Q. Have you any pay stations or slot machines?

A. We have. We have about 200 pay stations.

Q. On what basis are they regulated?

A. For each city call there is a charge of 5 cents. A commission of 25 per cent. is given to the subscriber, up to $9.00; about $9.00, 50 per cent.

Q. Have you any pay stations or slot machines in residences?

A. We have not.

Q. Have you given us all the services furnished by your Company?

A. I believe I have—No,—farmer line telephones, $20.00 per year, less 10 per cent.

Q. What do you mean by farmer line telephones?

A. We run a circuit out in the country in connection with the exchange, put 6 or 8 people on the line, or more, if necessary, and charge them at the rate of $20.00 per year, subject to this 10 per cent. discount.

Q. How far do these lines extend?

A. They will vary—4 or 5 miles from the city limits would be a reasonable average.

Q. Will you please tell us how many operators you have in the Columbus exchange and the salaries you pay them?

A. We have approximately 150 operators and the local operators will average, I should say, about $26.00 or $27.00. The long distance operators will average, I should say, $32.50.

Q. How do you regulate the number of your operators?

A. By the average load or average number of calls.

Q. Per position?

A. Yes sir.

Q. What is the average number of calls per position in this exchange?

A. I should say in the neighborhood of 185 calls per hour during the busy hours.

JAMES T. DANIELS.

3462 STATE OF OHIO,
Franklin County, ss:

I, John L. Davies, a Notary Public in and for the County and State aforesaid, duly commissioned and qualified, do hereby certify that the above named Gansey R. Johnston and James T. Daniels were by me first -everally duly sworn to testify the truth, the whole truth and nothing but the truth, and that the depositions by them subscribed, as above set forth, were taken in short hand by Harry H. Hamm, who is not interested in this suit, in my presence and in the presence of the witnesses above named respectively, and by him transcribed, read by said respective witnesses and subscribed by them respectively in my presence, and were taken at the time and place in the annexed notice specified; that I am not counsel or attorney or a relative to either party, or otherwise interested in the event of this suit.

In witness whereof, I have hereunto set my hand and seal of office, this 23d day of December, 1909.

JOHN L. DAVIES,
Notary Public, Franklin County, Ohio.

3463 CUMBERLAND TELEPHONE & TELEGRAPH COMPANY,
Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

In the United States Circuit Court for the Sixth Circuit and Western District of Kentucky.

Answers and Depositions of William J. Kavanagh, H. W. Ritterhoff and Charles M. Peale, the witnesses named in the annexed commission, taken before me at my office, number 1120 Scarritt Building, in the City of Kansas City, in the County of Jackson, State of Missouri, on this 14th day of December, A. D. 1909, in accordance with said commission.

The said Complainant appears by its attorney, Mr. Huston Quin.
The said Defendant appears by its attorney, Mr. W. L. Granbery.
The witness, WILLIAM J. KAVANAGH, being first duly sworn, says:

Direct examination by Mr. HUSTON QUIN.

Q. What is your full name and occupation?
A. William J. Kavanagh; present occupation is that of auditor for the Kansas City Home Telephone Company.
Q. How long have you held that position?
A. Why, since March, 1905.

Q. Do you know the population of Kansas City, Missouri?

A. I know about, I expect about 200,000, 275,000, I don't know exactly.

Q. Can you tell us how many subscribers the Home Telephone Company has in this city?

3464 A. In this city?

Q. Yes, sir.

A. In the neighborhood of 20,000.

Q. How many subscribers connected with the exchange in this city?

A. I don't quite understand your question.

Q. As to whether or not there are any subscribers connected with this exchange who do not live in the city, but in the suburban towns?

A. Well, there would be about 24,000 telephones in this district.

Q. When you speak of telephones do you mean subscribers or telephone instruments?

A. Instruments.

Q. Now what class of service is furnished by the Home Telephone Company in this city?

A. Single line service, central energy.

Q. Please tell us the various kinds of service you have and the prices that your company charges for each class of service?

A. Business telephones $60.00 a year and residence telephones $36.00, just two prices.

Q. Have you any party lines?

A. We have not.

Q. You have no other classes of service than those?

A. No, sir.

Q. Have you any private branch exchanges?

A. We have.

Q. What do you charge for those?

A. We charge $60.00 for trunks.

Q. And how much for each station?

A. On private branch exchange.

Q. Mr. Kavanagh, does the Home Telephone Company in this city pay a dividend on its stock or not?

A. They do.

Q. Please tell us what it is?

A. 6% on all outstanding stock.

Q. When did it pay its last dividend?

A. October 15th.

Q. Of this year?

A. Yes, sir.

Q. How long has it been paying that dividend?

3465 A. Why, they have been paying that dividend since—let me see; the first dividend they declared was in July, 1905. I believe they paid that at the rate of 5% for about a year and since that time it has been 6%.

Q. I will ask you as to whether or not your company gets out a detailed statement or report of its business for each of the years?

A. We have been getting one out for the last two fiscal years.

Q. I will ask you if you will file as part of your deposition the last printed statement of your company?

A. Why, it is somewhat hard to have to swear to the facts of something that has been published, it doesn't seem just right.

Q. Mr. Kavanagh, do you know anything about the ordinances of the city of Kansas City, Missouri, regulating the rates of the telephone companies?

A. No, I don't know much about that. I know what the terms of our ordinance are in regard to rates and what we should pay the city, that is, that would interest me in my work.

Q. What do you pay the city under your ordinance?

A. 2% of our gross receipts.

Q. How long have you been paying them that 2%.

A. From the time we started to do business here.

Q. Do you know what the terms of the ordinance under which the Bell Company in this city is regulated?

A. I do not.

Cross-examination by Mr. W. L. GRANBERY:

Q. Mr. Kavanagh, are there 24,000 stations connected with the Kansas City exchange that all have free service between the different stations?

A. They do, with the exception of, of course, we have got some telephones in down town hotels where they pay five cents.

Q. What I mean is——

3466 A. (Interrupting) Our charge is for free business, yes.

Q. What I mean——

A. (Interrupting) We are not charging for measured service, if that is what you mean.

Q. If you will let me ask the question I think you will understand. What I mean is are there 24,000 stations treated as this one exchange and part of this exchange?

A. Yes.

Q. When you say this district what do you mean, Kansas City?

A. Kansas City, Missouri, and Kansas City, Kansas.

Q. And the suburbs?

A. Yes; Kansas City, Kansas.

Q. Does the Kansas City Home Telephone Company own any other exchanges other than Kansas City, other than the Kansas City plant?

A. They have an exchange at Independence, Missouri.

Q. Is that a separate corporation or——

A. (Interrupting) No, part of the Kansas City Home Telephone Company.

Q. How many telephone stations have you in the Independence plant?

A. Oh, I don't know; there is 700 maybe.

Q. What do you mean by several hundred, a thousand or two hundred?

A. I said seven hundred about.

Q. Oh, I beg your pardon, I thought you said several hundred. What are your rates there?

A. Well, for Kansas City service we charge the same rate we do in Kansas City.

Q. Have you any that don't take Kansas City service?

A. Yes, sir.

Q. What do you charge those?

A. I believe it is for our out of town line service there a
3467 dollar, I think for residence; $2.00 for business; I can't say exactly about that.

Q. Can you ascertain definitely and let me know?

A. Yes; the contract agent will enlighten you on that, I think.

Q. What is the capitalization per station for the Kansas City Home Telephone Company?

A. I don't know.

Q. Well, you are the auditor of the company, are you not?

A. Yes, sir.

Q. Can't you find out from your own records?

A. Yes.

Q. Please let me know that.

A. What do you mean by the capitalization?

Q. Well, I mean just what you would expect a man might mean when he would ask for the capitalization per station; that is, the number of telephones you have, amount of your capital stock and amount of your outstanding bonded indebtedness. You have stated that the number of your telephones was about 24,000?

A. Yes.

Q. Now what is your capital stock?

A. Why, I can't say definitely, it is two million three hundred thousand and something, I don't know the figures.

Q. And your bonded indebtedness?

A. Outstanding bonds $3,000,000.00, I presume it is about $200.00.

Q. Well, it is whatever the aggregate of your stock and bonds are compared with the number of telephones you have?

A. That is right.

Q. How long has the Kansas City Home Telephone Company been doing business?

A. Well, we have been doing business since some time in 1904.

3468 Q. Did you begin giving service in 1904?

A. Yes; we started to charge I believe February 15th, 1904.

Q. Do you use the central energy system?

A. We do.

Q. Why don't you use the automatic system?

A. I don't know that that——

Q. (Interrupting.) Answer the question, Mr. Kavanagh, you have got——

A. (Interrupting.) I don't know that that enters into this question.

Q. You then decline to answer the question?

A. I decline to answer it.

Mr. GRANBERY: Mr. Quin, I shall move to suppress the whole deposition, on the ground that the witness declines to answer.

Counsel refuses to instruct the witness to answer the question and since the witness declines to answer my questions and the Notary before whom these depositions are being taken declines to make the witness answer it, Counsel now gives notice to Counsel for the Defendant that a motion will be made to suppress this deposition, on the ground that the witness refuses to answer the question. That is all.

(Counsel for the Defendant and the witness now retire for consultation and after such consultation return.)

The WITNESS: Put that question again, will you?

The last question is here read to the witness by the Notary.

The WITNESS: Well, I will tell you why we don't——

Mr. GRANBERY (Interrupting, addressing the Notary): Before you put that you might say that Counsel for the Defendant and the witness, having retired to the hall, Defendant's Counsel in-

3469 structed the witness to answer the question if he could.

The WITNESS: I will just simply say I don't know.

Mr. GRANBERY:

Q. Do you know how many places the automatic system is used?

A. I do not.

Q. Do you know any places it is used?

A. Yes, sir.

Q. How many?

A. I believe it is used principally in Los Angeles and Dayton, Ohio. I believe they are using it in Columbus, Ohio, too.

Q. What, as compared between the two, what proportion of the places would you say use the central energy or the magneto, and what proportion uses the automatic?

A. I don't know. I can't answer that question; I don't know.

Q. Well, the overwhelming number use the central energy, don't they?

A. I believe they do, yes.

Q. Have you a detailed statement of the expenses for the year ending March 31st, 1909?

A. What do you mean by "detailed"?

Q. Well, how much was expended in general, how much for operating, how much for maintenance, how much for reconstruction?

A. Yes, I believe we have.

Q. Well, I should like to have that, please?

A. Do we have to produce our books here?

Mr. QUIN: No, I don't think you have to produce your books.

The WITNESS: What is it you want, a general answer to the question?

Mr. GRANBERY: For the year ending March 31st, 1909, I understand that would be your fiscal year?

The WITNESS: Yes. What was the question again? You
3470 want me to produce those things?

Mr. GRANBERY:

Q. I want to know how much your expenses were?
A. There is all the information I can give you in that report.
Q. Don't your books show in detail the amount of your expenses?
A. They do.
Q. Well, then, I want to know from your books or from any other source you can give it how much of the total expenses for the year ending March 31st, 1909, which is stated to be $413,535.32, I want to know how much of this expense was for general, how much for operating, how much for maintenance, how much for reconstruction and how much for other expenses?
A. I don't know.
Q. Do your books show?
A. Yes.
Q. Well, will you look at your books and tell us?
A. I haven't the books here.
Q. Well, will you get them?
A. No.
Q. Will you exhibit your books?
A. I decline to give you the books; no, sir.
Q. You decline to give any further information?
A. I have told you what the expenses were, the report shows.
Q. Just wait till I ask the question and then you can answer it: you decline to give me any further information?
A. I decline to give you any further information than covered by that report.

Mr. GRANBERY: Mr. Quin, will you ask your witness to give me the information?

The WITNESS: I can't do so.

Mr. QUIN: I have no objection in the least to his giving it if he can do so.

3471 Mr. GRANBERY: If he can do so I say.

Q. Well, you can do it, can't you, Mr. Kavanagh

Mr. QUIN: I don't know whether it is within the power of the witness to furnish it now. I don't know whether he can give it or not.

Mr. GRANBERY:

Q. I believe you stated you were auditor of the company?
A. Yes, sir.
Q. And you have those books in your office and under your charge?
A. Yes, sir.
Q. And you decline then to let me have that information?
A. I decline to let you have that information.

Mr. GRANBERY: Well, Mr. Quin, don't you think that is highly improper.

Mr. QUIN: I say, Mr. Granbery, if he can give you the information, if he is the man to furnish the information, there is no objection to his doing so on our part. He has stated he knows nothing farther than what is embodied in this report that he has filed.

Mr. GRANBERY: I beg your pardon, he has stated he is the auditor of the company, that the information is on the books in his charge there, is in his department.

The WITNESS: I don't know, I would think I would not be supposed to produce our books here.

Mr. QUIN: I don't know whether he is authorized to furnish that information.

Mr. GRANBERY: Are you trying to aid me to get the information or are you trying to aid the witness in not giving answers to the questions?

Mr. QUIN: As I stated in the beginning, I am perfectly
3472 willing for him to give you all the information you want. As to whether or not Mr. Kavanagh is the man to give you the information I do not know.

Mr. GRANBERY: Counsel again states that unless the witness will answer his questions he will have to ask the Court to suppress the deposition, on the ground that direct examination is of no importance whatever until tested by cross-examination and if the witness declines to give information upon cross-examination to test the importance of evidence given on direct examination there is nothing left for the Complainant but to give notice now that he will move to suppress this deposition.

Mr. QUIN: Just state there, Miss Parlin, that the witness is an employee of the Kansas City Home Telephone Company and that the Counsel for the defendant has no power to compel him to make answers to Complainant's Counsel's questions. As heretofore stated, he is perfectly willing that the witness answer any question that is propounded to him that is competent. Mr. Kavanagh, if you can furnish that I——

The WITNESS (Interrupting): Oh, I think we ought to continue this. We ought to have our attorney here on technical questions.

Mr. QUIN: Suppose you go and consult your attorney then.

The WITNESS: All right; continue this until one o'clock if you want to.

Mr. QUIN: One o'clock will suit you, Mr. Granbery?

Mr. GRANBERY: Yes, sir; I will accommodate myself to any hour you may fix.

(Signed) WILLIAM J. KAVANAGH.

By agreement of Counsel for the respective parties hereto
3473 I now excuse the witness until one o'clock for the purpose of enabling him to consult his attorney.

[SEAL.] GENEVIEVE PARLIN.
Notary Public within and for Jackson County, Missouri.

The Witness, H. W. RITTERHOFF, first being duly sworn, says:—

Direct examination by Mr. HUSTON QUIN:

Q. Mr. Ritterhoff, what is your occupation?

A. Contract superintendent for the Kansas City Home Telephone Company.

Q. How long have you been connected with that company in that capacity?

A. I think it was five years the 1st of July, 1909.

Q. Can you give us approximately the population of Kansas City?

A. About 300,000.

Q. Do you know how many subscribers the Kansas City Home Telephone Company in this city has?

A. We have about 18,000 lines, from twenty-four to twenty-five thousand instruments.

Q. Can you tell us the various classes of service furnished by the Kansas City Home Telephone Company, together with the prices charged for said services and each of them?

A. Yes, sir. Individual line business telephones, $5.00 a month; individual line residence telephone, $3.00 a month; unlimited service.

Q. No party lines?

A. No party lines in the city.

Q. What do you charge for extension sets?

A. $1.00 per month.

3474 Q. Have you any other class of service besides those mentioned?

A. Switchboard and inter-communicating systems.

Q. Are the rates charged by that company regulated by ordinance or not?

A. Regulated and operating under a franchise granted to them by the City of Kansas City, Missouri.

Q. Do you know the rates charged by the Bell Company in this city?

A. Yes; they are now operating under a flat rate of $5.00 a month, unlimited service, for business, and $3.00 a month for unlimited service, residence.

Q. That is the same as charged by the Home Company?

A. The same as charged by the Home Company. Then they are still offering two-party line service, residence, unlimited at $2.50 per month and four-party unlimited service at $2.00 a month, residence.

Q. Are those charges in obedience to an ordinance or not?

A. Well, the party line rates are not affected by the franchise that they are operating under on the maximum rates charges, of $5.00 a month for business telephones and $3.00 a month residence, offered on unlimited basis.

Q. You speak of the maximum basis, you mean under the ordinance?

A. Under the ordinance.

Q. Do you know how long the Bell Company has had that franchise or that right to charge those rates?

A. I don't know exactly, I think it is some time in, I believe in October, shortly before October.

Q. Well, do you know how many subscribers the Bell Company has in this city?

A. They have approximately about the same number as the Home Company.

Q. Can you tell us how that ordinance regulating the Bell
3475 Company's business in this city happened to be passed?

A. Why, it was by an application by the Bell Company to the city.

Q. For those rates?

A. For those rates.

Q. Do they pay the City of Kansas City anything in addition or anything at all for operating in this city?

A. They pay them, as I understand 2% gross receipts and then they are allowed I think thirty telephones free.

Q. Do they pay the same amount to the city on their gross receipts as the Home Company?

A. Yes.

Cross-examination by Mr. W. L. GRANBERY:

Q. What were the rates of the so-called Bell Company prior to the time the Kansas City Home Telephone Company commenced to operate?

A. $96.00 a year for individual line, unlimited service, business and $60.00 a year for residence, metallic circuit. And they were also operating on grounded circuit at $72.00 for business service and $42.00 for four-party residence service.

Q. That was what was known as the Blake service?

A. Blake service.

Q. Now when the Home Telephone Company came in and put the prices at $5.00 and $3.00 it resulted in the Bell Company having to follow suit, did it?

A. No, they didn't follow suit; they still maintained their $96.00 rate for business service, on the unlimited plan, and reduced the residence rate to $3.00 a month on the unlimited basis and then maintained many nickel-in-the-slot telephones in drug stores and groceries and similar places of business.

Q. And finally they came to the rates that the Home Telephone Company was charging say in October of the present year?

3476 A. Why, they made application for a franchise some time ago and I think it was passed some time previous to October 1st.

Q. And those were the rates that were prescribed by that franchise ordinance?

A. Yes, sir.

Q. Now you stated a moment ago that they made application to the city for those rates, that may give an erroneous impression, did they apply to the city to reduce rates and put in that schedule of

rates, or did they apply to the city for a franchise to do business and then the city gave that schedule of rates as a condition of giving the franchise?

A. They applied to the city for that franchise at those rates.

Q. They fixed the rates themselves?

A. Yes, sir.

Q. And that was when?

A. Why, I think they applied more than a year ago, it was two years ago I think they applied for it and the city council and the mayor were, I think, against granting the franchise then and then it laid over till about three months ago.

Q. So that there was opposition to granting that franchise?

A. No opposition, except politically I guess.

Q. Well, there was opposition regardless of where it came from, was there not?

A. Not that I know of.

Q. Well, why wasn't it granted sooner?

A. That is something I don't know.

Q. Did the Kansas City Home Company oppose it?

A. No, sir.

Q. Were they for it?

A. They had no interest in the matter whatever.

Q. That company doesn't affect your company in any way?

A. No, sir, not that I know of.

3477 Q. You regard those rates as entirely reasonable and fair, do you?

A. Why, we are operating under those rates.

Q. I am not asking whether you are operating under them, I am asking you whether you regard them as entirely reasonable and fair?

A. For the number of subscribers we have I do.

Q. Well, for the number of your subscribers you think that is entirely reasonable and fair?

A. I do.

Q. You don't want to charge any higher rates and wouldn't if you had the right, is that correct?

Mr. QUIN: Well, I object to that, whether he wants to charge a higher rate or not, I don't think that is competent now.

Mr. GRANBERY: Now he has made his objection, now let the witness answer. All right now, Mr. Ritterhoff, let's have an answer.

The WITNESS: I don't care to make a reply to that question.

Mr. GRANBERY:

Q. Yes, but I want you to make a reply.

A. Well, I don't care about making it.

Q. Yes, but you came here to be a witness and went on the stand and I must insist on your answering.

A. I don't think it is a competent question.

Q. It is not a question of whether you think it is competent or incompetent; the only thing for you to do is to answer the question

that is asked and the Court will rule on the competency of the question.

Mr. QUIN: He has stated those rates are reasonable and fair and they are making money under them. The question of whether they want to charge more, I suppose anybody wants to make all the money he can.

3478 Mr. GRANBERY: Now, Mr. Quin, I insist the witness be allowed to answer the question, instead of you.

Mr. QUIN: Answer the question, Mr. Ritterhoff, if you can.

The WITNESS: Why, the rates are perfectly satisfactory to us.

Mr. GRANBERY:

Q. What did you say your position was?
A. Contract superintendent.
Q. What do you mean by that, what are your duties?
A. I make contracts for telephone service for the Kansas City Home Telephone Company.
Q. Under what office of the company do you perform your duties?
A. Under the office of the general manager.
Q. Do you fix the rates or the terms of the contracts or does the general manager?
A. There are no rates to be fixed, because we are operating under a franchise that gives us the right to charge $60.00 a year and $36.00.
Q. Well, you can charge less, can't you?
A. No, sir.
Q. Are you compelled under your franchise to charge those rates?
A. The rates are fixed at $60.00 and $36.00 and we pay the city 2% of the gross receipts.
Q. Does the franchise require you to operate under those rates or do they merely fix the maximum rates?
A. The franchise I think fixes the rates at $60.00 and $36.00.
Q. Did you ever read the franchise?
A. Yes.
Q. How long ago?
A. Oh, been some time ago, I guess more than three or four years ago.
Q. Well, do you remember what it states?
A. No, I don't.

3479 Q. Now you spoke of not having any party lines in the corporate limits, have you party lines outside of the corporate limits?
A. Yes, sir.
Q. Who fixes that, the general manager or you?
A. The general manager.
Q. In other words, you make such contracts as you are instructed to make by the general manager?
A. Yes.
Q. And not a question of policy then of what rate shall be charged, matters of that kind come to you from the general manager and not fixed by you?
A. That is right.

Q. Now prior to your connection with the Kansas City Home Telephone Company what business were you engaged in?

A. Contract superintendent for the Missouri & Kansas Telephone Company here in Kansas City.

Q. How long had you occupied that position?

A. Oh, a number of years. I was connected with the Missouri & Kansas Company here in Kansas City for twenty-three years prior to my employment by the Home.

Q. Do you know what the profits are on the rates prescribed in the Kansas City Home Telephone Company's franchise?

A. No; I don't pay any attention to the financial end of it.

Q. So you don't know anything about whether those rates are reasonable or unreasonable except as you gather from hearsay?

A. From the financial statement of the Kansas City Home Telephone Company that is prepared each year.

Q. You have examined that, have you?

A. I have.

Q. Do you remember what it shows?

A. No, I don't.

Q. Do you remember what profit it shows?

A. No.

3480 Q. Are you the contract agent for the Independence exchange?

A. Independence, Missouri?

Q. Yes, sir?

A. I accept all contracts for the Independence exchange, yes.

Q. Well now is that a separate corporation or part of the Kansas City Home Company's plant?

A. That is part of the Kansas City Home Telephone Company.

Q. Well now in this financial statement they put out, does that include the operations of the Independence plant on the part of the Kansas City plant?

A. If I remember correctly it does.

Q. Now what are the rates at Independence?

A. For unlimited service business telephone, including Independence service in Kansas City, Missouri, $5.00 a month and residence service $3.00 a month. For local service only at Independence $2.50 a month, five cents toll to Kansas City; residence $1.50 a month local, five cents toll to Kansas City.

Q. And how many telephones have you in that Independence exchange?

A. I think in the neighborhood of 700 or more.

Q. Do you remember about what part of those take the Kansas City service and what part the local service?

A. Why, I believe there is just about half of them.

Q. I believe the Kansas City Company uses what is known as the central energy type of switchboard, does it not?

A. Yes, sir.

Q. Now are you familiar with the automatic system?

A. Yes, sir.

Q. What proportion of the plants in America use the automatic and what proportion use the central energy, in your opinion?

A. Well, that is a hard thing to answer.

3481 Q. Would you say that as much as five per cent. use the automatic?

A. Not knowing, I couldn't tell.

Q. Well, what is your best estimate on it, you have a general knowledge of the matter?

A. I can't give any estimate.

Q. Well, what is your opinion of the two systems, which is the better?

A. Well, I can't say; people may have a preference.

Q. Well, the Kansas City Home Company thinks the central energy the better, does it not?

A. Yes, sir.

(Signed) H. W. RITTERHOFF.

The witness, CHARLES M. PEALE, being first duly sworn, says:—

Direct examination by Mr. HUSTON QUIN:

Q. Mr. Peale, what is your present occupation?

A. Salesman for Cudahy Packing Company.

Q. How long have you been connected with that company?

A. Since December 6th.

Q. Where were you prior to that time?

A. From January, 1906, to December 1st, with the Missouri & Kansas Telephone Company's office in Kansas City, Missouri.

Q. Are you familiar with the telephone rates for the Bell Company in the City of Kansas City, Missouri?

A. I am.

Q. Will you please tell us what rates and what classes of service are furnished by what is known as the Bell Company at Kansas City?

Mr. GRANBERY: Are you asking the witness for the present time or when he was connected with the company?

Mr. QUIN: I am asking for the present time.

Mr. GRANBERY: Oh yes.

3482 A. If there have been any changes since November 1st I am not aware of it. On that date the rate for special unlimited service for business telephones was $60.00 a year, $5.00 a month. Other business rates as follows: special measured service at $48.00 per year, which gave the subscriber the right to use eighty outgoing local calls per month, incoming calls free; which means outgoing long distance calls not included in the eighty calls. Excess calls to be reckoned and paid at the end of each month at the rate of three cents a call. The two-party measured service at the rate of $39.00 per year entitled the subscriber to sixty-five outgoing local calls, excess calls to be reckoned and paid for at the end of each month at the rate of three cents per call. Other conditions the same as bargained for in the contract for special measured service. And

the four-party line, slot machine service only, with a guarantee from the subscriber of seven and one-half cents per day for every day in the year. If the money in the box exceeded the guarantee it all belonged to the company. If less than the guarantee on the date of collection the subscriber is required to make up the shortage.

Q. Mr. Peale, were those rates charged and fixed under an ordinance of the general council of Kansas City, Missouri, or not?

Mr. GRANBERY: I object to that question, on the ground that the ordinance itself is the best evidence of that fact and this would be purely hearsay and I ask that the ordinance be produced in order that it may be ascertained whether the witness is merely speaking from memory in regard to its contents.

Mr. QUIN: Answer the question now, Mr. Peale.

A. My understanding is that no ordinance prior to an ordinance passed I believe in August, 1909, had any bearing on the rates of the Bell Telephone Company. The ordinance referred to limited
3483 the maximum charge of all telephone companies for special line, unlimited telephone service to $60.00 per annum and special unlimited line residence telephone service to $35.00 per annum. This is the only ordinance to my knowledge governing in any way the rates of telephone service as applied to the Bell Telephone Company.

Q. Are you or not familiar with the ordinance and do you know those rates to be such rates as are provided by that ordinance?

A. I am familiar with it, having seen certified copies of it and studied it carefully and those are the rates provided for in that ordinance. Lesser rates are made by the telephone company at their option.

Q. Can you tell us how many telephone subscribers the Bell Company had in the City of Kansas City, Missouri, on November 1st, 1909?

A. Approximately 23,000.

Q. Did they have that many instruments or more instruments than that number?

A. That I believe is the approximate number of stations, as we call it; that means separate telephones and it would necessarily follow the number of subscribers would be less. How many less I am unable to state.

Mr. QUIN: You may ask Mr. Peale.

Cross-examination by Mr. W. L. GRANBERY:

Q. When do you say you severed your connection with the Bell Company in Kansas City, what year?

A. November 1st, 1909.

Q. What was your position prior to that time?

A. During the time of my employment first as solicitor, second as adjuster, then in charge of the adjusting department, then chief

clerk, the duties in this position involving charge of all
3484 solicitors, collectors and office force. Afterwards I was made head of the local contract department. That was my position when I resigned.

Q. And you ceased to occupy that position the 1st of November, 1909?

A. Yes, sir.

Q. When did you say you became travelling salesman for Cudahy?

A. I didn't say I became travelling salesman, I am local salesman.

Q. Well, local salesman?

A. On the 6th of December, 1909.

(Signed) CHARLES M. PEALE.

At this point, by agreement of Counsel for the respective parties hereto, I now adjourn the further taking of depositions in this cause until one o'clock this afternoon, at which time the Defendant will put Mr. Kavanagh on the stand again.

[SEAL.] GENEVIEVE PARLIN,
Notary Public within and for Jackson County, Missouri.

Pursuant to the foregoing adjournment, at the hour of one o'clock, Counsel for the respective parties hereto met, at which time the witness William J. Kavanagh is present with the attorney for the Kansas City Home Telephone Company, Mr. R. J. Ingraham, and the following proceedings were had:

At the request of Mr. Ingraham the Notary reads the latter portion of the testimony of the witness William J. Kavanagh, including the questions which said witness declined to answer at the morning session.

Mr. INGRAHAM: As counsel for Mr. Kavanagh, I will say that the law of Missouri does not oblige or compel a witness to pro-
3485 duce books at the taking of a deposition before a Notary, and for that reason I would advise Mr. Kavanagh not to produce the books, for the reason that to do so would divulge the private information of his company to an inspection by a rival concern.

Cross-examination continued by Mr. W. L. GRANBERY:

Q. Mr. Kavanagh, can you examine your books and then tell me what those expenses consist of?

A. Yes, I could do that.

Q. Will you do so?

A. No, sir.

Q. In your Exhibit "1" you file a consolidated balance sheet showing assets of the Kansas City Home Telephone Company and the Kansas City Long Distance Telephone Company, will you tell me how much of the plant account belongs to the Kansas City Home Telephone Company?

A. How much is the amount of the plant account there?

Counsel for the Complainant here shows to the witness the statement above inquired about, which the witness examines.

The WITNESS: I can't do it, no, without referring to the books.
Q. Will you refer to the books and let me have it?
A. No, sir.

Q. You speak in this annual report of having an average gross earning per telephone of $38.66, will you tell me how many of the 22,500 telephones were paid for at that time at the direct business rate, how many at the direct residence rate and how many at various other rates?

A. No, sir; can't do it without referring to my books.
Q. Will you refer to your books?
A. No, sir.
Q. You decline to give any information except what is contained in that report?
3486 A. I swear to the correctness of the report.

Mr. GRANBERY: Just state there that Counsel for the Complainant will ask the Court to suppress the deposition of this witness, on the ground that the witness declined to be examined.

Mr. INGRAHAM: I suggest that Mr. Kavanagh decline to answer on the advice of Counsel and I do so advise.

Mr. GRANBERY: Well now, do I understand this is Mr. Kavanagh's own answer or that of Counsel for the Kansas City Home Telephone Company?

Mr. INGRAHAM: Kansas City Home Telephone Company.

WILLIAM J. KAVANAGH.

STATE OF MISSOURI,
County of Jackson, ss:

I, Genevieve Parlin, a Notary Public duly commissioned, qualified and acting as such in and for Jackson County, Missouri, do hereby certify that the foregoing depositions of William J. Kavanagh, H. W. Ritterhoff and Charles M. Peale were taken before me at the time and place stated in the caption; that said witnesses were severally duly sworn by me before giving their said respective depositions, and that the said depositions of the said witnesses were, by agreement of Counsel for the respective parties hereto, taken down in shorthand by me and afterwards transcribed upon the typewriter and read to and severally duly subscribed by the said witnesses in my presence.

Witness my hand and seal of office this 3rd day of January, A. D. 1910.

[SEAL.]

GENEVIEVE PARLIN,
Notary Public within and for Jackson County, Missouri.

My commission expires February 8th, 1913.

Fees $13.65.
Paid by Defendant.

3487 UNITED STATES OF AMERICA:

In the United States Circuit Court for the Sixth Circuit and Western District of Kentucky.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

THE UNITED STATES OF AMERICA,
Eastern District of Michigan,
Southern Division, County of Wayne, ss:

The examination of witnesses de bene esse had on the 21st day of December, 1909, on behalf of the Defendant, before me, a Notary Public in and for the County of Wayne, State of Michigan, at my office in the City of Detroit, at 305 Whitney Building, in a certain suit now pending in the Circuit Court of the United States for the Sixth Circuit and Western District of Kentucky, in the District aforesaid, wherein the Cumberland Telephone & Telegraph
3488 Company is Complainant, and the City of Louisville is Defendant. George M. Welch and Robert Frewin, witnesses produced on behalf of the Defendant, being first duly sworn, severally depose and say as follows:

GEORGE M. WELCH, being duly sworn, testified as follows:

Examined by Mr. HUSTON QUIN:

Q. What is your general occupation?
A. Local contract agent for the Michigan State Telephone Company, Bell.
Q. How long have you held that position?
A. A year and four months.
Q. How long have you been connected with the telephone business?
A. Five years, approximately.
Q. Can you tell approximately the population of the City of Detroit?
A. We are estimating somewhere around 475,000. We have not had any figures for a long time, so that we don't know whether that is right or wrong.
Q. How many subscribers has the Michigan State Telephone Company in the Detroit Exchange?
A. Approximately 47,200.
Q. Does the number of subscribers correspond to the number of telephone instruments, or is there a difference between the two?
A. The figure that I gave is telephones.
3489 Q. How many subscribers have you?
A. 34,000, approximately.
Q. The difference is explained by the fact that a hotel or a business house, being one subscriber, would have a number of phones?

A. Yes, extension phones, and private branch exchanges.

Q. You count every instrument as a separate telephone?

A. We count the instruments in the 47,200, the customers or subscribers in the 34,000. We mail out 34,000 bills. I haven't any way of getting at it any closer than that. We mail out 34,000 bills. That is approximately the number of subscribers.

Q. Will you please tell us the various classes of service rendered by your company to the Detroit subscribers, together with the charges for each class of such service.

A. Business, unlimited, 1-party service, $80 a year. 2-party, unlimited, business service, $66.66. Residence, 1-party, unlimited, $46.66. Residence, 2-party, unlimited service, $40. Residence, 4-party, limited to four calls a day, $26.66. Business extension telephones, $13.33. Residence extension telephones, desk, $13.33. Residence auxiliary extension, $6.66. Private branch exchanges: trunk lines, $80; switch-board and operator's sets, $20. Switch-board terminal stations, $20. Minimum equipment leased, two trunks, 5 terminals. All of the above rates are subject to a discount of 10 per cent if paid before the 15th of the month in which service is rendered. Where bills are rendered quarterly in advance, discount is allowed at the end of the first month in the quarter.

3490 Business, 1-party, pre-payment, guarantee service, guarantee per month, $5. Business, multi-party, guarantee pre-payment,, service guarantee per month, $2.50. The subscriber deposits 5 cents for each local call, and if the amount in the box at the end of the month exceeds the guarantee, the excess is divided equally between the subscriber and the company.

Q. Are the rates which you have testified to, all upon an annual basis? In other words, so much per year?

A. All except guarantee service.

Q. Have you any residence pay stations or slot machines?

A. No.

Q. They are limited to the business phones?

A. Business only in the pre-payment service.

Q. Can you tell us approximately the division of your entire telephone business in the various classes?

A. No.

Q. What proportion of them, to the best of your knowledge, are straight line business phones?

A. The business and residence are about equally divided, that is, half and half in the number I gave you.

Q. What proportion of business phones are straight line telephones?

A. I cannot answer that; I don't know.

Q. To the best of your knowledge?

A. Do you want me to make a guess?

Q. Can you not make more than a guess?

A. No, I cannot do it. I really do not know.

Q. Would you say as much as 25 per cent of the business phones are straight line telephones?

A. I should say they were, yes. I should say that was a
3491 reasonable estimate of it.

Q. Would the same thing be true as to the residence telephones?

A. No.

Q. Is there a greater percentage or less percentage?

A. A less percentage. The reason of that is that in giving those rates, you see that our individual rate is $6, our 2-party rate is $5. That is all we get, except the guarantee. So that the individual business runs high, and the individual residence, we have a greater variety of rates, which cut it down. It is not as high in the residence.

Q. How many branch exchanges or sub-stations have you in the Detroit Exchange?

A. Nine.

Q. What other cities other than Detroit does your Exchange cover?

A. Highland Park, Grosse Pointe Village, Grosse Pointe Farms. I think that is all; all the important ones.

Q. Can you tell us how many pay stations you have?

A. No, I cannot.

Q. Can you approximate the number?

A. No.

Q. Would you say as much as 4,000?

A. Public pay stations?

Q. Yes?

A. No, not that many.

Q. Please tell us approximately how many telephones of the prepayment, nickel service, you have in the Detroit Exchange?

3492 A. I would make a guess that it is 4,000.

Q. Do I understand that to be that whenever a person wants to use a telephone, they pay 5 cents for the privilege?

A. Yes.

Q. Are they in residences as well as business houses?

A. No, business only.

Q. How about your hotel service?

A. Our rates?

Q. Yes.

A. $6 for each room or department telephone; trunk lines free. 10 cents for each call; the hotel retains 50 per cent of the revenue.

Q. How many hotels have you in Detroit, do you know?

A. About 150, probably.

Q. Have you pay stations in the depots here?

A. Yes.

Q. How many depots are there?

A. There are three main depots, and two small ones. There are pay stations in the three main depots.

Q. Pay stations in the drug stores here in the city, are there?

A. Yes.

Q. How many have you approximately?

A. Approximately 300.

Q. Have you given us now every class of service furnished by your company, together with the prices charged for it?

A. No, sir. I have given you every class of service that we sell today. I cannot enumerate those that we are furnishing under old contracts, because we do not pay any attention to them until the contract expires.

3493 Q. How many are there of those, approximately?

A. Possibly 75.

Q. Does your company pay a dividend on its stock?

A. Yes, sir.

Q. On the common and preferred both?

A. Yes.

Q. How much dividend?

A. Six per cent.

Q. Do you know how many operators are connected with your Exchange?

A. I do not.

Q. Or the pay of them?

A. No, sir.

GEORGE M. WELSH.

ROBERT FREWIN, being duly sworn, testified as follows:

Examined by Mr. HUSTON QUIN:

Q. Mr. Frewin, what is your occupation?

A. General contract agent, Home Telephone Company of Michigan.

Q. How long have you held that position?

A. Since September 1, 1908.

Q. Is or is not your company a new company in this city?

A. It is.

3494 Q. How many subscribers have you?

A. Approximately 12,500 telephones; I should say about 11,000 subscribers.

Q. Are you familiar with the rates charged by the Home Company in this city?

A. I am.

Q. Please give us the various classes of service you furnish, together with the prices you charge for each of such classes of service.

A. Individual business, unlimited, $66.66 a year. 2-party business, unlimited, $53.33. 4-party, business, unlimited, $40. Individual, residence, unlimited, $33.33. These are all gross rates I am giving you. 2-party line, unlimited, residence, $30. 4-party line, unlimited, residence, $20. Extension sets, business, $13.33, gross. Residence, with ringer, $8.88; without ringer, $6.66, gross. Pay station, 1-party, no guarantee, 5 cents for each local call. Commissions, 50, 10 and 5, to such places as public hotels, railroad stations, and so forth; 40, 10 and 5 to all others.

Q. Please explain what you mean by 50, 10 and 5, and 40, 10 and 5?

A. 40 per cent on local calls, 10 per cent on long-distance, no com-

mission on any single call to amount to more than 5 cents. Nickel service, 1-party line, guarantee, $4 per month; party guarantee, $2.50 a month. Commissions on above, 50, 10 and 5, 50 for local, 10 for long-distance, the commission on no message to exceed 5 cents. These commissions are paid after we have taken out the guarantee.

3495 Q. You stated that all rates mentioned were gross?

A. The above rates are subject to a discount of 10 per cent, except the pay stations, if paid at the office on or before the 15th day of each current month.

Q. Are the rates which you have given, the annual rates?

A. Those are the annual rates, yearly gross rates. Our bills are payable monthly or quarterly if subscriber so desires same as with Michigan State Telephone Co. as to discount.

Q. How about your branch exchanges? Have you any of those?

A. Yes. Our private branch exchange rates, switchboard, $20, gross, a year; trunk lines, $66.66; stations located in same building, $13.33.

Q. Are they subject to the same discounts?

A. Subject to the same discounts. In addition to that, we sell equipment outright?

Q. What do you mean by that

A. At absolute cost. We sell a man his interior system, and connect with it.

Q. Does the number of subscribers that you have given us include all classes of services that you have enumerated?

A. It does.

Q. There are no other subscribers than those you have named?

A. Well, we have subscribers to private line service, special service. They are not included, however, in that list.

Q. What kind of service is that?

A. For instance, we rent a line, a circuit from our office to another, private circuit.

Q. Do you know anything about the number of operators that you have at your plant?

A. No, I do not.

3496 Q. How many exchanges or sub-stations have you in this city?

A. We have a main exchange, and three sub-stations. We are building a fourth.

Q. Can you tell us approximately the division of your subscribers into the various classes of service, how many straight line business telephones, and how many party lines? Can you approximate it?

A. No, I cannot.

Q. Would you say that the business telephones were equal to one-half of the total number of telephones?

A. I don't know. I would not want to say.

ROBERT FREWIN.

I, the above-named Notary Public, do hereby certify that pursuant to the annexed Notice issued and served in the above-mentioned cause, wherein the Cumberland Telephone & Telegraph Company is Complainant, and the City of Louisville, is Defendant, I was attended at my office, aforesaid, by Huston Quin, of counsel for the Defendant, on the day hereinbefore stated, and that no person appeared on behalf of the Complainant. That the aforenamed
3497 witnesses, George M. Welch, and Robert Frewin, who are of sound mind and lawful age, were by me first duly sworn to testify to the truth, the whole truth and nothing but the truth, as they knew the controversy between the parties in this cause, and that the depositions were taken by an expert stenographer; and that aftrwards, on the twenty second day of December, 1909, after having been reduced to writing, were read to the witnesses themselves, and were subscribed by said witnesses in my presence, and were taken at the place in the annexed Notice specified, and at the time as set forth, and that all was so done, written and signed at the request of counsel for the Defendant.

And I further certify that the reason for taking said depositions was and is, and the fact was and is that the deponents all live in Detroit, Michigan, more than 100 miles from the place where said suit is appointed by law to be tried.

I further certify that I am neither of counsel nor attorney for either of the parties to said suit, nor interested in the event of said cause; and that it being impracticable for me to deliver said depositions with my own hand into the court for which they were taken, I have retained the same for the purpose of being sealed up and directed with my own hand, and speedily and safely transmitted to the said court for which they were taken, and to remain under my seal until then opened.

As witness my hand and official seal this 22nd day of December, A. D. 1909.

CHARLES E. DUFFY,
Notary Public, Wayne County, Mich.

My Commission expires November 17, 1911.

3498 UNITED STATES OF AMERICA:

In the United States Circuit Court for the Sixth Circuit and Western District of Kentucky.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

Exceptions to Depositions.

Comes the defendant and excepts and objects to all that part of the deposition of James E. Caldwell beginning at the first question on page 613 and including the answer to said questions, and all the questions and answers appearing on page 614, all the questions and an-

swers appearing on page 615, and the first two questions and the answers thereto appearing on page 616, for the reason that said questions are irrelevant, incompetent and hearsay.

Also excepts to the last question on page 618 and the first question on page 619 and the answers thereto of the said deposition of J. E. Caldwell, together with the exhibit referred to in those answers, for the reason that said questions and answers, and said exhibit, are incompetent and irrelevant.

Also, to the last two questions on page 24 and all the questions on page 25, and the answers thereto, of the deposition of T. D. Webb, for the reason that said questions and answers are irrelevant, incompetent and hearsay.

Also, to the entire second deposition of James E. Caldwell for the reason that said deposition was not in rebuttal, said deposition having been taken after the complainant had closed its evidence in chief.

3499 Also, to the entire deposition of O. B. Green, for the reason that said deposition was not in rebuttal, said deposition having been taken after the complainant had closed its evidence in chief; and for the further reason that said deposition was taken after the complainant had closed its rebuttal proof and after the defendant had closed its surrebuttal proof.

CLAYTON B. BLAKEY,
HUSTON QUIN, *For Def't.*

3500 United States Circuit Court.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

Stipulation.

Exhibits Nos. 7, 8 and *22* with the deposition of H. Blair Smith, and certain blue prints filed with the deposition of W. H. Crumb, were filed and examined by the opposing counsel and by the Master, but, because of their great bulk, it is stipulated they are not to be read or considered read on the final submission of this case.

GRANBERY, DALE & HUMPHREY,
Counsel for Complainant.
C. B. BLAKELY, *Counsel for Defendant.*

3501 And on April 25th, 1911, the following proceedings were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

This cause having been heretofore submitted upon the Master's report and exceptions thereto, and also in chief, and having been argued by counsel, and the Court being sufficiently advised, delivered a written opinion, which is now filed and ordered to be made a part of the record.

In consideration whereof it is now ordered, adjudged and decreed as follows:

1. That the exceptions of the complainant to the Master's report be, and they are hereby, sustained only to the extent wherein the Court, by its opinion, shows that it differs from the conclusions of the Master. All other of complainant's exceptions are overruled, except those relating to the Master's finding as to the cost of the plant. These exceptions having been ignored by the Court and not passed upon for the reasons stated in the opinion herein filed.

2. That all the exceptions filed by the defendant be, and they are hereby, overruled;

3. That the ordinance adopted by the City of Louisville on February 27, 1909, through its legislative department, and approved by the Mayor on March 6, 1909, being an ordinance entitled "An ordinance fixing the maximum rate to be charged for telephone service in the City of Louisville," is, as to the complainant, confiscatory, null and void, and violates the Fourteenth Amendment of the Constitution of the United States in, that it would, if enforced, deprive the complainant of its property without due process of law.

It is therefore further ordered, adjudged and decreed by
3502 the Court that the prayer of the complainant's bill be, and the same is, sustained; and the defendant, the City of Louisville, its officers, agents, employés and all other persons, are hereby perpetually enjoined from undertaking to enforce in any wise the provisions of said ordinance against the complainant.

4. That the complainant recover of the defendant the costs of this cause, including the compensation heretofore allowed by the Court to the Special Commissioner and paid by the complainant.

The Opinion above referred to is as follows:

3503 United States Circuit Court, Western District of Kentucky.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

Opinion.

The complainant, which we shall call the Company, in February, 1909, was charging the following rates for services in the City of Louisville:

Business.

Within the two-mile radius of nearest exchange.

Private metallic	$8.00	per	month
2-station metallic	5.00	"	"
Public pay station (coin device), private	4.00	"	"
(Agent's service free out and in, and divide with any cash deposits for local city calls);			
City and County telephones within city limits.	4.00	"	"

Residence.

Private, within city limits	4.00	"	"
Private, beyond city limits, and within three miles of nearest exchange	4.50	"	"
2-station, within city limits	3.00	"	"
2-station, beyond city limits, and within three miles of nearest exchange	3.50	"	"
Extension set	1.25	"	"

Country Rates.

Private Metallic.

Business or residence—add to the exchange rate 50¢ per month, per mile, or fraction thereof, if subscribers are located beyond the exchange radius. Exchange radius for business is two miles—for residence, three miles, from nearest Louisville exchange.

3504 4-party Metallic.

Business or residence—add to the exchange radial rate 25¢ per month, per mile, or fraction thereof, if the subscriber is located beyond the exchange radius. For exchange radius, see above.

Extension set ..... $1.25 per month

A discount of 50 cents per month is allowed on all rates above enumerated if rental is paid quarterly in advance.

Private line instruments $12.00 per year, per instrument, to which is added mileage charge of $30.00 per mile, per annum.

Extension bells (business or residence)	net....	$0.15	per	month
Joint user (business).....	"	1.00	"	"
List (business)	"	.25	"	"
List (residence)	"	.25	"	"
Loud ringing extension gongs.....	"	.25	"	"
Buzzers and push buttons.....	"	.25	"	"

The defendant in its answer says "that the rate ordinance referred to in Paragraph Four of the bill was passed after as thorough and complete investigation as the authorities of the City of Louisville were able to make; that said investigation was based on the reports made by the complainant to the Louisville Board of Trade; on the published annual and monthly reports made by the complainant, wherein the operations and other facts in connection with the telephone system of said complainant company were detailed, and on the facts gathered from the Telephone Directory issued by the complainant, and on a comparison of the respective charges, operations property, receipts and operating expenses of the complainant company and the Louisville Home Telephone Company."

Though the burden in respect to these allegations rested upon the city, they were left wholly unproved. No testimony whatever was offered in their report, vague and general as they are. No member of the legislative body which enacted the ordinance presently to be noticed was called as a witness. The then Mayor did testify on behalf of the City, but did not allude to the subject. He, as well as two other officials, confined their statements to the condition of another company which appears to have been then seeking some relief in the way of legislation. So that we may fairly say that, without making any adequate inquiry into the real facts upon which
3505 such action could intelligently be based, the defendant, which we shall call the City, on February 27th, 1909, through its legislative department, enacted, and on March 6th, 1909, the Mayor approved, an ordinance which was as follows:

"Be it ordained by the General Council of the City of Louisville:

Section 1. That no company, corporation or individual operating, conducting, maintaining, telephone system, or furnishing telephone service in the city of Louisville, shall charge more for service than the following rates which are hereby fixed, established and ordained to be the maximum rates that may be charged for telephone service in the city of Louisville.

Section 2. For each telephone in a business house or office the maximum rate or charge shall not exceed, for a single or private line, unlimited service, $5.50 per month, or at the rate of $66.00 per year. For a party line, unlimited service, $4.00 per month, or at the rate of $48.00 per year. For each telephone in a residence the maximum rate or charge shall not exceed, for a single or private line, unlimited service, $3.00 per month, or at the rate of $36.00 per year. For a party line, unlimited service, $2.00 per

month, or at the rate of $24.00 per year. For each extension desk telephone the maximum rate or charge shall not exceed $1.00 per month, or at the rate of $12.00 per year.

Section 3. Any person, firm or corporation violating any provision of this ordinance, or charging a higher rate for telephone service than is fixed by this ordinance, shall be subject to a fine of not less than $5.00 nor more than $25.00 for each offense. Each charge for telephone service in excess of the rates herein fixed, and each month that such charge is made for such service shall constitute a separate offense."

Of course the City was not bound by any law or constitutional provision to make any inquiry before enacting the ordinance, but when it is known that it did not do so in respect to a matter as important and intricate as the one involved, the weight of any presumption in favor of its action is lessened. However plausible it may appear on paper, guess work, if ever admissible upon so difficult a problem as rates, is likely to lead to unsatisfactory results, and, possibly, palpable injustice. As the rates thus fixed effected a very material reduction, the Company, on March 8th, 1909, filed its bill, in which it prayed that the City be enjoined from enforcing the ordinance. The ground upon which that relief was sought, speaking generally, was, that the rates fixed by the ordinance were confiscatory, and would not, if enforced, permit the Company to earn a fair, reasonable and just income and return upon the value of its property in the city used for operating and conduct-
3506 ing its business. In April, 1909, the case was referred to a Special Master, with instructions to take the testimony and report to the Court his conclusions upon various questions set forth in the order of reference, the details of which need not be stated. The order of reference was, of course, designed to afford the means for ascertaining all the facts necessary to enable the Court to meet the requirements of the rules laid down by the Supreme Court, notably in Knoxville vs. Water Co., 212 U. S., 1, and Willcox vs. Consolidated Gas Co., 212 U. S., 19.

Great labor was thus devolved upon the Master in the effort to ascertain the facts bearing upon the case from many points of view, and the means of testimony has made up a most voluminous record, the study of which has imposed upon the Court also a great task. After many months devoted to the work the Master filed a report stating his conclusion of fact and of law. Many exceptions thereto have been filed by the parties, and the questions raised have been the subject of very interesting and instructive argument. Where a Master makes findings of fact, it is the usual practice of courts of equity to treat those findings as, prima facie, correct, and not to disturb them unless he has proceeded upon an erroneous theory of the law applicable to the case, or has made findings of fact which are clearly against the weight of the testimony. Much less weight, however, is given to this prima facie presumption in cases where the powers of a legislative body are called in question, or where constitutional rights are involved. Such delicate and im-

portant questions demand the more direct attention and labor of the Court itself. 212 U. S., 1.

In many cases the Supreme Court has stated the general rules applicable to the essential propositions which must lie at the bottom of the claim to relief against the ordinance in question. It seems to be settled that while rates which, under the circumstances, are unreasonably high, may not be charged by a public utility corporation to enable it to earn dividends which otherwise it could not earn, yet such corporation should be permitted to charge rates which are, under all the circumstances, reasonable and just and which afford a fair return upon the value of its property.

3507 The legislative department of a State or city may compel the corporation to charge rates which are reasonable and just, but may not fix rates which are so low as to deprive it of a fair return upon the value of its property which, at the time, is being used for the public in the operations of the Company within the jurisdiction of the legislative body which attempts to fix rates. Were this not so, property of the Company would be used not for the benefit of its owners, but for that of the public, in which case the property would be appropriated by the public without just compensation, and would be a violation of constitutional rights.

In Knoxville vs. Water Co., 12 U. S., at page 17, it was said:

"It cannot be doubted that in a clear case of confiscation it is the right and duty of the Court to annul the law. Thus in Reagan vs. Farmers' Loan and Trust Co., 154 U. S., 362, where the property was worth more than its capitalization, and upon the admitted facts the rates prescribed would not pay one-half the interest on the bonded debt; in Covington &c. Turnpike Co. v. Sandford, 164 U. S., 578, where the rates prescribed would not even pay operating expenses; in Smyth v. Ames, 169 U. S., 466, where the rates prescribed left substantially nothing over operating expenses and cost of service . . . injunctions were severally sustained."

But on page 16 of the report of the same case the Court had said:

"If a company of this kind chooses to decline to observe an ordinance of this nature and prefers rather to go into court with the claim that the ordinance is unconstitutional, it must be prepared to show to the satisfaction of the court that the ordinance would necessarily be so confiscatory in its effect as to violate the Constitution of the United States."

It would seem clear from the decisions that the most material question in such cases is, that of the reasonable value of the

3508 property "at the time it is being used for the public"—that is to say, the time at which the question arises—it being upon the reasonable valuation at that time that the Company is entitled to earn a fair return. Willcox v. Consolidated Gas Co., 212 U. S., 41. The ascertainment of the present value of the Company's plant is, therefore, a matter of prime importance, and the subject, speaking generally may be viewed from many standpoints, as to which it may suffice for present purposes to suggest that if the expenditures in the construction and equipment of a public utility corporation have been absurdly extravagant and wasteful,

it would not be admissible to say that such outlays fairly indicated the real value of its plant nor in such a state of case that rates should be fixed upon a scale that would pay ordinary dividends upon a licentiously extravagant cost of property, and similar considerations might apply if fictitious values were the result of "watering" the stock. On the other hand, if property had been obtained at a price far below its real value in better hands, or if some one of the many accidents or unsuspected reasons for a large increase should fortunately operate to double the value of a plant, it would not be just nor reasonable to confine ourselves to the lower or former value, nor to say that such former value continued to be the real one. The value of a plant may depend upon good fortune, upon good management or upon fortuitous circumstances, but in every event the reasonable value of the property "at the time it is used for the public" is the value we are to ascertain for the purposes of this controversy. Cost of the plant at a much earlier date may throw some light on the question of value, and, hence, the provision in the order of reference directing the inquiry as to the cost. Of course, as this direction was made in advance of knowledge of the actual situation it could not be then seen that the question as to the cost of the plant would be so complicated as the inquiry developed it to be. The wisdom of the rule which fixed present value instead of the original cost of the property as the prime factor in our problem, is well illustrated by this case, although here, as in all similar cases, the question of value must largely be a matter of opinion. Not be-
3509 cause the cost of the plant was at all conclusive in its bearing upon the questions involved, but, as already stated, because it might be helpful, the Court, in the order of reference, directed an inquiry into the actual cost of the Company's property in this city. The lapse of many years, the multitude of items making up the total, the wide diversity of present views as to what expenditures should have been or should now be included in the cost of construction, etc., the manner of keeping the Company's accounts (though no dishonesty is attributable, inasmuch as no motive is conceivable which at that time tempted to deliberate wrong), and other considerations have so obscured the question of cost of the plant as to greatly weaken the value of this inquiry, laborious and painstaking as it appears to have been. With all these difficulties to contend with, the Master has found that the total cost of the Company's plant and property in this city, including toll lines, but excluding real estate, was $1,506,531.21, while the Company insists that it was $1,864,583.10—a difference of $358,051.89. This large difference does not seem to grow, to any material extent, except as to the value of real estate and toll lines, out of anything except a difference of opinion as to whether certain expenditures, which no doubt were actually made, should be charged to construction or some other account. In his estimate of the cost of the Company's plant, the Master excluded certain items which the Company insists should have been included. The City made no objections to the finding of the Master as to cost of plant, but the contention

of the Company may probably be best stated by an extract from its exceptions to the Master's report. After claiming that it had been agreed between counsel representing both sides, and approved by the Master, that whatever the two accountants representing the two sides respectively should agree upon as the cost of the plant should be accepted by all parties as correct, and no testimony permitted to vary or contradict it, the Company in its exceptions says:

"These accountants having agreed upon the records of complainant showing the cost of the Louisville plant, excluding toll lines and real estate, should, under the agreement, be accepted and the cost was, as stated..... $1,702,391.68

3510

Summary.

Complainant, for the foregoing reasons, insists that the Master was in error in reporting the cost to complainant of its plant and property in the City of Louisville as of January 1, 1900, as only.....	$457,759.07
And on December 31, 1908.....	1,381,124.41
And real estate of only.....	108,034.50
The Master should have found and reported that complainant's plant cost it, as of January 1, 1900	678,354.69
And added construction to January 1, 1909.....	1,023,545.34
Making the total cost to complainant of its plant, in Louisville, Kentucky, as of January 1, 1909...	$1,701,900.03
And construction added from January 1, 1909, to March 9, 1909.....	491.65
Making the total cost of plant to March 9, 1909....	$1,702,391.68
And the total cost of real estate.....	62,191.42
Total 'cost of plant and property' March 9, 1909	$1,864,583.10

The difference between the $1,702,391.68, alleged to have been agreed upon by the accountants, and the $1,596,531.21, fixed by the Master as cost of the plant plus $162,191.42, the value of the real estate, is the sum above referred to of $358,051.89.

Consideration of these contentions between the parties in connection with the Master's findings, the exceptions thereto, and the large mass of testimony directed to the subject of cost of plant, will demonstrate the extreme difficulty of reaching a satisfactory conclusion upon the subject upon any very reliable theory, and the fact becomes apparent that its cost, under the complications presented in the record, would furnish a fallacious test of the actual present value of the Company's plant and property in this city where it is being used for the public. We incline to think that these considerations may properly relieve us of the necessity of passing directly upon the exceptions to the findings as to the "cost"

of the plant, although the Master seems, in his estimate of the present value, to have proceeded upon a different theory, for he says,

"if I am correct as to the original cost, then it is not possible
3511 that the value of the plant at this date is in excess of the cost." We are not sure that that result would necessarily follow even if there were agreement upon what constituted original cost, but under the circumstances we think we need not pass on those exceptions, inasmuch as whether they are sustained or overruled, the findings of the Master as to the original cost, whether correct or not, under the circumstances of this case, furnish no very valuable guide for ascertaining the "present value" of the plant. It might happen that original cost and present value in a given case (especially if the plant were not old) would be approximately the same, but that would be a coincidence merely and not a necessary sequence. We think, therefore, that we may safely proceed to the consideration of the latter question without directly passing upon the exceptions to the Master's findings as to the former, though we incline to think that the testimony clearly shows that the original cost of the Company's plant, exclusive of real estate and franchise, was as much as $1,600,000 beyond any premium paid for stock in the Ohio Valley Telephone Company. In short, a determination of the question of original cost in this case would most likely be the determination of an abstract question, inasmuch as we feel compelled to hold that the original cost of the plant, per se, be determinative of its present value. We shall, however, endeavor to give proper weight to the testimony as to original cost in our effort to ascertain present values. It may be proper to say, however, that in considering the testimony as to the original cost of the plant, so far as it bears upon present value, we have not overlooked the fact that each of the parties tendered to the Master the services of an expert accountant, George Wilkinson being named by the Company and E. W. Farnham being named by the City; that they examined the Company's books, and that they made a joint report to the Master so far as they could agree, and separate reports upon points about which they differed. The Master availed himself of these reports, and they were read as testimony at the trial. Wilkinson, as a witness, testified very fully in support of his report. Farnham did not testify at all. Whether the fail-
3512 ure to call him was because of subsequent developments we do not know, but it was shown by the testimony that though he was the general manager of the Mutual Audit Company of this city, in his previous business career he had not been a bookkeeper but had been a locomotive engineer, a telegraph operator, a train dispatcher, a constructor of works, an electrician and a detective, and, besides, had been engaged in the express business. While this may account for his not being called as a witness by the City, and subjected to cross examination, it hardly adds weight to his report to the Master, which, however, may have been to some extent at least, the work of his assistant, H. B. Warren, who is a bookkeeper and who did testify.

Present Value of the Plant.

In the order of reference the Master was directed to find the value of the plant on March 6, 1906, when the suit was brought, and on November 17, 1910, when his report was filed. It will be seen that about twenty months elapsed between the earlier period and the last. Under what he conceived to be the proper rules for his guidance is ascertaining the original cost of the Company's plant, the Master, as we have seen, found it to have been $1,506,531.21, including the cost of the toll lines but excluding the cost of the real estate. In his report the Master says, "the service rendered by complainant is good and the physical condition of its plant is excellent." He also says, "for all practical purposes the Louisville exchange in all its parts performs well the functions of a new plant, and is nearly equal physically to a new plant." But, as we have seen, he also says, "if I am correct as to the original cost, then it is not possible that the value of the plant at this date is in excess of the cost." He also says "I see no reason to doubt that the value of the plant as of the first of November, 1910, is not of much less value than I have found it to be as of date March 6, 1909." In other words, for the twenty months ending in November last there was little or no actual depreciation in its value.

The Master had not seen his way properly to include in his
3513 estimate of the cost large sums which the Company insisted should be included therein, but while he fixed the cost of the plant at the sum named, to-wit, $1,506,531.21, he fixed the present value at only $1,355,875.09, including as we have seen, the value of its toll lines. He fixed this valuation after, for some unexplained reason, deducting a flat depreciation of 10 per cent alike upon the plant and upon the toll lines, thus finding the plant to be at present worth less by $150,653.12 than his own estimate of its cost. It would seem to result from this that the Master was of opinion that the corpus of the plant, notwithstanding the expenditure of large sums for repairs and maintenance, and indeed, for reconstruction, had not been kept up during the period ending March 6, 1909, to the standard which he found to exist now, although there was strong testimony to the contrary. The finding of the Master as to the present value of the plant is the subject of many exceptions by both parties, and before we proceed to the consideration of the question upon the testimony of the witnesses (which at least appears to be the best way to get at it), we may notice those exceptions of the complainant which call in question the accuracy of his conclusions in excluding several items from his estimate. Those items were—

First, what are called "overhead charges," which are made up of various items of expenses incurred in the organization of the Company and its work, the details of which need not be stated, but which it is claimed could not be avoided, and which enter, as is insisted, into the present value of the plant. These charges amounted to $90,000.00.

Second, expenses of securing business, and particularly the value of the franchise, right of way, office furniture, etc. The value of the franchise, it is claimed, is $80,000.00.

Third, "Working capital," amounting to $33,353.15, and supplies on hand amounting to $18,000.00.

Fourth, The real estate and the improvements thereon of the value of $162,191.42.

3514 Fifth, The amount, somewhat indefinitely stated, of the excess in value of the toll lines over the $112,866.12 fixed upon them by the Special Master.

Sixth. It is insisted that $50,000.00 should have been included in the estimate as a distinct and additional enhancement of the value of the plant because of the fact that the Company is a going concern. In valuing property of the character of that involved here it would indeed be looking only at "its bare bones," not to take into consideration the fact that the Company is a going concern. That fact, however, though possibly somewhat unconsciously to themselves, must, necessarily, we think, have been taken into account by the witnesses who testified as to values. Property under ground or over head, thinly strung out over many miles, would have very diminished value were it not in actual use for the purpose for which it was installed. The matter does not appear to have been passed upon in the report, nor, while it is argued in the brief, does any exception appear to be based upon this phase of the case, but we have concluded that this element of value would hardly be susceptible of accurate measurement by and of itself, and we shall consider the fact to be that it was an inherent factor in and estimate made by each witness who testified as to values.

It seems to us that a proper amount of working capital should have been included in any estimate of the present value of the plant. In normal cases (and we may assume this to be such), it would play a very important part in enterprises like a telephone company. No association of prudent business men probably would attempt to conduct a large business, such as that involved in this case, without keeping a considerable working capital on hand devoted to that business, and which would really be embarked in it. It would seem to be quite essential to the successful operation of any great plant that some working capital should be kept on hand and available for immediate uses, and such capital would seem to be a very proper and important part of the property which, it may fairly be said, is "being used for the public." It may be difficult, however, to say in this case, as in all others, precisely what the amount of such working capital should be.

3515 Very similar considerations apply to what are called "supplies on hand." We think prudent management demands that a reasonable quantity of articles certain to be called for in the operation of the plant should be kept on hand, and, if on hand, should be included in any estimate of the present value of the property which is "being used for the public."

The "franchise" and "rights of way," in cases like this, would seem to be absolutely necessary for the Company, and, being so, they are valuable, and under some circumstances should be included in any estimate of the real value of property used for the public. But while a franchise is a possession of great value to a telephone company in

any city, it must be remembered that the franchise in this case was given freely and without price to one of the constituent companies of which complainant was made up. The gift was made before the adoption of the present Constitution of the State. As it was a free bestowment by the people, and could not figure as an item of expense in the original cost of the plant, and as no direct proof was tendered as to its present value (the only proof being that it was put into the consolidated company at, say, $100,000.00, and then afterward carried by the Company on its books as an asset), we are disposed to ignore it as one of the values upon which a fair return may be earned by rates charged to the people who gave it. If it had been paid for originally, or even if any testimony had specifically shown its present value, we might have reached a different conclusion, but under the circumstances we are not disposed to guess about it.

We suppose the franchise includes the right of way over the streets and alleys of the city, but there are other rights of way that must come from the owners of private property. Instances of this may occur where lots are crossed by the Company's lines, or where wires are strung over housetops. As to the value of these rights of way, considered separately from the other property of the Company, there was no direct testimony, and we shall treat their value as a negligible quantity, or one which has already gone into the estimate of the value of the plant.

3516 Office furniture is a small matter, but would seem to be necessary to the efficient conduct of the Company's business. Its value is shown to be $2,000.00, but it is not entirely clear that it was not included in the estimates of value made by the witnesses. Hence, it will not be figured separately.

"Overhead charges" consist of expenses, much of which were incurred long ago. Probably those expenses may have aided very materially in increasing the present value of the plant. That present value we must ascertain, but it does not follow that "overhead charges" as a separate item should be included as such. It seems to us that they are too intangible to be available for that purpose. But we think that working capital and supplies on hand (which are practically equivalents) have tangible values which should have been taken into the estimate of the value of the plant. In their exclusion from the estimate we think the Special Master proceeded upon an erroneous theory, and we have concluded that their valuation should have been fixed as follows:

The working capital at $33,000.00, and the supplies on hand at $18,000.00—a total of $51,000.00. We incline to think that the term "working capital" might embrace both items, as supplies on hand may fairly be regarded as part of the working capital in another form.

Real Estate.

It remains to be considered whether the Company's real estate should be included in estimating the present value of its property. The Master excluded it from his estimate, but does not directly give his reason for so doing. A statement in a later part of his report

seems to authorize the inference that he did it because the Company charged up to expenses and credited to income an estimated rental for the real estate, including taxes and interest. If this be his reason we think it was not maintainable. The value of the real estate should be included because it is part of the property which is being used by the Company for the public. George Wilkinson, one of the expert accountants, is not contradicted in his testimony
3517 that the Company carries on its general books an income account, to which is credited an estimated amount representing the rental value of its premises, which amount is charged to operating expenses, and which estimated rental value the Company treats on its books of account as income. Assuming this to be true, we think it furnishes no reason for including this estimated rental either in income or in expense from any standpoint appropriate to this litigation, however appropriate as matter of mere bookkeeping it might be for it to appear in the accounts of the Company. Because its real estate is part of the "property which is being used for the public," its value should be included in the estimate, but as no rent was actually paid for the real estate by the Company, there was no actual outlay, nor was there any income derived from the real estate as the Company did not pay itself for the use of its own property. The bookkeeping of the Company in this respect was based upon grounds other than actual earnings and expenses. If effect is given to this bookkeeping in this particular litigation, the result would be to exclude the Company from the benefit of the value of its real estate in estimating the reasonableness of the rates it should be permitted to charge. Nothing in fact is separately earned and collected from the real estate. Its use is to enable the other parts of the plant, such as business and residence telephones, toll line and the like upon which actual cash is collected, to earn income. In the direct sense, therefore, the real estate brings in no separate income. Nevertheless, it is a very essential part of the Company's property which is being used for the public. We think the exclusion of the value of the real estate was erroneous, and we find that its value is and was at least $162,000.00.

Separate Value of the Plant.

In considering the question of the value of the plant outside of various items already disposed of, we find it impossible, amidst the immense complications disclosed in the testimony, to go into details. Our task for the present is to ascertain whether the Company has made it clear that the Master's valuation of the property
3518 which is being used for the public is too low, and, if so, to what extent. The Supreme Court said in the case last referred to that any estimate of value must be an opinion estimate. In a case like this there is no possibility of scientific accuracy. The Master seems to have based his final estimate of the value of the plant largely upon his conclusion as to its original cost, less certain depreciations, and then he makes a flat deduction therefrom of 10% in addition. As already intimated, we have concluded that

original cost does not, of itself, furnish a reliable test of actual value in a case like this. Discarding it, as we do, devolves upon us the task of ascertaining the value of the plant upon all the testimony heard in the case. This may be a different, but it is by no means a less difficult or less laborious task. Nor is it the less necessary because the results of the two processes may not be strikingly variant. Details would extend this opinion to unbearable length, and we shall be content with saying that a very careful and protracted consideration of all the testimony has led us to the conclusion that the Master's estimate of the reasonable value of the plant is clearly too low. He says:

"Convinced, as I am, that my finding as to the cost of the plant is correct, I am, for the reasons stated, persuaded that the value of the plant as of March 6th, 1909, all features of depreciation considered, ought to be, and is	$1,381,124.41
Less depreciation of ten per cent	138,112.44
Leaves	$1,243,011.97
This does not embrace real estate nor toll lines, nor working capital, if any should be allowed.	
The value of the plant, after considering depreciation, I find to be	$1,243,011.97
Value of toll lines and equipment	125,406.80
Less depreciation of ten per cent	12,540.68
Net value	$112,866.12
"I find, therefore, that the total value of the exchange, including the toll lines, but excluding real estate, as of March 6, 1909	$1,355,878.09

3519 We have not been able, from anything said by the Master, to see what his reasons were for the reduction of ten per cent for depreciation, as shown in the above extract from his report, particularly as the large sums shown by him to have been expended for maintenance and reconstruction had, as he tells us, put the plant in excellent condition and practically equal to a new one, and had prevented any material change of its value during the twenty months the case was before him. If we eliminate the ten per cent reduction made by the Master, we find that his estimate of the value of the plant would be $1,506,665.09, which would be $133.88 in excess of the original cost of the plant, which we found to have been $1,506,531.21. We think the reduction of ten per cent, under the circumstances, was in large measure an arbitrary reduction in the sense that it was without an adequate basis, in view of the large expenditures made to keep the plant up to the standard.

As opposed to the Master's valuation of the plant at $1,355,878.09, including toll lines, but excluding real estate, the Company, as we have seen, insists that the plant is worth $1,702,391.68, exclusive both of toll lines and real estate. This contention of the latter seems to be based upon the assertion that the two accountants who

jointly examined the Company's books have agreed that the books show that the plant alone had cost that sum. It may be remarked that the accountants agreed that the books did show the latter sum to be the original cost of the plant, but they differed upon the question of whether some of the items should have been embraced therein. We have already stated our reasons for calculating that whatever the Company's books may show, after the plant has existed for so many years, the original cost is not, per se, a reliable test of its present value. Other reasons might be added, such as failure to do adequate work by costly patented articles which would be thrown away. No exceptions have been taken by the City to the action of the Master in including the toll lines in his valuation of the plant. All agree that the toll lines should have been included. While we think the Master's valuation is too low, we also think that the Company insists upon a valuation that is too high.

3520 Many witnesses testified as to the present value of the plant, exclusive of the real estate, and several of them had also testified as to its original cost. They differed very widely in their estimates. One of them out of the seven who testified fixed its value at over $1,770,000.00, another at over $1,700,000.00, two at something over $1,600,000.00, two at about $1,000,000.00, and one at $875,000.00, and if it were not altogether obvious that some of the witnesses testified after adequate opportunity to know the facts, and that some of them testified without such opportunities, we might average their estimates. But we cannot take refuge in any law of averages in this case without being sensible of the manifest injustice of placing the testimony of the two classes of witnesses upon an equal footing. So that, allowing for the bias of the witnesses, the one way and the other, arising from employment, from partisanship, and from the eagerness of strife, we have reached the very deliberate conclusion that the value of the plant itself, including toll lines, but excluding the things presently to be mentioned, is and was when this suit was brought at least..... $1,575,000.00
That the real estate is worth..... 162,000.00
That the supplies on hand are worth..... 18,000.00
And that the working capital should be placed at... 33,000.00

Making the total value of the Company's property now being used by the public..... $1,788,000.00

Net Earnings.

The Master, as directed, went into the question of net earnings for the four years immediately preceding that in which the ordinance complained of was enacted, namely, the years 1905, 1906, 1907 and 1908. We shall not attempt to ascertain the net annual earnings of the Company in this city by striking an average for the four years, but will assume that the year 1908 (in which the gross earnings were greater and the gross expenditures less than in either of the four) is that upon which the city probably had the best

right to rely as a basis for what it did. In 1908 the gross
3521 earnings, as shown by the Master, were the sum of $325,838.30, exclusive of the item presently to be noticed. In this sum is included $7,632.11, which represents 15 per cent of all the tolls collected by the Company upon all long distance messages sent from this city over the Company's long distance wires. The other 85 per cent of such collections were not taken into its accounts by the Company as part of its earnings in this city. The proof renders it entirely clear that the Company uniformly contracts with numerous other companies, in many of which it has no interest, to handle all the toll business between them, so far as it goes over its lines, for a compensation fixed upon a basis of 15 per cent of tolls on outgoing messages only, and we are free to say upon the testimony that this appears to afford a fair compensation for the service it renders, both upon outgoing and upon incoming messages, and if this is so in respect to outside companies, we know of no very good reason why the same rule may not be applied here, because very much the larger part of the Company's own toll service is over wires and through instrumentalities located entirely outside of Louisville, that city furnishing the facilities of a terminal point only. The Company's property here contributes only a small item in the mass of the property the Company actually uses in long distance service over its own lines. These are matters of importance to be remembered in connection with our duty to ascertain what is a fair income upon that part of the Company's property which is located at this point. The Master concluded, however, that the 15 per cent was not a fair division, and that the other 85 per cent which amounted in 1908 to $43,248.70 should also be included in the gross earnings of the Company here, which, of course, would require it to put into any estimate of its earnings upon the property it has in Louisville, a great sum which its local property did not in fact earn, but which was earned by other property located all over the South. The result of the Master's conclusion upon this item was to swell the gross earnings of the Company at this point from $325,838.30 to $369,087.00. We think that neither the testimony nor sound reason will justify all of this addition, but while we are extremely
doubtful of its correctness we have concluded, under the
3522 peculiar circumstances of this case, to add to the 15 per cent already included in the gross earnings the further sum of $5,088.08 to cover the cost of operating here the toll lines extending elsewhere, thus allowing for the local work 25 instead of 15 per cent. The last named sum, added to the $325,838.30, will make the gross earnings for 1908, $330,926.38 instead of $369,087.00, as found by the Master.

In respect to the so-called rentals of the Company's local real estate, we have concluded, for the reasons already indicated, that as they were included aline in the estimate of gross earnings and gross expenses, they will offset and balance one another. Strict accuracy of course, would require different treatment, but as allowing them to offset each other will accomplish practically the same

result as taking them out, we shall let them stand, as any difference in result will be quite immaterial.

The Master finds that the total operating expenses of the Company for 1908, though greatly less than those for the three preceding years, were $216,363.07. In this is included $86,155.98, the amount which he finds was actually expended by the Company for what he calls "maintenance and reconstruction." He found the average amount spent for that purpose for the four years to be $94,490.19. The Company did not, therefore, spend in 1908 the average amount by $8,334.21. Depreciation calculated on the basis of 7 per cent on the Master's valuation of the plant, viz, $1,355,878.09 would call for $94,911.46 per year, which is $8,755.48 in excess of the amount actually expended on that account in 1908. The Master finds that the net income on the Company in 1908 was $150,673.19, but when we deduct from the gross earnings as we find them, viz, $330,926.38, the full amount of $216,363.07, found by the Master to be the gross expenses, we find the apparent net income to be only $114,563.07, which would be 6-7/17 per cent upon $1,788,000, which we find to be the value of the Company's property. Can we accept the $114,563.31 as fairly representing the Company's net earnings in 1908, the year always most favorable to the City, and upon which, therefore, we have based all our calculations? We conceive the answer to this question to
3523 depend upon the valuation of the plant and upon how we treat the matter of depreciation. While we shall soon come to the latter, we may so far anticipate it as to say that if we shall find 7 per cent on the present value of the Company's destructible property (which we have fixed at $1,575,000.00) to be the proper provision for depreciation, the difference between that sum, viz, $110,250.00, and the $86,155.98, which was actually spent for depreciation in 1908, will be $24,095.02, which would reduce the net earnings to $90,468.29 equal to 5-10/17 per cent on the value of the Company's entire property here. If we estimate the 7 per cent on the original cost of the plant as it was found by the Master, viz, $1,506,531.21, we find the difference between $105,457.19, the sum thus produced and the $86,155.98 to be $19,301.20. This would reduce the net earnings to $95,262.11, which would be 5-6/17 per cent on the value of the Company's property. Of course, the amount needed to restore the values lost by depreciation necessarily varies from year to year because some parts of the plant have shorter life than others, but we have reached a point where we must ascertain what proportion of the earnings should, for the future, be allowed for restoring values to be lost by the termination of the life of the plant.

Depreciation.

In other words, it has now become essential that we shall consider the question of depreciation. In Knoxville vs. Water Co., 212 U. S., 13-14, the Court said:

"Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current repairs but for making good the depreciation and replacing

the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning. It is not only the right of the company to make such a provision, but it is the duty to its bond and stockholders, and, in the case of a public service corporation at least, its plain duty to the public. If a different course were pursued the only method of providing for replacement of property which has ceased to be useful would be the investment of new capital and the issue of new bonds or
3524 stock. This course would lead to a constantly increasing variance between present value and bond and stock capitalization—a tendency which would inevitably lead to disaster either to the stockholders or to the public, or both. If, however, a company fails to keep the investment unimpaired, whether this is the result of unwarranted dividends upon over-issues of securities, or of omission to exact proper prices for the output, the fault is its own."

A very intelligent witness—George Wilkinson—in his deposition said, "Depreciation may be defined as the loss in value of some destructible property over and above current repairs." We accept this as a sufficiently accurate definition of that form of depreciation which now concerns us. What sum should, year by year, be set apart to re-supply values lost in the current depreciation of what may be called the Company's working plant is not always a matter of easy solution. The testimony upon the subject in this instance is somewhat conflicting, and the opinions of the witnesses do not altogether agree. The Master expressed his own conclusions as follows:

"In view of the foregoing, I find that the fair and reasonable amount or proportion of annual income of complainant that should be set aside as a substantial provision and allowance for depreciation of complainant's plant and property employed in its business in Louisville, and including everything except cash working capital and supplies, would be an amount equal to seven per cent of the value of the plant, as above limited, and that the amount expended annually for maintenance and reconstruction of the plant should be deducted from the seven per cent fund."

It is obvious that the last clause of what he says makes it difficult to understand his findings, and especially difficult to reduce it to a percentage which will apply to the future. These difficulties, however, are somewhat moderated when we find that the Master himself appears to have figured depreciation upon the basis of about 7 per cent of his valuation of the property, and we shall go upon the idea that he meant to find that 7 per cent was proper. If any of the exceptions reach this finding, the question to be considered is, what proportion of the Company's annual earnings shall, in the language of the Supreme Court, which we have just quoted, be set aside "for making good the depreciation and replacing the parts of the property when they come to the end of their life." This provision is altogether apart from and beyond current repairs. (212 U. S., 12).

It is apparent from the record that persons in the telephone
3525 business use the words "reconstruction" and "depreciation" almost if not quite interchangeably, so far as money spent or to be spent is concerned. In their art the two things are substantially the same from that standpoint. This being so, we avail ourself of the labor of Professor D. C. Jackson, whose very intelligent report to the Massachusetts Highway Commission was read as testimony. He says:

"The appraisal affords information on which your honorable body can decide how much money the company should be allowed as return on its investment, and how much it should be reasonably expected to expend on the average per year for reconstruction for the purpose of maintaining the plant against the ravages of age or the obsolescence incident to inventions and other causes for improvements and changes in the art. Whether the return on investment is ultimately to be figured on the outstanding stocks and bonds of the company, or on the value of the plant, the sum that must be allowed for reconstruction is unquestionably determined by the actual existing values of the different kinds of property composing the plant, which values are shown by the appraisal.

"This reconstruction is called for on account of several factors. The rotting of poles so that they must be replaced, the deterioration of conduits, cables and wires so that they must be replaced, and the other effects of the elements and of use on every part of the plant ultimately bring nearly all parts of the telephone plant to a point where their further use is impracticable without rebuilding, however well cared for and carefully kept up by current repairs they may be. The part of the plant affected must then be bodily replaced. The advances occurring through improvements in the art also make an important factor in the telephone business which demands the remodeling or the bodily replacing of parts of the plant from time to time before their natural life is run. A third factor is introduced by the action of municipal and other boards who may order improvements of streets and roads, as by ordering good pole lines removed to alleys or wires placed underground. None of these factors can be cared for out of a uniform appropriation such as may cover ordinary repairs; and the cost of making good after special attacks of the elements, such as damage of pole lines from sleet storms, the effects of forest fires, etc. is still more capricious in its occurrence. Nevertheless, these expenditures must be made out of current receipts year by year or the capital of the company is bound to become impaired. For this purpose, the average rate of reconstruction likely to be required over an extended period of years must be figured on the basis of experience, and a corresponding sum of money should be set aside each year to be expended in reconstruction or operating plant as the conditions require it. Less than this amount may be used in some years and more in other years, but the amount to be taken from the gross receipts each year for this purpose should be fixed upon an average determined by the extent and value of each kind of plant in the complete system. As a result of our study of the complete plant, we have applied percentages

to each kind of construction involved, giving consideration to first cost, rate of depreciation, probable effects of rate of changes in the art and the acts of municipal bodies, special misfortunes
3526 caused by the elements, and also giving consideration to any salvage that might be recovered from discarded plant. The consideration of these various factors is based on experience in telephony and electric lighting of the past and as much judgment of the future as may be brought to bear. In this way we arrive at a figure for the average yearly reconstruction account for the property used in Massachusetts business, which is equal to 7.3 per cent of the value of such property, exclusive of land, general supplies, and working capital (net current assets and cash on hand)."

As the conclusion of the Master is not clearly stated in simple form, but is somewhat complicated by the qualification of his finding introduced in its last clause, we have concluded to reconcile any differences of opinion developed by the testimony by finding, as we now do, that a reasonable amount to be set apart in this climate for making good depreciations is 7 per cent of the value of the Company's plant, exclusive of real estate, working capital and supplies on hand. We think the testimony clearly leads to the conclusion that the average life of the combined elements which make up the plant is about fourteen years, and we shall act upon that theory. The real estate and the working capital of the Company are not subject to such depreciation as that now in question. In estimating depreciation we shall, therefore, reckon it at 7 per cent on $1,575,000.00, which we have found to be the value of the destructible parts of the plant. In reaching this conclusion we have borne in mind that the past is fixed. We cannot change it. But taking the Company's plant as it now is, and as it probably will become in the future, and remembering that the value of its real estate and working capital will almost certainly not depreciate at all, the problem has been to ascertain what percentum of the earnings of the Company will be required to keep what is called its plant always in as good condition as it is now, or as it may become. Of course, our estimate could not be based upon the proposition that the percentum set apart to cover depreciation would be deposited in bank or loaned out from year to year so as to accumulate and be on hand at the end of fourteen years, and to be then used to construct an entirely new plant, and so on from period to period. In such a case the public would not only have a service that would progressively grow worse until its operations ceased altogether, but it would thereafter get no service at all until a new plant replacing the old could
3527 be completed and put into operation. The question rather has been, What does experience show to be the proper average per cent of annual earnings which the Company should expend in order to insure that its plant at the end of fourteen years will be as good as it now is, and in the meantime render to the public that good service which its duty to the public requires? The Master, after finding that the cost of the plant was $1,506,531.21 finds that its present value is only $1,355,868.09. If this is correct, it necessarily indicates that in the past enough money has not, from

time to time, been expended upon reconstruction and reinstatement to make good the depreciation and keep the ever-failing parts of the plant up to the standard by re-supplying all values that have been destroyed. And if this is true, the Company's inadequate expenditures in the past do not, per se, furnish a safe guide for the ascertainment of what should, in the future, be set aside for depreciations. But we think the 10 per cent reduction is not sustainable, and that it is not consistent with other findings of the Master, and that if it could have been justified at all, it must have been either upon the ground that 7 per cent had not been expended for keeping the plant in good condition or upon the ground that 7 per cent was not sufficient, even if spent, to supply the depreciation. Indeed, if the 10 per cent reduction were proper it might well be that 8 per cent should annually be set aside for depreciation. In our view, however, 7 per cent of the value of the plant is the proper per cent to allow for depreciation.

It may not be out of place in this connection to observe that in private business where the owner may fix his own prices for the use of his property, his own interest may compel him to keep the property he hires to others up to a standard that will induce them to use it, but no one can directly compel him to do so. It is different with public utilities corporations. The owners in such cases have not the absolute and uncontrolled right to fix their own prices for the use by the public of the utilities they furnish. Instead, prices may, within certain limits, be regulated by public authority, but when that authority attempts to regulate the rates to be charged for the use of the property of another it must take into consid-
3528 eration and allow what would be a fair amount of the earnings of the property to be devoted to keeping it always up to the proper standard. What interest may force the private owner to do in respect to his own property the law compels public authority to do when the latter undertakes to fix rates to be charged by public utilities corporations.

What is a Fair Return?

Where persons have put their money into property which is used for the public, they are entitled, year by year, to earn upon the property so employed a fair return. This is not only an established judicial doctrine, but it is inherently just and right. The case of Willcox vs. Consolidated Gas Co., 212 U. S., to which, as well as to the Knoxville case, we have so frequently resorted for guidance, sheds a clear light in this connection as well as in others. On pages 49-50 of the report the Supreme Court said:

"In an investment in a gas company, such as complainant's, the risk is reduced almost to a minimum. It is a corporation, which in fact, as the court below remarks, monopolizes the gas service of the largest city in America, and is secure against competition under the circumstances in which it is placed, because it is a proposition almost unthinkable that the city of New York would, for purposes of making competition, permit the streets of the city to be again torn up in order to allow the mains of another company to be laid

all through them to supply gas which the present company can adequately supply. And, so far as it is given us to look into the future, it seems as certain as anything of such a nature can be, that the demand for gas will increase, and, at the reduced price, increase to a considerable extent. An interest in such a business is as near a safe and secure investment as can be imagined with regard to any private manufacturing business, although it is recognized at the same time that there is a possible element of risk, even in such a business. The court below regarded it as the most favorably situated gas business in America, and added that all gas business is inherently subject to many vicissitudes of manufacturing. Under the circumstances, the court held that a rate which would permit a return of six per cent would be enough to avoid the charge of confiscation, and for the reason that such an amount was the return ordinarily sought and obtained on investments of that degree of safety in the city of New York.

"Taking all facts into consideration, we concur with the court below on this question, and think complainant is entitled to six per cent on the fair value of its property devoted to the public use."

3529 There the Consolidated Gas Company, under all the favorable conditions pointed out by the Court, was held to be "entitled to 6 per cent on the fair value of its property devoted to the public use." That company monopolized the gas service of the largest city in America, and it appeared to the Court to be unthinkable that the city, in order to make competition, would subject its population to the annoyances that would inevitably be involved in the effort. The income from investment in Consolidated Gas stock was regarded as permanent and certain, and the risk practically none. In such a case the owners of the property were held entitled to earn 6 per cent on its fair value, and, consequently, it had the right to charge such rates as would enable them to do so. The case before us is vastly different. Here, there is competition of a very dangerous character to the Company. A rival company, thinking it could make money in doing so, got a franchise from the city upon condition that its rates for a long period should be as follows, namely: Four dollars per month for telephones in business houses, two dollars per month for telephones in residences where the residence was one mile or less from the exchange; two and one-half dollars per month where the residence was over one and under two miles distant. Over two million dollars appear to have been expended on the plant of the latter company, and it has secured in this community a larger number of telephone patrons than has the complainant. Nevertheless, it is notorious that dividends to its stockholders have been very meager for several years. Obviously this is a competition so disadvantageous as greatly to increase the risk of the owners of complainant's property in this city. For some cause or causes, however, and notwithstanding the much lower rates charged by the other company, about ten thousand telephones are operated by the complainant. The precise reason for this result we can only conjecture, though presumably its patrons find com-

pensatory advantages. But all things considered, it is by no means extravagant to say that dissatisfaction with the higher rates of the complainant must be excited by the greatly lower rates charged by a rival company operating along the same streets, and dissatisfied people, looking only to what Byron calls that greatest of
3530 all human ills, the inflammation of their weekly bills, are not likely to consider whether or not the higher rates are in fact reasonable or such as are necessary to enable the complainant to earn a fair return upon its property used for the public. The contrast between the two rates, no doubt, is disagreeable, and this source of irritation might be aggravated by what we may call the bad manners of a utilities company in its dealings with the public.

There are not wanting signs of such manners in this instance. The grossly profane outbreak of the President of the complainant while giving his deposition was as inexcusable as it was suggestive. But as any harm coming to the Company from this kind of conduct must be borne by it alone, we only allude to it in order to express our condemnation of it. The lower rates of the rival company, though voluntarily consented to by it in advance in order to get a franchise, are productive of very little return to those whose money afforded the cheaper telephone facilities. While the difference in rates of the two companies must constantly be a source of irritation to many of those who pay the higher rates, this must not obscure our sense of the legal rights of the complainant. It cannot be doubted that growing out of this situation comes one of the most serious risks of the complainant, namely, the danger of losing patrons. Its success as a business enterprise necessarily depends upon having public patronage from which to derive its revenue. Those of its patrons who become dissatisfied with its rates may, and many of them have quit the Company and have gone over to its rival, whose rates, while attractive to its patrons, are not very remunerative to itself. Nevertheless, the complainant is entitled to be allowed, if it so chooses, to charge those who use its property for their own purposes such reasonable rates as will enable it to earn thereon a fair income whether or not a rival company can do so upon its property. In other words, the charging by a rival company of rates which it had agreed to as a condition precedent to being granted a franchise, while it adds to the risks of complainant's business, cannot affect the right of the latter to be allowed to charge rates which are not confiscatory, but which may yield a fair income upon the value of its property if that property is in
3531 fact used by the public.

The local situation here produces another risk, the serious nature of which may be indicated by this suit. That situation has already resulted in the municipal legislation now in contest, which, though easily and somewhat casually enacted without serious investigation, may cost the Company at least 7 per cent. and probably more, of one year's gross earnings in contesting its validity—an expense which may fairly be held to be necessary and proper for the Company to incur in self defense. The conditions thus brought about inevitably greatly increase the risk of those who invest money

in the telephone business in this city. Other circumstances might be noted, but what has been said will suffice for contrasting conditions here with those in New York in the case of the Consolidated Gas Company.

After much consideration of the subject, and of the testimony heard thereon, we have reached the conclusion that the complainant Company is entitled to be allowed to earn, if it can, as much as seven per cent annually on the fair value of its property devoted to the public use in this city before its rates can fairly be reduced by legislative regulation. This per cent is not to be calculated upon the Company's stock, watered or unwatered, nor upon its bonded indebtedness but upon the fair value of its property, inclusive of its real estate, its supplies on hand and its working capital. We are entirely satisfied that no prudent business man would willingly incur all the risks of the business and be content with being forced to earn less than that per centum of profit. And while many of us may not feel entirely willing to contribute to the earning of that much income, we should be much more unwilling to supply the capital for such an enterprise unless it might be allowed to earn, if it could, that much for us.

We are quite sure that a telephone company in respect to this phase of the case, and under circumstances such as exist in Louisville cannot fairly be compared to our banking institutions when it comes to the consideration of the risk of the money invested. Indeed, no other business known to the Court affords a very convincing basis of comparison, though that of the rival telephone company here might have done so if its rates (self-assumed
3532 though they were) had not notoriously proved inadequate.

Nor have we at all lost sight of the fact that the property of the complainant in Louisville is only a small proportion of the property it owns and operates throughout the country. Any dividends the complainant earns upon its stock is upon its operations as a whole, regardless of results in any particular locality. If it loses at one place it hopes to make up the deficiency elsewhere, but we conceive the law to be that it is entitled to earn, if it can upon fair and reasonable rates, a fair income upon its property situated in any given locality over which the power of the particular legislative body extends. Otherwise its property here might be subjected to confiscatory rates by our legislative bodies because its property elsewhere was earning better income. The force of this suggestion becomes apparent when we remember that if the rates charged by the Company are too high in other localities, they may, and probably will, be regulated and lowered by legislative authority there; that there is no practicable way for co-operation as to rates between legislative bodies in different States, and that very much the larger proportion of the earnings of the Company are intra-State and can only be regulated by those authorities which have jurisdiction in the locality where the earnings are realized.

Rates.

The principles upon which we must proceed in respect to rates have been authoritatively established by the Supreme Court. Those principles are based upon that constitutional provision which forbids the taking of private property for public uses without just compensation. The interest of every individual citizen demands the rigid enforcement of this provision, whether the legislation which denies it to be national, state or municipal, and its enforcement must not be denied because of prejudice, nor at the behest of public clamor. In applying to this case the principles to which we have referred, it should be borne in mind that in this instance we are not inquiring whether existing rates are too high. While we discuss existing rates for obvious reasons, our real task is to
3533 ascertain whether the rates fixed by the ordinance complained of are so unreasonably low as to prevent the earning by the Company of a fair return upon the value of its property which is being used by the public. It goes without saying that the interest of the owners of the property leads to a desire for high rates and that of the consumer leads toward low rates. This sort of conflict is as old as time. In all such contests the court must ascertain what rates may yield a fair return regardless of the mere interest of either party to the controversy, and, after a careful study alike of the testimony and the applicable law, must find what is the logical and proper result. In this way we have ascertained the present reasonable value of the complainant's property here: the annual gross earnings and expenses of the Company from the operation of that property in 1908, apparently its best recent year, the fair proportion of its earnings to be set aside in the future to cover and re-supply the depreciation of the destructible parts of its plant, and the fair percentage upon the value of the Company's property in this city which it should be permitted to earn as annual profits thereon by charging rates which are reasonable. All these things we have done, and have clearly ascertained that while an annual profit of 7 per cent on the value of the Company's property would be a fair return thereon, we have also ascertained that it does not, under present rates, and after the allowance of 7 per cent for depreciation on the portions of its property subject thereto, earn over 5 10/17 per cent upon the value of that property. We also find that the rates fixed by the ordinance, if put in force, would result in an actual present loss of $49,721.76 in net annual earnings if the present status be maintained, but that assuming that the lower rates would bring an increase in the number of patrons and other advantages, and accepting the conclusion of the Master that the net loss from the enforcement of the ordinance rates would be only $30,000 per annum up to 1912, we find, judging by the year 1908, and allowing 7 per cent for depreciation, that the net profits of the Company on the value of its property under the ordinance rates would be $60,468.00, or only 3 6/17 per cent annually for the present. If the Master should be mistaken in his forecasts
3534 as to earnings for 1909, 1910 and 1911, and if the $49,721.76 should continue to be lost in earnings for each of

those years under the ordinance rates, then the Company's property would only earn net $43,747.60, which would be 2 7/17 per cent annually on its value. And these figures may be lowered to some extent by the new federal taxation and the costs and expenses of this action. Of course, we are left to conjecture and guess work as to what would in fact occur under the ordinance rates, and the Court at the final hearing, submitted in writing to the counsel for the respective parties a suggestion in this language:

"Does the record furnish the Court with the means of estimating the earnings and expenses of the Company for the years 1909 and 1910, and, if not, would it not be well for a disinterested expert bookkeeper, not in the spirit of controversy, but with the view to ascertaining the figures, to make an examination of the books of the Company in that connection and report the facts to the Court?"

To this the complainant's counsel in open court agreed, but the defendant's counsel declined to do so for the reason then stated by him that it would further delay the final decision of the case. In this situation it may aid us to remember that the average number of the Company's telephones which were in use in this city during the four years immediately preceding the institution of this suit were as follows:

9001 in 1905; 9675 in 1906; 10,610 in 1907, and 10,212 in 1908. We have no data for the period during which this suit has been pending. If we take these figures as our guide, we are not able to say that there is, under present conditions, any great probability of a notable change. To one acquainted with local conditions the decline in 1908 is as likely to indicate the course of events as was the increase in 1907, when the war on complainant was possibly less acute. We, therefore, cannot find in the figures just given anything like practical or reliable aid. As to the future, everything is largely a matter of conjecture, but upon the testimony we are not well assured that conditions for the complainant will materially improve within the next few years. Its rival has, as we have seen, outstripped it in patronage. The causes leading to this will not only continue,
3535 but possibly may be intensified. If they materially improve in the future, a carefully prepared ordinance can then adjust rates to the new conditions.

Confiscatory Rates.

Of course, if rates are fixed which will yield no income or profit to the owner, the public will get the entire benefit of his property and he will get none. Where rates are established which will yield the owner some income, but below what is just and reasonable, the confiscation may be less pronounced, but, nevertheless, it will result to the full extent of the difference between the profits actually earned and those which would be just and reasonable. The first is unqualified confiscation. The latter is qualified and partial confiscation. Any legislation which certainly brings either result is confiscatory in character and, consequently, void as violating the Constitution of the United States. If, as we have found, 7 per cent would be a just and reasonable income and profit for the complainant to earn upon

its property the ordinance complained of which would not permit the Company to earn more than a possible 60/125 of seven per cent is necessarily confiscatory in its nature and results, because it takes the difference of 65/125 of seven per cent from the owner and gives it to the public without compensation. In other words, when the Company, at its own rates and after setting aside a sufficient sum annually, in the language of the Supreme Court, for "making good the depreciation and replacing the parts of the property when they come to the end of their life," does not earn seven per cent but only 5-10/17 per cent on the fair value of its property used by the people, then, if, notwithstanding that state of fact, the rates are lowered 30 per cent by legislative action, such reduction under such circumstances is necessarily confiscatory to its full extent. And equally the confiscatory nature of the legislation will appear if we base our calculations on the net income under present rates in 1908. This we have ascertained to have been $114,563.07. In that year only the sum of $86,155.98 was actually expended to replace depreciations instead of the seven per cent on the value of the plant which we have concluded should be allowed for that purpose in the future.

3536 If from the $114,563.07 we deduct $30,000.00 (the estimated loss of income under the ordinance rates), we find that the net income would be only $84,563.07, an amount equal to only about 84/125 of the 7 per cent profit which the Company would be entitled to earn annually—that is to say, the Company, under the ordinance rates, would probably earn only $84,563.07 instead of the $125,120.00 it would be entitled to earn if it could. As the figures we have given show either the 65/125 or the 84/125 of seven per cent would represent a confiscation of the earnings of the Company under present conditions to the extent of not less than $30,000.00 per year even if the anticipations of the Master be realized. That is to say, assuming our conclusions to be correct, 1st, as to the proportion of toll line earnings to be taken into the estimate of earnings here; 2nd, as to the value of the destructible parts of the Company's plant; 3rd, as to including real estate, working capital and supplies on hand in the valuation of the Company's property used for the public; 4th, as to the flat reduction of ten per cent for depreciation made by the Master in his estimate of the value of the property; 5th, as to the proper sum to be allowed in the future for depreciation; and, 6th, as to the net earnings for the illustrative year 1908, and finding that 7 per cent upon our valuation of the property at $1,788,000.00 is $125,120.00, we have the basis of our computations. They do not show "a very narrow line of division between possible confiscation and proper regulation," again to use the language of the Supreme Court. On the contrary, it would be a very wide line of division. And it may be noted that if only six per cent were allowed for depreciation the ultimate result would not be different, as the ordinance rates would still be confiscatory.

What is the Remedy for the Present Situation?

We have now reached the point where we must consider whether we shall give an actual trial to the ordinance rates by putting them

in force for a time, or whether we shall decree the relief prayed in the bill and make perpetual the temporary injunction. We are not without guidance in this situation. In Willcox v. Consolidated
3537 Gas Co., 212 U. S., at page 42, the Court, after remarking that the value of a plant was, to a considerable extent, matter of opinion, used this language:

"Of course, there may be cases where the rate is so low, upon any reasonable basis of valuation, that there can be no just doubt as to its confiscatory nature, and in that event, there should be no hesitation in so deciding and in enjoining its enforcement without waiting for the damage which must inevitably accompany the operation of the business under the objectionable rate. But where the rate complained of shows in any event a very narrow line of division between possible confiscation and proper regulation, as based upon the value of the property found by the court below, and the division depends upon opinions as to value, which differ considerably among witnesses, and also upon the results in the future of operating under the rate objected to, so that the material fact of value is left in much doubt, a court of equity ought not to interfere by injunction before a fair trial has been made of continuing the business under that rate, and thus eliminating, as far as possible, the doubt arising from opinions as opposed to facts."

If we are correct in the conclusion that 7 per cent annually on the value of the property used for the public indicates a fair income thereon for the complainant, and if we are correct in what we regard as the very conservative valuation we have placed on that property and in the amounts to be allowed for depreciation and upon the toll line earnings, unquestionably we should now enjoin enforcement of the ordinance without inflicting the inevitable loss upon the complainant that would come from a trial of the rates the ordinance fixes—a loss impossible to be recouped. We have ascertained that the Company's rates do not themselves produce, and most probably will not in the near future, yield the 7 per cent. If that be so, it follows inevitably that the ordinance rates, which are about 30 per cent lower than the present rates, cannot possibly do so. Nor do we think it possible under existing circumstances, nor under circumstances which will probably arise in the future, that the line of division between possible confiscation and proper regulation will be a narrow one within the meaning of the Supreme Court. The most careful consideration of the testimony has led us to the clear conviction that the facts are as we have found them, and it follows that it is proper now to grant the injunction prayed for, and this view may be emphasized by the consideration already suggested, that whenever there is an essential improvement or change in the situation
3538 which makes it admissible, a new ordinance adjusted to the new conditions can then be enacted by the City.

Exceptions to the Report.

The complainant filed a great number and variety of exceptions to the Master's report. To give expression to them required 141

printed pages. What we have said requires that the exceptions should be sustained only to the extent that the views of the Court, as herein expressed, differ from the conclusions of the Master. All of complainant's other exceptions are overruled, except those relating to the Master's findings as to the cost of the plant. They have been ignored for reasons already stated.

The defendant filed seven exceptions to the report. The first raised objections to the reading of certain depositions; the next four relate to certain minor items of expense included by the Master in his estimate, and the others relate to the Master's findings as to the effect of the ordinance rates. The Court is of opinion that all of the seven exceptions should be overruled.

A decree may be submitted granting the injunction prayed for in the bill. The complainant is also entitled to recover its cost.

WALTER EVANS, *Judge.*

April 25th, 1911.

3539 And on another day of said term of said court, continued and held, to-wit, on July 12th, 1911, the following proceedings were had:

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, KENTUCKY, Defendant.

This day came the defendant by Clayton B. Blakey and Huston Quin, its counsel, and presented to the Court its petition for appeal and assignment of errors, and on consideration whereof it is now ordered that said petition and assignment of errors be filed; and an appeal be, and is hereby, allowed to have reviewed in the Supreme Court of the United States the judgment and proceedings heretofore entered and had herein, upon the defendant giving bond according to law in the sum of $12,000.00 which shall operate as a supersedeas bond.

The Petition for appeal and assignment of errors above referred to are as follows:

3540 In the United States Circuit Court for the Western District of Kentucky, at Louisville.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, KENTUCKY, Defendant.

Petition for Appeal.

To the Honorable the United States Circuit Court for the Western District of Kentucky:

The above named defendant, City of Louisville, feeling itself aggrieved by the decree made and entered in this cause on the 25th day of April, A. D. 1911, and that there is error to the prejudice of

said defendant in the said decree by which it will be irreparably injured, does hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the Assignment of Errors, which is filed herewith; and it prays that its appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States at Washington, D. C.

And your petitioner further prays that the proper order touching the security to be required of it to perfect its appeal be made.

CLAYTON B. BLAKEY,
HUSTON QUIN,
Solicitors for Defendant.

3541 In the United States Circuit Court for the Western District of Kentucky, at Louisville.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant.

Assignment of Errors.

And now, on this the 12th day of July, 1911, comes the defendant by its solicitors, Clayton B. Blakey and Huston Quin, and says that the decree rendered in the above cause on the 25th day of April, A. D. 1911, is erroneous and unjust to the defendant, and assigns error thereto as follows:

1. The Court erred in holding and finding that "the ordinance adopted by the City of Louisville on February 27, 1909, through its legislative department and approved by the Mayor on March 6, 1909, being an ordinance entitled 'An ordinance fixing the maximum rates to be charged for telephone service in the city of Louisville,' is as to the complainant confiscatory, null and void, and violates the Fourteenth Amendment to the Constitution of the United States in that it would if enforced deprive the complainant of its property without due process of law."

2. The Court erred in failing and refusing to hold that the rates fixed by the ordinance of February 27, 1909, were fair and reasonable; and in refusing to hold that said ordinance was valid as to complainant and not confiscatory, null or void.

3. The Court erred in decreeing and granting unto the complainant an injunction perpetually enjoining the City of Louisville, its officers, agents and employees and all other persons from undertaking to enforce in any wise the provisions of the ordinance referred to in said decree.

3542 4. The Court erred in decreeing and adjudging unto the complainant a recovery against this defendant of the costs of this cause including compensation allowed by the Court to the Special Master.

5. The Court erred in finding that the defendant enacted the ordinance referred to in the decree without making any adequate inquiry into the real facts upon which such action could intelligently be based.

6. The Court erred in overruling the motion of the defendant for an order permitting it to examine the books and records of the complainant company touching the value of the plant and the earnings and expenses of the company in the City of Louisville for the years 1905, 1906, 1907 and 1908.

7. The Court erred in failing and refusing to hold that the complainant was not entitled to the decree sought for the reason that complainant had failed and refused to make a frank, free and full disclosure of its books, records and accounts, and deprived the defendant and defendant's accountants of access to its books and records whereby the defendant might ascertain what amount had been expended by the complainant in constructing and operating its said plant in Louisville, Kentucky.

8. The Court erred in that it failed and refused to dismiss the Bill of Complaint because the complainant refused to make a full, free and frank disclosure of its books and records and refused through its officers, who testified in the case, to answer questions and disclose facts and records concerning the cost of said plant and the expenses of operating said plant over the period investigated by the Master.

9. The Court erred in failing and refusing to dismiss complainant's bill because the complainant was and is greatly discriminating among its patrons in the City of Louisville.

3543 Cost of Plant.

10. The Court erred in failing and refusing to find that the complainant so concealed the facts and so manipulated its books that it was impossible to tell from its said books and records what its plant in the City of Louisville had cost.

11. The Court erred in finding that the complainant's plant had cost in excess of $1,745,235.00; the complainant itself only charging in its bill and producing evidence to show that its plant had cost $1,700,000.00; and the Master having found that the complainant's plant cost $1,381,124.41.

12. The Court erred in sustaining exceptions to the Master's report wherein the Master found that complainant's plant in the City of Louisville had cost it $1,381,124.41.

Value of Plant.

13. The Court erred in failing and refusing to ascertain "the present value of the company's property" by following "the plain method of ascertaining the cost of reproduction diminished by depreciation." (212 U. S., 14).

14. The Court erred in finding that "the Master seems to have based his final estimate of the value of the plant largely upon his conclusion as to its original cost, less certain depreciation, and then he makes a flat deduction therefrom of ten per cent in addition."

The fact being that the Master found from the evidence that it would cost so much money to reproduce the plant new throughout and then found that the plant was 10% less valuable than if new throughout.

15. The Court erred in finding that the valuation placed by the Master on the plant was too low.

16. The Court erred in finding that the 10% deduction in the value of the plant as found by the Master "was in a large measure an arbitrary deduction in the sense that it was without an adequate basis in view of the large expenditures made to keep the plant
3544 up to the standard." The fact being that said 10% deduction was based on the evidence and sustained by all the facts in the case.

17. The Court erred in finding that the complainant was entitled to earn a dividend on $1,788,000.00, which the Court found to be the value of complainant's plant; complainant having charged in its Bill of Complaint that it was only entitled to earn a dividend on $1,700,000.00 representing the value of its plant; and the Master having found that complainant was under the evidence entitled to earn a dividend on only $1,243,011.97 representing the value of the plant, less depreciation.

18. The Court erred in finding that the value of the plant "including toll lines and excluding the things presently mentioned is and was when this suit was brought at least $1,575,000.00
That the real estate is worth..... 162,000.00
That the supplies on hand are worth..... 18,000.00
And that the working capital should be placed at.... 33,000.00
Making a total value of the company's property now being used by the public..... $1,788,000.00"

19. The Court erred in sustaining exceptions to the Master's report wherein the Master found the value of the plant, exclusive of toll lines and real estate, to be as of March 6, 1909, $1,243,011.97.

20. The Court erred in including in the value of the plant the value of the real estate, it appearing from the record that the complainant does not treat its real estate as a part of its plant, but charges a rental of $13,800.00 against the Louisville exchange as operating expenses, which amount is more than 8% on the value of the real estate.

21. The Court erred in finding the value of the real estate of the complainant to be $162,000.00.

22. The Court erred in including as part of the value of complainant's plant supplies on hand amounting to $18,000.00,
3545 and working capital amounting to $33,000.00; it appearing from the record that the supplies on hand are kept in complainant's supply department, the expenses of maintaining which are charged against the Louisville exchange and 10% on the cost price of all supplies charged against the Louisville exchage whenever any supplies are furnished from said supply department to the Louisville exchange; and as to the working capital it appearing from the record that the rentals are paid in advance and that no working capital is required.

23. The Court erred in sustaining exceptions to the Master's report wherein the Master excluded from the value of the plant supplies on hand and working capital.

24. The Court erred in finding that no amount was included by the Master in the valuation of the plant as found by him representing the value of the franchise, whereas the amount found by the Master as the value of said plant, namely, $1,243,011.97, included the amount paid by the complainant for said franchise.

25. The Court erred in finding that the value of the toll lines should be included as part of the value of the Louisville exchange, and in finding that "all agree that the toll lines should have been included" in the value of the exchange; and in refusing to eliminate the value of the toll lines from the value of the exchange.

26. The Court erred in fixing any value on the toll lines, there being no evidence whatever to show the value of said toll lines and there being no evidence whatever to show what it would cost to reproduce the said toll lines.

27. The Court erred in including in its valuation of the plant the value of certan dead cable, that is, cable not being used and which was in no wise a part of the exchange plant.

28. The Court erred in including in the valuation of the plant items representing cost of supervising the building of the plant, it appearing that all such cost had been paid out of the earnings of the plant.

3546 Expenses.

29. The Court erred in including as part of the complainant's expenses for 1908, the sum of $13,800.00, or any amount, as rental on the real estate owned by the complainant, which amount was more than 8% on the book value of said real estate; the Court having found that the complainant was entitled to earn a dividend of 7% on the book value of said real estate, the result of which was to allow the complainant to earn more than 15% on the value of its real estate in Louisville, Kentucky.

30. The Court erred in including as part of the expenses of conducting complainant's exchange for 1908 the sum of $31,910.00, which amount was expended by the complainant in conducting its long-distance business in the City of Louisville; the evidence showing that 15% of the total receipts of the complainant at Louisville was derived from the long-distance business and that at least 15% of the expenses of the complainant at Louisville were properly chargeable against the long-distance department of its business; the records showing that salaries were paid to long-distance operators alone exceeding $11,000.00 per year and that this $11,000.00 expenditure did not include any of the general expenses of the company, any expense of maintenence, rent, light, heat, taxes or insurance.

31. The Court erred in including in said expenses the sum of $13,722.52 for an item denominated instrument expense, whereas said instrument expense did not and should not have exceeded $4,000.00; and the Court erred in overruling the exceptions of the

defendant to the Master's report wherein this item of expense was specifically excepted to.

32. The Court erred in allowing as part of the expenses of the Louisville exchange for the year 1908 the sum of $2,111.24 being the amount of taxes and insurance on real estate charged as part of the expenses of the Louisville exchange, it appearing that the Court allowed the complainant to charge up as part of the expenses
3547 of the Louisville exchange a net rental on said real estate in excess of 8% on its value; and the Court erred in overruling the defendant's exceptions to the Master's report wherein the above items of expense were specifically excepted to.

33. The Court erred in allowing as part of the expense of the Louisville exchange the sum of $9,900.00 representing what the earnings of complainant would have been had the complainant charged all its subscribers who had free telephone service the amount which such subscribers would have been required to pay had the regular rates been charged against such subscribers; and the Court erred in failing and refusing to sustain the defendant's exceptions to the Master's report wherein the above item of expense was specifically excepted to.

34. The Court erred in allowing for depreciation and as a part of the expenses of complainant 7% on $1,575,000.00, a sum said to represent the value of a portion of complainant's plant, or a total for depreciation of $110,250.00.

35. The Court erred in failing and refusing to find that $92,606.83 was the amount which complainant should have been allowed to set aside for the year 1908 to provide for maintenance, repairs and depreciation; and the Court erred in sustaining exceptions to the Master's report wherein the Master found such to be the fact.

36. The Court erred in failing and refusing to find that 7% on the value of complainant's plant was a sufficient sum to be allowed in the future each year as a part of the expenses of the plant to take care of maintenance, repairs and depreciation; and the Court erred in sustaining exceptions to the Master's report wherein the Master found such to be the fact.

37. The Court erred in failing and refusing to find that the experience of the complainant in operating a telephone plant in the City of Louisville for a period of nine years, and the experience of the complainant's predecessor for a period of ten years prior thereto justified the Court in finding that 7% on the value of com-
3548 plainant's plant was all that had been required to take care of maintenance and repairs and provide a fund for depreciation; and the Court erred in sustaining exceptions to the Master's report wherein the Master found such to be the fact.

Earnings.

38. The Court erred in finding the gross earnings for the year 1908 to be $330,926.38 instead of $369,087.00, as found by the Master.

39. The Court erred in excluding from the earnings of the complainant all the receipts of the Louisville exchange on outgoing mes-

sages over its long-distance lines, and in sustaining exceptions to the Master's report wherein the Master allowed such receipts as part of the earnings of the Louisville exchange.

40. The Court erred in only allowing $12,632.11 to the Louisville exchange as its portion of the earnings from long-distance business of the complainant for the year 1908 and in sustaining exceptions to the Master's report wherein the Master allowed $50,880.81 as the portion of the earnings of the long-distance business which should be credited to the Louisville exchange.

41. The Court erred in finding that 15% of the toll earnings on outgoing messages over complainant's lines was "a fair compensation for the service" rendered by the Louisville exchange to the long-distance department of the complainant.

42. The Court erred in failing and refusing to sustain defendant's exceptions to the Master's report wherein the Master found "that if the ordinance rates be put into operation the loss in revenue to complainant annually would probably be $49,721.76."

43. The Court erred in finding that the gross earnings of the complainant during the year 1908 would have been $49,721.76 less during said year had the rate ordinance been in effect than they actually were; whereas complainant only charged in its Bill of Com-
3549 plaint that said loss would have been $33,504.09; and whereas the undisputed evidence and the facts all show that due to gross discrimination during the year 1908 on the part of complainant, the gross earnings for that year would have been in excess of what they actually were had all the subscribers to the complainant's telephone system been charged the rates established by the ordinance, each subscriber being charged the rate prescribed for the class of service furnished such subscriber.

44. The Court erred in finding that the estimated loss under the rate ordinance for future years would equal $30,000.00 per year and in overruling exceptions to the Master's report wherein the Master found that the net earnings for the year 1911 under the rate ordinance would probably amount to $30,000.00 below what the net earnings were under the rates charged in 1908, which finding of the Master was specifically excepted to by defendant.

45. The Court erred in failing and refusing to find that the net earnings under the rate ordinance for future years, if all subscribers were charged alike and according to the class of service each subscriber had, no discrimination being practiced among subscribers, would probably amount to $30,000.00 in excess of what the net earnings were found to be under the rates in effect during the year 1908.

46. The Court erred in finding that the rates of the complainant were lowered 30% by the rate ordinance.

47. The Court erred in failing and refusing to find that the gross exchange earnings alone (excluding toll earnings) for the year 1908, had the rate ordinance been in effect and no discrimination practiced, would have been $327,283.42.

48. The Court erred in finding that the net earnings "may be lowered to some extent by the new Federal taxation, and the cost and

expenses of this action," there being no evidence in the case touching on this subject.

3550 49. The Court erred in finding that any earnings less than 7% on the value of complainant's plant was confiscatory.

50. The Court erred in finding that the net earnings for the year 1908 were only $114,563.07, and in sustaining exceptions to the Master's report wherein the Master found that the net earnings for said year were $150,673.19.

51. The Court erred in finding that the net earnings for the year 1908 were only $90,468.29, if certain findings were correct.

52. The Court erred in finding that the net earnings for the year 1908 were only $96,262.11, if certain findings were correct.

53. The Court erred in failing and refusing to hold that had the rate ordinance been in effect during the year 1908, the complainant would have earned in excess of 7% on the value of its plant after paying all operating expenses and providing a sufficient sum for depreciation.

54. The Court erred in finding "that complainant company is entitled to be allowed to earn if it can as much as 7% annually on the fair value of its property devoted to the public use in this city before its rates can fairly be reduced by legislative regulation."

55. The Court erred in finding that complainant was entitled to earn 7% on $1,788,000.00, which sum the Court found to be the value of complainant's plant.

56. The Court erred in sustaining exceptions to the Master's report wherein the Master found that "the average net income or return from reasonably safe investments in business enterprises in Louisville approximately resembling that of the complainant, is below 6% upon the reasonable value of the plant or property from which said income is derived."

57. The Court erred in finding that complainant was entitled to earn 7% on the value of its real estate in Louisville, it appearing that said real estate is treated by the complainant as an outside investment, and a rental of over 8% on the value of said real estate is charged up each year against the Louisville exchange as a

3551 part of the operating expenses of said Louisville exchange.

58. The Court erred in finding that complainant "does not under the present rates and after an allowance of 7% for depreciation on the portion of the property subject thereto, earn over 5-10/17% upon the value of that property."

58*a*. The Court erred in sustaining exceptions to that portion of the Master's report, wherein the Master found that "the percentage of net earnings to the value of complainant's plant for the four years was as follows: 1908, 11.14%."

59. The Court erred in finding that "judging by the year 1908 and allowing 7% for depreciation that the net profits of the company on the value of its property under the rate ordinance would be $60,468.00, or only 3-6/17% annually for the present."

Miscellaneous.

60. The Court erred in failing and refusing to hold that the complainant's bill should be dismissed and the injunction sought by it denied, because the evidence showed that sums earned by the complainant in operating its Louisville plant and set aside for depreciation had been used by it in extending and making additions to its said plant, and had become an integral part of the plant on which it was seeking to earn dividends; and failed to show how much of said earnings had been so invested.

61. The Court erred in failing and refusing to dismiss complainant's bill and in failing and refusing to deny the injunction sought by the complainant because the evidence showed that some of the money earned by the complainant on its Louisville plant had been used by it in making extensions and additions to said Louisville plant and which sums had become an integral part of the said Louisville plant and the capital account on which the complainant was seeking to earn dividends; but did not show how much of said earnings had been so invested.

62. The Court erred in refusing to dismiss the complainant's bill for the reason that the complainant had no franchise to occupy the streets of the City of Louisville; was a wrong-doer; was without right to operate a telephone system in the City of Louisville and,
3552 therefore, should not have been permitted to question the rates established by the rate making body of the City of Louisville.

63. The Court erred in finding that the probable increase in the subscribers in the future was doubtful; it appearing in the record that the company had lost over 2000 subscribers by having raised its rates, and all witnesses agreeing that a reduction of the rates would materially increase the number of subscribers.

64. The Court erred in failing and refusing to find that an increase in the number of its subscribers would be remunerative to the company; that the complainant had surplus system to take care of more than 2000 new subscribers, and in sustaining exceptions to the Master's report wherein the Master found such to be the fact.

65. The Court erred in failing and refusing to find that an increase in the number of subscribers would not increase the cost of operating the telephone plant per station; and in sustaining exceptions to the Master's report wherein the Master found such to be the fact.

66. The Court erred in finding that there were more hazards connected with the complainant's business than with the business of other public utilities such as gas companies, railway companies and electric lighting companies.

67. The Court erred in granting the injunction before a fair trial had been made of continuing the business and conducting the business under the rates established by the rate ordinance.

68. The Court erred in granting a temporary restraining order enjoining the enforcement of said ordinance pending the litigation involving the validity of said ordinance.

69. The Court erred in refusing to dissolve said temporary restraining order on motion of the defendant, which refusal was made by an order entered in the case on the 29th day of June, 1909.

70. The Court erred in refusing to grant the motion of the defendant to require the complainant to impound and pay into
3553 Court or give bond for the return of the amounts collected by it for telephone service in excess of the rates fixed by the rate ordinance.

71. The Court erred in refusing and failing to give any weight to "the rates in force in numerous cities where the circumstances are as nearly similar as may be to those prevailing at" Louisville. (115 Fed. Rep., 741.)

72. The Court erred in sustaining exceptions to the depositions of S. M. Wilhite and Charles Meriwether, said witnesses having testified in effect as follows:

That they were officials and accountants of the City of Louisville; that under instructions from the Mayor of the City of Louisville and at the request and with the consent of the Louisville Home Telephone Company, which telephone company operates a telephone exchange in the City of Louisville, said witnesses examined the books and records of the said Telephone Company and ascertained that the gross earnings of said company for the year 1907 were $382,104.47; that the expenses of every nature for operating and maintaining said plant for the year 1907 were $204,646.53; and that the net earnings for said year 1907 were, therefore, $177,457.94;

That for four months of the year 1908 the gross income of said Louisville Home Telephone Company was $134,035.18 and the expenses were $63,359.96;

That the following figures represent the net earnings of the Louisville Home Telephone Company for the years mentioned after all expenses and interest on the bonded indebtedness had been paid:

1903	$69,326.76
1904	75,988.77
1905	96,487.60
1906	102,237.24

(The pertinency of all which testimony is in its bearing upon other testimony in the case, wherein it was shown that the rates of the Louisville Home Telephone Company were 50% lower
3554 than the rates charged by the complainant at the time the rate ordinance was passed; wherein it was shown what it had cost the Louisville Home Telephone Company to build its plant; and that on rates 50% lower than those charged by the complainant the Louisville Home Telephone Company was earning over 12% on the value of its plant.)

And the Court erred in failing and refusing to sustain exceptions to that portion of the Master's report wherein the Master reported that he had quashed the foregoing depositions of S. W. Wilhite and Charles Meriwether.

And further erred in refusing to consider the said depositions as evidence in the case.

70. The Court erred in refusing to require the witness, C. E. Archer, to testify in the case; that said Archer, had he been permitted and required to testify, would have stated (and it is true) that he was treasurer of the Louisville Home Telephone Company; that the gross earnings of the said Telephone Company for the year 1907 were $382,104.47; that the expenses for said year were $204,646.53; that the net earnings for the following years after all interest on the bonded indebtedness had been paid were as follows:

1903	$69,326.76
1904	75,988.77
1905	96,487.60
1906	102,237.24

that the plant of the Louisville Home Telephone Company had not cost in excess of $1,300,000.00; that the company had 11,000 telephone subscribers in the City of Louisville where it conducted a telephone exchange; and that the company for the years 1905, 1906, 1907 and 1908 had earned in excess of 12% on the value of its plant after paying all expenses and providing a fund for depreciation.

And the Court erred in sustaining exceptions to that portion of the Master's report wherein the Master reported that he had not required the said witness to testify and had quashed the said deposition.

3555 Wherefore, the City of Louisville, defendant, prays for a reversal of the judgment and decree of the Honorable Circuit Court of the United States for the Western District of Kentucky at Louisville, Kentucky, entered in the above entitled cause, and that the said Circuit Court be directed to dismiss the complainant's Bill of Complaint.

CLAYTON B. BLAKEY,
HUSTON QUIN,
Solicitors for Defendant.

3556 And on another day of said term of said court, continued and held, to-wit, on July 13th, 1911, the following proceedins were had:

No. 7194.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant.
vs.
CITY OF LOUISVILLE, KENTUCKY, Defendant.

This day came the defendant by Clayton B. Blakey and Huston Quin, its counsel, and presented for acceptance and approval its supersedeas bond in the sum of $12,000.00, with the National Surety Company as surety, which bond is now ordered filed, and is hereby

accepted and approved by the Court, and accordingly all further proceedings in this court as to said defendant be suspended and stayed until the determination of said appeal by the Supreme Court of the United States.

The Bond above referred as is as follows:

Circuit Court of the United States, Western District of Kentucky.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, KENTUCKY, Defendant.

Know all men by these presents, That we, City of Louisville, Kentucky, Principal, and National Surety Co. as surety, are held and firmly bound unto Cumberland Telephone & Telegraph Company and A. G. Ronald Clerk U. S. Circuit Court, in the sum of
3557 Twelve Thousand Dollars, to be paid to the said Cumberland Telephone & Telegraph Company and A. G. Ronald, Clerk, executors or administrators. To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors and administrators firmly by these presents.

Sealed with our seals, and dated this 12th day of July, A. D. 1911.

Whereas, the above named City of Louisville, Kentucky, hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit, by the Circuit Court of the United States for the Western District of Kentucky, at Louisville.

Now, therefore, the condition of this obligation is such, that if the above named City of Louisville, Kentucky, shall prosecute its said appeal to effect, and answer all damages and costs, to include cost of A. G. Ronald, Clerk, for making transcript for appeal to Supreme Court of the United States, if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CITY OF LOUISVILLE, KENTUCKY, [L. S.]
By CLAYTON B. BLAKEY, *City Attorney.*
NATIONAL SURETY COMPANY, [L. S.]
By J. H. MORTON MORRIS, *Attorney-in-fact.*

Sealed and delivered in presence of
HENRY F. CASSIN,
Deputy Clerk U. S. Circuit Court,
Western District of Kentucky.

Approved July 13th, 1911.
WALTER EVANS, *Judge.*

3558 WESTERN DISTRICT OF KENTUCKY, *ss:*

I, A. G. Ronald, Clerk of the Circuit Court of the United States for the Western District of Kentucky, at Louisville, do hereby certify that the foregoing 3557 pages contain a true and correct copy of the record and proceedings in the case of the Cumberland Telephone & Telegraph Company against the City of Louisville, Kentucky, No. 7194, as the same appears from the records and files in my said office.

Witness my hand and seal of said Court, this 8th day of August, A. D. 1911.

[Seal 6th Circuit Court, Wes. Dist. Ky., U. S. of America.]

A. G. RONALD, *Clerk.*
By HENRY F. CASSIN,
Deputy Clerk.

3559 United States Supreme Court.

No. 761.

CITY OF LOUISVILLE, Appellant,
vs.
CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, Appellee.

Stipulation.

In this cause to save the expense of printing and to reduce the record as much as possible it is stipulated between the parties through their respective counsel that the following portions of the record need not be printed, and the Clerk will omit printing the following portions of said record:

1. The Charter and Amendments of appellee filed as Exhibit No. 1 with the Bill of Complaint. (See p. 29 of the Record).

2. All of H. Blair Smith's Exhibit No. 19, being a printed pamphlet entitled "Telephone conditions in New Orleans, La." made by the new Orleans Board of Trade, (see about P. 1100 of the Record), except that part of the report contained on pages 35, 36 and 37 of said Exhibit; also beginning in the middle of page 39 with the words "the telephone as a public utility", to the bottom of page 45 ending with the words "by the traffic and expense of the exchanges"; also the language at the bottom of page 48 beginning with the words "extension sets" and ending on the same page with the words "street or block"; also at the bottom of page 57 beginning with the words "from my examination" and down to the bottom of page 58 ending with the words "net revenue to investment .99"; also the language on page 70 beginning with the words "To the above statement" and ending with the words on page 71 "New

Orleans exchange"; the last paragraph on page 77 beginning with the words "in the telephone report" and ending on page 78
3560 with the words "in the case of the Cumberland Telephone & Telegraph Company here"; the third paragraph on page 98 commencing with the words "competition does undoubtedly" and ending on the same page with the words "disadvantages of competition"; pages 133 and 134 and the first two paragraphs on page 135 ending on page 135 with the words "double the original cost."

3. Exhibit No. 6 with the deposition of H. Blair Smith, being three typewritten pamphlets containing the names of all the subscribers to the appellee's exchange at Louisville, Ky. (See Record about p. 950).

4. Exhibits Nos. 15 and 16 with the deposition of H. Blair Smith being a number of blue sheets of paper bound together representing the payrolls of the appellee at Louisville, Ky., for two months. (See Record, about p. 1000).

5. The report of the Committee on Gas, Oil and Electric Light of the City Council of Chicago, being a 300 page printed report filed as an exhibit with H. Blair Smith's deposition. (see Record, about p. 1699); except the last 7 lines on page 29 and the first 5 lines on page 30; and except page 47 beginning at the top and extending down to the first paragraph on page 48; and except table on page 56; and except table No. 8 on page 118; and except the language beginning at the end of table No. 7 on page 115 and extending down to and including the last paragraph on page 116; and except the language beginning at the bottom of page 69 with the words "four hundred thousand" and ending at the top of page 70 with the words "number of inhabitants"; and except the language beginning in the eighth line from the top of page 74 with the words "the average rate paid" through page 75; and except the
3561 language beginning with the last paragraph at the bottom of page 83 with the words "the book value" and extending down to line 12 from the top of page 84 and ending with the words "within the limits of the City"; and except the language beginning with the third paragraph on page 90 beginning with the words "consideration of the contract" and ending on page 91 with the words "prices of other vendors"; and except the language beginning with the first paragraph on page 94 with the words "the last item mentioned" and ending with the following words on the same page "earned within the City of Chicago"; and except table No. 6 on page 114 and note; and except "data for chart No. 12" on page 151.

CLAYTON B. BLAKEY,
Attorney for Appellant.
W. L. GRANBERY,
Attorney for Appellee.

3562 Endorsed: No. 761. United States Supreme Court. City of Louisville, Appellant, vs. Cumberland Telephone & Telegraph Co., Appellee. Stipulation.

3563 [Endorsed:] File No. 22,837. Supreme Court U. S. October term, 1911. Term No. 761 City of Louisville, Appellant, vs. Cumberland Telephone & Telegraph Company. Stipulation as to printing of record. Filed November 13, 1911.

Endorsed on cover: File No. 22,837. W. Kentucky C. C. U. S. Term No. 761. City of Louisville, appellant, vs. Cumberland Telephone & Telegraph Company. Filed August 14th, 1911. File No. 22,837.

[End of Volume II.]

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No. 761

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1911

Office Supreme Court, U. S.
FILED.
FEB 24 1912
JAMES H. McKENNEY,
CLERK.

CITY OF LOUISVILLE,
Appellant,
vs.
CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY,
Appellee.

Appeal from the Circuit Court of the United States for the Western District of Kentucky.

STATEMENT AND BRIEF

FOR APPELLANT

CLAYTON B. BLAKEY,
City Attorney for the City of Louisville.

HUSTON QUIN,
JOSEPH S. LAWTON,
of Counsel.

COURIER-JOURNAL JOB PRINT, LOUISVILLE

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No. 761

IN THE

Supreme Court of The United States

OCTOBER TERM, 1911.

CITY OF LOUISVILLE, *Appellant*

vs.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY, *Appellee*

Appeal from the Circuit Court of the United States for the Western District of Kentucky.

PART ONE

BRIEF AND ARGUMENT FOR APPELLANT, CITY OF LOUISVILLE.

STATEMENT.

May It Please The Court:

The City of Louisville, Kentucky, the appellant in this case, is a city of the first class with authority under the Constitution and laws of Kentucky to govern itself in all

local matters. Among the other powers delegated to it by the Constitution and laws of Kentucky is the power to regulate the rates of public service corporations which occupy its streets.

The appellee, the Telephone Company, operates a telephone exchange in the City of Louisville. With this exchange are connected from nine to ten thousand subscribers in the City of Louisville and three hundred subscribers in Jefferson County outside the City limits.

In January, 1909, the City of Louisville through its Mayor and General Council, conceiving the idea that the appellee was grossly discriminating among its patrons, and charging some of them exorbitant rates and furnishing others free service, or service at ridiculously low rates, enacted an ordinance revoking the right of the appellee to operate a telephone exchange in the City of Louisville.

The purpose of the Mayor and General Council in enacting such an ordinance was to require the appellee to purchase from the City a franchise wherein reasonable rates could be enforced, and whereby appellee could be prevented from discriminating among its patrons.

The ordinance in question appears in the record in case No. 197, October Term 1911, of this Court, City of Louisville vs. Cumberland Telephone & Telegraph Company, which case has been ordered to be heard with this cause.

The appellee filed its Bill of Complaint in the United States Circuit Court for the Western District of Kentucky wherein it charged that the above mentioned ordinance was an attempt to violate a contract between it and the City of Louisville, and was in violation of the Constitution of the United States in that it confiscated its property. It sought and obtained a temporary injunction enjoining the

City of Louisville from enforcing the provisions of that ordinance.

As the Mayor and General Council of the City of Louisville were thereby prevented from accomplishing their purpose, they proceeded to enact an ordinance whereby they sought to regulate the rates to be charged by the appellee in the City of Louisville. That ordinance is printed in this record (see p. 12), and is as follows:

"An ordinance fixing the maximum rates to be charged for telephone service in the City of Louisville.

"Be it ordained by the General Council of the City of Louisville:

"Section 1. That no company, corporation or individual operating, conducting, maintaining a telephone system, or furnishing telephone service in the City of Louisville, shall charge more for such service than the following rates which are hereby fixed, established and ordained to be the maximum rates that may be charged for telephone service in the City of Louisville.

"Section 2. For each telephone in a business house or office the maximum rates of charge shall not exceed,

"For a single or private line, unlimited service, $5.50 per month, or at the rate of $66.00 per year.

"For a party line, unlimited service, $4.00 per month, or at the rate of $48.00 per year.

"For each telephone in a residence the maximum rate or charge shall not exceed:

"For a single or private line, unlimited service, $3.00 per month, or at the rate of $36.00 per year.

"For a party line, unlimited service, $2.00 per month, or at the rate of $24.00 per year.

"For each extension desk telephone the maximum rate or charge shall not exceed $1.00 per month, or at the rate of $12.00 per year.

"Section 3. Any person, firm or corporation violating any provision of this ordinance, or charging a higher rate for telephone service than is fixed by this

ordinance, shall be subject to a fine of not less than $5.00 nor more than $25.00 for each offense. Each charge for telephone service in excess of the rates herein fixed, and each month that such charge is made for such service, shall constitute a separate offense.

"Section 4. That an ordinance entitled 'An Ordinance regulating the charges for telephone service in the City of Louisville,' approved November 12, 1906, is hereby repealed: provided, however, that this ordinance shall not be so construed as to confer upon any person, firm or corporation now conducting or operating a telephone system in the City of Louisville the right to charge any rate in excess of that limited in the charter or franchise of such person, firm or corporation.

"Section 5. This ordinance shall take effect from and after its passage."

Thereafter the appellee filed its Bill of Complaint in the above entitled cause wherein it charged that the ordinance rates, if enforced, would result in preventing it from earning a reasonable return on the value of its property and would confiscate its property, in violation of the Fourteenth Amendment to the Constitution of the United States.

The lower Court granted a restraining order wherein the City and all other persons were restrained from seeking to enforce the provisions of the rate ordinance in question until the further order of the Court.

A motion for a temporary injunction was made within ten days after the filing of the Bill and fully argued, numerous affidavits having been filed by appellant and appellee on the hearing of that motion. The lower Court, however, failed to grant the temporary injunction, but allowed the restraining order to remain in force for more than two years and until the final hearing of the cause.

THE CITY'S ANSWER.

In its answer the City denied that the rates fixed by it in the ordinance were unreasonable and denied that the enforcement of those rates would result in the confiscation of appellee's property.

It charged (Record, p. 40) that the appellee had, prior to the passage of the ordinance, conducted its business in a dictatorial, arbitrary and offensive manner and without regard to the rights of the citizens of Louisville; that the appellee was discriminating unmercifully among its patrons, even going to the extent of furnishing free telephones in order to stifle competition; that the ordinance was passed primarily to prevent appellee from charging exorbitant rates to some of the citizens of Louisville, and further as a means of preventing appellee from continuing to discriminate among its patrons.

And appellant prayed that the bill be dismissed and that it recover its costs.

MASTER APPOINTED.

A Special Master was appointed to make an investigation of the affairs of appellee and report his findings to the Court (see Record, p. 54).

The Master permitted the City to select an accountant and appellee to select an accountant, and these two accountants were directed to examine the books and records of appellee and make a joint report to the Master of their findings. These accountants did examine the books and did make a joint report and also separate reports (see Record, p. 102).

A large amount of evidence was taken by both appellant and appellee. The case was finally argued before the Master and his report was made to the Court in accordance with the order of reference (see Record, p. 59).

By the terms of that report the Master found that the appellee was, under the rates charged prior to the passage of the ordinance, earning more than 11 per cent on the value of its property (Record, p. 85) and that after paying all expenses, including a provision for depreciation, the appellee could, the first year after the rate ordinance was put into effect, earn 8 per cent on the value of its plant and could within two years thereafter earn 11 per cent on the value of its plant. (Record, p. 88.)

The Master's recommendation was that the validity of the ordinance in question be upheld and that the injunction asked by the appellee be denied.

The lower Court, however, overruled the findings of the Master in every instance, entered a decree declaring the ordinance in question void in that the rates were so low as to confiscate the appellee's property, and perpetually enjoined the City from attempting to put the rates into effect.

From that decree this appeal is prosecuted to this Court.

The Bill of Complaint filed in the above styled action is copied in the record in No. 197, October Term, 1911, City of Louisville vs. Cumberland Telephone & Telegraph Company, and by stipulation is ordered read as part of this record.

PART TWO

SPECIFICATIONS OF ERRORS RELIED UPON.

The following are the Specifications of Errors on which appellant bases this appeal. (Record, p. 1645.) See Note.

1. The Court erred in holding and finding that "the ordinance adopted by the City of Louisville on February 27, 1909, through its legislative department and approved by the Mayor on March 6, 1909, being an ordinance entitled 'An ordinance fixing the maximum rates to be charged for telephone service in the City of Louisville,' is as to the complainant confiscatory, null and void, and violates the Fourteenth Amendment to the Constitution of the United States in that it would if enforced deprive the complainant of its property without due process of law."

2. The Court erred in failing and refusing to hold that the rates fixed by the ordinance of February 27, 1909, were fair and reasonable; and in refusing to hold that said ordinance was valid as to complainant and not confiscatory, null or void.

3. The Court erred in decreeing and granting unto the complainant an injunction perpetually enjoining the City

NOTE. Should this brief embody verbatim the exceptions filed by the appellee to the Master's report, most of which exceptions were sustained, it would be unduly voluminous. Those exceptions are copied in the Record on pages 105 to 198 inclusive. The exceptions as drawn constitute in reality appellee's brief in this case. A reproduction of these exceptions instead of assisting the Court would merely result in confusion. I have, therefore, stated as concisely as possible the errors on which appellant relies for a reversal, referring wherever possible to the pages on which appellee's exceptions may be found.

of Louisville, its officers, agents and employes and all other persons from undertaking to enforce in any wise the provisions of the ordinance referred to in said decree.

4. The Court erred in decreeing and adjudging unto the complainant a recovery against this defendant of the costs of this cause including compensation allowed by the Court to the Special Master.

5. The Court erred in finding that the defendant enacted the ordinance referred to in the decree without making any adequate inquiry into the real facts upon which such action could intelligently be based.

6. The Court erred in overruling the motion of the defendant for an order permitting it to examine the books and records of the complainant company touching the value of the plant and the earnings and expenses of the company in the City of Louisville for the years 1905, 1906, 1907 and 1908.

7. The Court erred in failing and refusing to hold that the complainant was not entitled to the decree sought for the reason that complainant had failed and refused to make a frank, free and full disclosure of its books, records and accounts, and deprived the defendant and defendant's accountants of access to its books and records whereby the defendant might ascertain what amount had been expended by the complainant in constructing and operating its said plant in Louisville, Kentucky.

8. The Court erred in that it failed and refused to dismiss the Bill of Complaint because the complainant refused to make a full, free and frank disclosure of its books and records and refused through its officers, who testified in the case, to answer questions and disclose facts and records concerning the cost of said plant and the ex-

penses of operating said plant over the period investigated by the Master.

9. The Court erred in failing and refusing to dismiss complainant's bill because the complainant was and is grossly discriminating among its patrons in the City of Louisville.

COST OF PLANT.

10. The Court erred in failing and refusing to find that the complainant so concealed the facts and so manipulated its books that it was impossible to tell from its said books and records what its plant in the City of Louisville had cost.

11. The Court erred in finding that the complainant's plant had cost in excess of $1,745,235.00; the complainant itself only charging in its bill and producing evidence to show that its plant had cost $1,700,000.00; and the Master having found that the complainant's plant cost $1,381,-124.41.

12. The Court erred in sustaining exceptions to the Master's report wherein the Master found that complainant's plant in the City of Louisville had cost it $1,381,124.41. (Record Exceptions, pp. 105 to 123.)

VALUE OF PLANT.

13. The Court erred in failing and refusing to ascertain "the present value of the company's property" by following "the plain method of ascertaining the cost of reproduction diminished by depreciation." (212 U. S. 14).

14. The Court erred in finding that "the Master seems to have based his final estimate of the value of the plant largely upon his conclusion as to its original cost, less

certain depreciation, and then he makes a flat deduction therefrom of 10 per cent in addition." The fact being that the Master found from the evidence that it would cost so much money to reproduce the plant new throughout and then found that the plant was 10 per cent less valuable than if new throughout.

15. The Court erred in finding that the valuation placed by the Master on the plant was too low.

16. The Court erred in finding that the 10 per cent deduction in the value of the plant as found by the Master "was in a large measure an arbitrary deduction in the sense that it was without an adequate basis in view of the large expenditures made to keep the plant up to the standard." The fact being that said 10 per cent deduction was based on the evidence and sustained by all the facts in the case.

17. The Court erred in finding that the complainant was entitled to earn a dividend on $1,788,000.00, which the Court found to be the value of complainant's plant; complainant having charged in its Bill of Complaint that it was only entitled to earn a dividend on $1,700,000.00 representing the value of its plant; and the Master having found that complainant was under the evidence entitled to earn a dividend on only $1,243,011.97 representing the value of the plant, less depreciation.

18. The Court erred in finding that the value of the plant "including toll lines and excluding the things presently mentioned is and was when this suit was brought at least $1,575,000.00; that the real estate is worth $162,000.00; that the supplies on hand are worth $18,000.00; and that the working capital should be placed at $33,-

000.00; making a total value of the company's property now being used by the public $1,788,000.00."

19. The Court erred in sustaining exceptions to the Master's report wherein the Master found the value of the plant, exclusive of toll lines and real estate, to be as of March 6, 1909, $1,243,011.97. (Record Exceptions, p. 124.)

20. The Court erred in including in the value of the plant the value of the real estate, it appearing from the record that the complainant does not treat its real estate as a part of its plant, but charges a rental of $13,800.00 against the Louisville exchange as operating expenses, which amount is more than 8 per cent on the value of the real estate.

21. The Court erred in finding the value of the real estate of the complainant to be $162,000.00.

22. The Court erred in including as part of the value of complainant's plant supplies on hand amounting to $18,000.00, and working capital amounting to $33,000.00; it appearing from the record that the supplies on hand are kept in complainant's supply department, the expenses of maintaining which are charged against the Louisville exchange at 10 per cent on the cost price of all supplies charged against the Louisville exchange whenever any supplies are furnished from said supply department to the Louisville exchange; and as to the working capital it appearing from the record that the rentals are paid in advance and that no working capital is required.

23. The Court erred in sustaining exceptions to the Master's report wherein the Master excluded from the value of the plant supplies on hand and working capital. (Record, 140.)

24. The Court erred in finding that no amount was included by the Master in the valuation of the plant as found by him representing the value of the franchise, whereas the amount found by the Master as the value of said plant, namely, $1,243,011.97, included the amount paid by the complainant for said franchise.

25. The Court erred in finding that the value of the toll lines should be included as part of the value of the Louisville exchange, and in finding that "all agree that the toll lines should have been included" in the value of the exchange; and in refusing to eliminate the value of the toll lines from the value of the exchange.

26. The Court erred in fixing any value on the toll lines, there being no evidence whatever to show the value of said toll lines and there being no evidence whatever to show what it would cost to reproduce the said toll lines.

27. The Court erred in including in its valuation of the plant the value of certain dead cable, that is, cable not being used and which was in no wise a part of the exchange plant.

28. The Court erred in including in the valuation of the plant items representing cost of supervising the building of the plant, it appearing that all such cost had been paid out of the earnings of the plant. (Record Exceptions, 124 to 141.)

EXPENSES.

29. The Court erred in including as part of the complainant's expenses for 1908 the sum of $13,800.00, or any amount, as rental on the real estate owned by the complainant, which amount was more than 8 per cent on the book value of said real estate; the Court having found

that the complainant was entitled to earn a dividend of 7 per cent on the book value of said real estate, the result of which was to allow the complainant to earn more than 15 per cent on the value of its real estate in Louisville, Kentucky.

30. The Court erred in including as part of the expenses of conducting complainant's exchange for 1908, the sum of $31,910.00, which amount was expended by the complainant in conducting its long distance business in the City of Louisville; the evidence showing that 15 per cent of the total receipts of the complainant at Louisville was derived from the long distance business and that at least 15 per cent of the expenses of the complainant at Louisville were properly chargeable against the long distance department of its business; the record showing that salaries were paid to long distance operators alone exceeding $11,000.00 per year and that this $11,000.00 expenditure did not include any of the general expenses of the company, any expense of maintenance, rent, light, heat, taxes or insurance.

34. The Court erred in allowing for depreciation and as a part of the expenses of complainant 7 per cent on $1,575,000.00, a sum said to represent the value of a portion of complainant's plant, or a total for depreciation of $110,250.00.

35. The Court erred in failing and refusing to find that $92,606.83 was the amount which complainant should have been allowed to set aside for the year 1908 to provide for maintenance, repairs and depreciation; and the Court erred in sustaining exceptions to the Master's report wherein the Master found such to be the fact. (Record, p. 154.)

36. The Court erred in failing and refusing to find that 7 per cent on the value of complainant's plant was a sufficient sum to be allowed in the future each year as a part of the expenses of the plant to take care of maintenance, repairs and depreciation; and the Court erred in sustaining exceptions to the Master's report wherein the Master found such to be the fact. (Record, p. 154.)

37. The Court erred in failing and refusing to find that the experience of the complainant in operating a telephone plant in the City of Louisville for a period of nine years, and the experience of the complainant's predecessor for a period of ten years prior thereto justified the Court in finding that 7 per cent on the value of complainant's plant was all that had been required to take care of maintenance and repairs and provide a fund for depreciation; and the Court erred in sustaining exceptions to the Master's report wherein the Master found such to be the fact. (Record Exceptions, p. 141 to 167.)

EARNINGS.

38. The Court erred in finding the gross earnings for the year 1908 to be $330,926.38 instead of $369,087.00, as found by the Master.

39. The Court erred in excluding from the earnings of the complainant all the receipts of the Louisville exchange on outgoing messages over its long-distance lines, and in sustaining exceptions to the Master's report wherein the Master allowed such receipts as part of the earnings of the Louisville exchange. (Record, p. 146.)

40. The Court erred in only allowing $12,632.11 to the Louisville exchange as its portion of the earnings from long-distance business of the complainant for the year

1908 and in sustaining exceptions to the Master's report wherein the Master allowed $50,880.81 as the portion of the earnings of the long-distance business which should be credited to the Louisville exchange. (Record, p. 146.)

41. The Court erred in finding that 15 per cent of the toll earnings on outgoing messages over complainant's lines was "a fair compensation for the service" rendered by the Louisville exchange to the long-distance department of the complainant.

45. The Court erred in failing and refusing to find that the net earnings under the rate ordinance for future years, if all subscribers were charged alike and according to the class of service each subscriber had, no discrimination being practiced among subscribers, would probably amount to $30,000.00 in excess of what the net earnings were found to be under the rates in effect during the year 1908.

46. The Court erred in finding that the rates of the complainant were lowered 30 per cent by the rate ordinance.

47. The Court erred in failing and refusing to find that the gross exchange earnings alone (excluding toll earnings) for the year 1908, had the rate ordinance been in effect and no discrimination practiced, would have been $327,283.42.

48. The Court erred in finding that the net earnings "may be lowered to some extent by the new Federal taxation, and the cost and expenses of this action," there being no evidence in the case touching on this subject.

49. The Court erred in finding that any earnings less than 7 per cent on the value of complainant's plant was confiscatory.

50. The Court erred in finding that the net earnings for the year 1908 were only $114,563.07, and in sustaining exceptions to the Master's report wherein the Master found that the net earnings for said year were $150,673.19. (Record, 159.)

51. The Court erred in finding that the net earnings for the year 1908 were only $90,468.29 if certain findings were correct.

52. The Court erred in finding that the net earnings for the year 1908 were only $96,262.11 if certain findings were correct.

53. The Court erred in failing and refusing to hold that had the rate ordinance been in effect during the year 1908, the complainant would have earned in excess of 7 per cent on the value of its plant after paying all operating expenses and providing a sufficient sum for depreciation.

54. The Court erred in finding "that complainant company is entitled to be allowed to earn if it can as much as 7 per cent annually on the fair value of its property devoted to the public use in this city before its rates can fairly be reduced by legislative regulation."

55. The Court erred in finding that complainant was entitled to earn 7 per cent on $1,788,000.00, which sum the Court found to be the value of complainant's plant.

56. The Court erred in sustaining exceptions to the Master's report wherein the Master found that "the average net income or return from reasonably safe investments in business enterprises in Louisville approximately resembling that of the complainant, is below 6 per cent upon the reasonable value of the plant or property from which said income is derived." (Record, 184.)

57. The Court erred in finding that complainant was entitled to earn 7 per cent on the value of its real estate in Louisville, it appearing that said real estate is treated by the complainant as an outside investment, and a rental of over 8 per cent on the value of said real estate is charged up each year against the Louisville exchange as a part of the operating expenses of said Louisville exchange.

58. The Court erred in finding that complainant "does not under the present rates and after an allowance of 7 per cent for depreciation on the portion of the property subject thereto, earn over 5 10-17 per cent upon the value of that property."

58a. The Court erred in sustaining exceptions to that portion of the Master's report, wherein the Master found that "the per centage of net earnings to the value of complainant's plant for the four years was as follows: 1908, 11.14 per cent." (Record, 165.)

59. The Court erred in finding that "judging by the year 1908 and allowing 7 per cent for depreciation that the net profits of the company on the value of its property under the rate ordinance would be $60,468.00, or only 3 6-17 per cent annually for the present."

MISCELLANEOUS.

60. The Court erred in failing and refusing to hold that the complainant's bill should be dismissed and the injunction sought by it denied, because the evidence showed that sums earned by the complainant in operating its Louisville plant and set aside for depreciation had been used by it in extending and making additions to its said plant, and had become an integral part of the plant on which it was

seeking to earn dividends; and failed to show how much of said earnings had been so invested.

61. The Court erred in failing and refusing to dismiss complainant's bill and in failing and refusing to deny the injunction sought by the complainant because the evidence showed that some of the money earned by the complainant on its Louisville plant had been used by it in making extensions and additions to said Louisville plant and which sums had become an integral part of the said Louisville plant and the capital account on which the complainant was seeking to earn dividends; but did not show how much of said earnings had been so invested.

62. The Court erred in refusing to dismiss the complainant's bill for the reason that the complainant had no franchise to occupy the streets of the City of Louisville; was a wrongdoer; was without right to operate a telephone system in the City of Louisville and, therefore, should not have been permitted to question the rates established by the rate-making body of the City of Louisville.

63. The Court erred in finding that the probable increase in the subscribers in the future was doubtful; it appearing in the record that the company had lost over 2,000 subscribers by having raised its rates, and all witnesses agreeing that a reduction of the rates would materially increase the number of subscribers.

64. The Court erred in failing and refusing to find that an increase in the number of its subscribers would be remunerative to the company; that the complainant had surplus system to take care of more than 2,000 new subscribers, and in sustaining exceptions to the Master's report wherein the Master found such to be the fact. (Record, 167.)

65. The Court erred in failing and refusing to find that an increase in the number of subscribers would not increase the cost of operating the telephone plant per station; and in sustaining exceptions to the Master's report wherein the Master found such to be the fact. (Record, 167.)

66. The Court erred in finding that there were more hazards connected with the complainant's business than with the business of other public utilities such as gas companies, railway companies and electric lighting companies.

67. The Court erred in granting the injunction before a fair trial had been made of continuing the business and conducting the business under the rates established by the rate ordinance.

68. The Court erred in granting a temporary restraining order enjoining the enforcement of said ordinance pending the litigation involving the validity of said ordinance.

69. The Court erred in refusing to dissolve said temporary restraining order on motion of the defendant, which refusal was made by an order entered in the case on the 29th day of June, 1909.

70. The Court erred in refusing to grant the motion of the defendant to require the complainant to impound and pay into Court or give bond for the return of the amounts collected by it for telephone service in excess of the rates fixed by the rate ordinance.

71. The Court erred in refusing and failing to give any weight to "the rates in force in numerous cities where the circumstances are as nearly similar as may be to those prevailing" at Louisville. (115 Fed. Rep. 741.)

72. The Court erred in sustaining exceptions to the depositions of S. M. Wilhite and Charles Meriwether, said witnesses having testified in effect as follows:

That they were officials and accountants of the City of Louisville; that under instructions from the Mayor of the City of Louisville and at the request and with the consent of the Louisville Home Telephone Company, which telephone company operates a telephone exchange in the City of Louisville, said witnesses examined the books and records of the said Telephone Company and ascertained that the gross earnings of said company for the year 1907 were $382,104.47; that the expenses of every nature for operating and maintaining said plant for the year 1907 were $204,646.53; and that the net earnings for said year 1907 were, therefore, $177,457.94;

That for four months of the year 1908 the gross income of said Louisville Home Telephone Company was $134,035.18 and the expenses were $63,359.96;

That the following figures represent the net earnings of the Louisville Home Telephone Company for the years mentioned after all expenses *and interest on the bonded indebtedness* had been paid:

1903	$69,326.76
1904	75,988.77
1905	96,487.60
1906	102,237.24

(The pertinency of all which testimony is in its bearing upon other testimony in the case, wherein it was shown that the rates of the Louisville Home Telephone Company were 50 per cent lower than the rates charged by the complainant at the time the rate ordinance was passed; wherein it was shown what it had cost the Louisville Home Tele

phone Company to build its plant; and that on rates 50 per cent lower than those charged by the complainant the Louisville Home Telephone Company was earning over 12 per cent on the value of its plant.)

And the Court erred in failing and refusing to sustain exceptions to that portion of the Master's report wherein the Master reported that he had quashed the foregoing depositions of S. W. Wilhite and Charles Meriwether.

And further erred in refusing to consider the said depositions as evidence in the case.

70. The Court erred in refusing to require the witness, C. E. Archer, to testify in the case; that said Archer, had he been permitted and required to testify, would have stated (and it is true) that he was treasurer of the Louisville Home Telephone Company; that the gross earnings of the said Telephone Company for the year 1907 were $382,104.47; that the expenses for said year were $204,646.53; that the net earnings for the following years after *all interest on the bonded indebtedness* had been paid were as follows:

1903	$69,326.76
1904	75,988.77
1905	96,487.60
1906	102,237.24

that the plant of the Louisville Home Telephone Company had not cost in excess of $1,300,000.00; that the company had 11,000 telephone subscribers in the City of Louisville where it conducted a telephone exchange; and that the company for the years 1905, 1906, 1907 and 1908 had earned in excess of 12 per cent on the value of its plant after paying all expenses and providing a fund for depreciation.

And the Court erred in sustaining exceptions to that portion of the Master's report wherein the Master reported that he had not required the said witness to testify and had quashed the said deposition.

As to appellant's exceptions to the Master's report:

1. The Court erred in overruling the exceptions filed by the City of Louisville to that portion of the report of the Master wherein the Master suppressed the depositions of William Kavanaugh, Charles Meriwether and S. M. Wilhite, which exceptions to the Master's report are as follows (Record, p. 198):

> "That the Master, in the trial of the cause on the motion of the complainant, and over the objections and exceptions of this defendant, suppressed the depositions of William Kavanaugh, Charles Meriwether and S. M. Wilhite and held the testimony of said witnesses irrelevant and incompetent; when in fact the Master should have overruled the motion of the complainant to suppress said depositions and should have considered said depositions on the hearing of this cause; said witness Kavanaugh having testified to the value and the cost of constructing the telephone plant of the Kansas City Home Telephone Company and the earnings and expenses of said company, the dividends paid by said company, and the rates charged by said company, all of which facts were pertinent and relevant on the trial of this cause; and said Charles Meriwether and S. M. Wilhite having testified as to the earnings and expenses of the Louisville Home Telephone Company, a telephone company doing business in the City of Louisville, Kentucky, which facts were pertinent and relevant on the trial of this cause. (See Supplemental Report of Master filed December 10, 1910.)"

2. The Court erred in overruling the exceptions filed by the City of Louisville to that portion of the report of the Master wherein the Master refused to eliminate from the

expenses of conducting appellee's plant $9,722.52 representing excess instrument rental for the year 1908, and similar items for the years 1905, 1906 and 1907, said exceptions to the Master's report being as follows (Record, p. 199):

> "That the Master in his said report stated and certified that the complainant was entitled to charge as a part of its operating expenses for operating its plant in the City of Louisville an item denominated 'instrument expense,' amounting to the following sums for each of the following years:
>
> 1905 ..... $11,559.76
> 1906 ..... 12,518.70
> 1907 ..... 13,372.49
> 1908 ..... 13,722.52
>
> whereas the Master ought to have found that the complainant was only entitled to charge as part of its operating expense the following sums for each of said years representing said instrument expense, to-wit:
>
> 1905 ..... $4,000.00
> 1906 ..... 4,000.00
> 1907 ..... 4,000.00
> 1908 ..... 4,000.00
>
> it having been shown in the deposition of W. H. Crumb (page 60) and the deposition of W. C. Polk (page 111) and the deposition of H. Blair Smith (pages 324 and 511) that about ten thousand of these instruments are used by the complainant in its Louisville exchange; that said instruments last about eight years; that they cost about $2.00 per instrument; and that said instruments, or instruments equally as good or better, can be purchased in the open market; and, therefore, the complainant was permitted to charge and was allowed as part of its operating expenses for instrument expense about 65 per cent on the value of the instruments, whereas it should not be permitted to charge nor allowed over 20 per cent thereon."

3. The Court erred in overruling the exceptions filed by the City of Louisville to that portion of the report of

the Master wherein the Master refused to eliminate from the items of expense $802.94 representing excess taxes on buildings and real estate for the year 1908 and similar items for the years 1905, 1906 and 1907, the exceptions to said report in this respect being as follows (Record, p. 199):

> "The Master in said report stated and certified on page 43 of his report that the amounts expended by the complainant in connection with the general expense account for operating its telephone system in the City of Louisville were as follows:
>
> $28,152.52 for the year 1905;
> $34,888.46 for the year 1906;
> $33,749.19 for the year 1907;
> $31,513.00 for the year 1908,
>
> whereas the Master ought to have found the amounts expended under the head of general expense account in operating complainant's telephone system in the City of Louisville were as follows:
>
> $27,319.78 for the year 1905;
> $34,078.84 for the year 1906;
> $32,911.33 for the year 1907;
> $30,710.06 for the year 1908.
>
> the difference being made up of the following items, to-wit:
>
> $832.74 for the year 1905;
> $809.62 for the year 1906;
> $837.86 for the year 1907;
> $802.94 for the year 1908,
>
> which last named items represent the taxes paid by the complainant on its exchange building and real estate in the City of Louisville, other than on its main exchange. The Master having reported on pages 35, 36, 37 and 42 that the complainant treats the real estate which it owns in the City of Louisville as an outside operation and charges against the earnings of the Louisville exchange rent of over 8 per cent on the said real estate, and charges against the Louisville exchange taxes on said real estate and buildings; and that if the taxes were paid by the complainant out of

said rent, and not charged against the Louisville exchange, then the complainant would receive over 6 per cent income on the value of its real estate and buildings, which percentage the Master finds to be in excess of what owners of similar real estate usually derive from the use of similar property in the City of Louisville. (See also the deposition of H. B. Warren, pages 491 to 498 and 534 to 536, together with Exhibit No. 8 filed with H. B. Warren's deposition.)

4. The Court erred in overruling the exceptions filed by the City of Louisville to that portion of the report of the Master wherein the Master refused to eliminate from the items of expense $1,308.30 representing insurance on the buildings of the appellee for the year 1908, and similar items for the years 1905, 1906 and 1907, said exceptions to the report on account of this item being as follows (Record, p. 200):

"That the Master has in said report stated and certified that the amounts expended by complainant in the way of maintenance and charged up as a part of the expense of operating its telephone plant in the City of Louisville were as follows:

1905	$49,819.14
1906	52,796.93
1907	65,616.31
1908	54,705.91

whereas the Master ought to have found that the amounts expended by the complainant in the way of maintenance, and the amounts complainant was entitled to as a part of the expenses of operating its telephone plant in the City of Louisville were as follows:

1905	$48,674.49
1906	51,475.63
1907	64,408.96
1908	53,397.61

the difference being the following items:

1905	$1,144.65
1906	1,321.30
1907	1,207.35
1908	1,308.30

which last mentioned items represent the insurance paid by the complainant on its buildings in the City of Louisville and charged up as a part of the operating expenses of the Louisville exchange; the Master having found in his third finding of fact (pages 35, 36, 37 and 42) that the complainant treats its buildings in the City of Louisville as an outside operation and charges against the Louisville exchange a rental equal to 8 per cent of the value of said real estate, and also charges against the Louisville exchange as expense the insurance which it pays on its said buildings; whereas, the said complainant is only entitled to charge against the Louisville exchange the rent which it does charge and should be required to pay out of its said rent the insurance on said buildings. (See also H. B. Warren's deposition, pages 491 to 498 and 534 to 536, and also Exhibit No. 8 filed by said H. B. Warren with his deposition.)"

5. The Court erred in overruling the exceptions filed by the City of Louisville to that portion of the report of the Master wherein the Master refused to eliminate from the expenses the sum of $9,900.00 representing what the earning would have been on free telephones furnished by appellee to its patrons in the City of Louisville, said exceptions being as follows (Record, p. 201):

"That the Master has in said report stated and certified that the total amounts expended by the complainant in operating its plant in the City of Louisville were as follows:

1905	$226,052.32
1906	232,838.37
1907	245,520.89
1908	216,363.07

whereas the Master ought to have found that the total amounts expended by the said complainant in operat-

ing its said plant in the City of Louisville were as follows:

1905	$206,615.17
1906	212,288.75
1907	224,203.29
1908	194,559.31

the difference being made up of the items specifically referred to and excepted to in the second, third and fourth exceptions hereof, which are as follows:

	Excess instrument.	Expense.	Taxes.	Insurance.	Total.
1905		$7,550.76	$832.74	$1,144.65	$9,537.15
1906		8,518.70	809.62	1,321.30	10,649.62
1907		9,372.49	837.86	1,207.35	11,417.70
1908		9,772.52	802.94	1,308.30	11,883.76

and also the following items:

For each of the years 1905, 1906, 1907 and 1908, the amounts charged up against the Louisville exchange as part of the operating expenses of said exchange, as shown by Mr. Warren's deposition (pages 523, 524 and 525), included the sum representing what the earnings would have been on telephones furnished by the complainant to its patrons in the City of Louisville free of charge had those patrons paid the regular rates for such services. This item, according to Exhibit No. 6 filed with the deposition of H. Blair Smith, auditor of the complainant, amounts for each of the years in question as follows:

1905, 1906, 1907 and 1908.....$9,900.00

"The finding of fact on the subject of total amount expended by the complainant in operating its plant in the City of Louisville, therefore, should have been the amount represented by the difference between the amounts found by the Master on page 47 of his report as the total operating expenses, and the items mentioned in exceptions, second, third and fourth hereof, plus $9,900.00, above referred to, which difference represents the total expenses incurred by the complainant

in operating its plant in the City of Louisville, and for the respective years in question is as follows:

1905	$206,615.17
1906	212,288.75
1907	224,203.29
1908	194,559.31

6. The Court erred in overruling the exceptions filed by the City of Louisville to that portion of the report of the Master wherein the Master found that had the ordinance rates been in effect in 1908, then the amount received by appellee during that year would have been $49,721.36 less than the amount actually received by the appellee under existing rates, the exceptions to the Master's report in this respect being as follows (Record, p. 202):

> "That the Master has in said report stated and certified that had the ordinance rates been in effect in 1908, then the amount received by the complainant during the year 1908 would have been $49,721.36 less than the amount actually received by the complainant; whereas, the Master ought to have found that the complainant would have earned and received during the year 1908, had the rates fixed by the ordinance of March 6, 1909, been in force, and had all the subscribers to complainant's telephone service been charged at the rates fixed by the ordinance, $5,793.00 in excess of what complainant did earn and receive under the rates which it charged to subscribers during the year 1908. H. B. Warren in his deposition (page 559), showing that the accountants reached the said figures ($49,721.36) by making a calculation based on what each subscriber to the complainant's telephone service would have been required to pay had the ordinance rates been in force, eliminating from such calculation all subscribers to the complainant's telephone service who were charged less than the ordinance rates. For instance, where a telephone subscriber had a direct business telephone line and was, during the year 1908, required to pay only $4.00

per month, the accountants in said calculation did not take into consideration the fact that under the ordinance rates such subscriber could be and should be required to pay $5.50 per month. The said $49,-721.36 was, therefore, arrived at on a false basis and on an erroneous calculation."

7. The Court erred in overruling the exceptions filed by the City of Louisville to that portion of the report of the Master wherein the Master found that should the ordinance rates be in force during the year 1911 the earnings would probably amount to $30,000.00 below what the net earnings were under the rates during the year 1908, the exceptions to the Master's report in this respect being as follows (Record, p. 202):

"That the Master in said report stated and certified that the complainant's net earnings, should the ordinance rates be in force during the year 1911, would probably amount to $30,000.00 below what the net earnings were under the rates charged in 1908; whereas the Master ought to have found that the said net earnings for the year 1911 under the ordinance rates would probably amount to $30,000.00 in excess of what the net earnings were found to be under the rates in effect during the year 1908. (See Warren's deposition, pages 539 to 552, inclusive, and also Exhibits 14, 15, 15*a* and 16, filed by said Warren with his deposition, and also Exhibit No. 6 filed by H. Blair Smith with his deposition.")

PART THREE

ARGUMENT.

From a reading of the books I have been unable to find a single case wherein a Court after appointing a Special Master to investigate the facts touching the confiscatory nature of a legislative rate, failed to sustain the Master where he reported in favor of the validity of the rate.

In view of the fact that the opinion of the lower Court, is based on theories and assumptions which were not even advanced by the appellee and which are not sustained by any evidence, the following facts are pertinent:

The Bill of Complaint was filed on the 8th day of March, 1909. On the same date a restraining order was issued. (Record, p. 26.) On the 31st day of March a motion for a temporary injunction was made and argued. Numerous affidavits were filed and two days were consumed in the hearing of the motion. (Record, p. 52.) The lower Court took under consideration the motion for a temporary injunction. No action having been taken by the Court on this motion the appellant moved the Court on the 15th day of June, 1909, for an order dissolving the restraining order (Record, p. 56). The Court took this motion under submission and subsequently on the 29th day of June, 1909, overruled it.

On the 30th day of June, 1909, the City moved the Court for an order requiring the appellee to impound all rentals collected by it in excess of the rentals permitted

under the rate ordinance (see Record, p. 57). The Court took this motion under submission, but failed to pass on it at all, and allowed the restraining order to remain in force from the 8th day of March, 1909, until the final decree was entered on the 25th day of April, 1911, under which final decree the restraining order was converted into a perpetual injunction.

Appellant assigned this conduct on the part of the lower Court as an error (see Record, p. 1653) for the reason that the only practical relief which litigants and their counsel have from the action of a trial Court in granting a restraining order and allowing it to remain in force indefinitely, is for this Court to place its stamp of disapproval thereon.

It is idle to say that the Circuit Court of Appeals, or this Court, could be applied to for a writ of mandamus to compel the trial Court to pass on the motion for a temporary injunction. Every litigant and every counsel engaged in a cause expects a favorable decision, and knowing well that if he applies to an Appellate Court for a mandamus to compel a trial Court to perform its duty it will prejudice his case in the lower Court, refrains from adopting any such course.

This case was pending before the Master for almost two years. Had the lower Court passed on the motion for a temporary injunction and granted it, then appellant could have applied to the Circuit Court of Appeals with every reason to believe that the temporary injunction would have been dissolved and the rates put into effect. Had those rates gone into effect the Master and the lower Court would have had before them the practical operation

of those rates for at least one year before even the Master made his report.

At the outset I propose to discuss the opinion of the lower Court and to show that if there be eliminated from it certain erroneous findings of fact—findings of fact which are sustained by no evidence whatever and which not even the appellee contended for—then under the opinion itself the rates will be shown to be reasonable and not confiscatory.

VALUE OF THE PLANT AS FOUND BY THE LOWER COURT.

The appellee charged in its Bill of Complaint (Record, p. 45) that its property used in the City of Louisville in the conduct of its business was of the value of $1,700,000.00.

Three telephone engineers, viz., W. C. Polk, W. H. Crumb and S. D. Levings, inspected and placed a value on the appellee's plant.

The appellee's superintendent of construction, J. E. Jagoe, inspected the plant and placed a value thereon.

There is in the record a report of D. C. Jackson, of Boston, Mass., to the Massachusetts Highway Commission showing the valuation placed by him on the Bell Telephone plant in Boston, Mass.

There is also in the record a report made by three telephone engineers to the City of Chicago wherein they placed a valuation on the Bell Telephone plant in the City of Chicago.

From these two reports it is easy to determine the unit of cost for the various parts of a telephone plant. These units of cost were applied by the witnesses to the various parts of the plant of the appellee in the City of Louis-

ville, the result showing by analogy the value of that plant.

The Master considered all of this evidence and made his report to the Court as to the value of the plant.

A summary of these valuations and the conclusion of the Court is shown below:

Value according to D. C. Jackson's Massachusetts report	$864,800.00
Value according to Chicago report	939,500.00
W. H. Crumb's reproduction value	975,000.00
S. H. Leving's reproduction value	1,000,000.00
W. C. Polk's reproduction value	1,195,737.00
J. E. Jagoe's reproduction value (see Note)	1,590,930.00
The Master found the value of the plant to be	1,243,011.92
Cost of plant as charged in the Bill of Complaint	1,700,000.00
The lower Court's conclusion as to the value of the plant	1,788,000.00

From the foregoing facts it will be seen that the lower Court not only disregarded the expert testimony of five disinterested telephone engineers and the findings of the Master who heard the witnesses testify, but in order to reach the conclusion that the ordinance was confiscatory, concluded that the only witness for appellee had fixed the value $200,000 lower than it should have been fixed at, and that even appellee itself, in its Bill of Complaint, had been too modest in valuing its property, and the Court accordingly boosted that value $88,000.

NOTE. Mr. Jagoe's valuation was $1,793,540.00 (Record, p. 635). In this was included $202,610.00 overhead charges (Record, pp. 645, 647,649,650). The Court held that overhead charges were not an element of value on which appellee could be allowed to earn a dividend. (Record, p. 1627). Therefore, Mr. Jagoe's valuation should be reduced to the extent of $202,610.00

There were three erroneous findings of fact by the lower Court which were not sustained by any evidence whatever.

Two of these erroneous findings of fact were in connection with valuing the property, both of which appellee will concede.

The third was an error of law committed by the lower Court concerning what the earnings of appellee would have been under the rate ordinance.

REAL ESTATE.

As regards the valuation of the plant as found by the Court, the facts are these:

Appellee owns the real estate which it uses in the City of Louisville and which is valued by it at $162,191.42 (Record, p. 763).

It charges as a part of the expenses of conducting the Louisville exchange $13,800.00 as rental for that real estate; and in addition to the rental all of the taxes and insurance paid by it on account of the ownership of its real estate, making its net income on this real estate exceed 8 per cent. This subject will be discussed later in this brief under the head of expenses.

Appellee does not contend that it should be permitted to treat its real estate as a part of its plant in the City of Louisville on which it is entitled to earn a dividend. (Record, p. 214.)

The amount charged in its Bill as the cost of its plant in the City of Louisville, viz., $1,700,000.00, does not include the $162,000.00 representing the value of its real estate. (Record, p. 214.)

The lower Court, however, included in the value of the appellee's plant the $162,000.00 representing the value of the real estate, not eliminating however from the expense account the $13,800.00 rental which appellee charged against the Louisville exchange as an expense. The lower Court is, therefore, in the attitude of allowing the appellee to include in its expenses $13,800.00 rental on its real estate, which is 8 per cent on the value thereof, and allowing it in addition thereto to earn under its rates a reasonable income on the value of that real estate.

The action of the lower Court in the foregoing respect was assigned as error. (Record, pp. 1648, 1651.)

TOLL LINES.

When the appellee purchased the plant of The Ohio Valley Telephone Company in 1900 it acquired toll lines radiating out of the City of Louisville to towns in Kentucky and Indiana which The Ohio Valley Telephone Company said had cost $125,000.00. The appellee paid a premium on the capitalization of The Ohio Valley Telephone Company, and with that premium charged proportionately against the toll lines and the exchanges the result will show that the toll lines cost $150,000.00. (See Record, pp. 60, 61.)

The Master in his examination and in reaching his conclusion concerning the toll line earnings was confronted by a complicated situation. He found that the cost of all toll line equipment in Louisville and in the vicinity of Louisville had been charged against the Louisville exchange as a part of the cost on constructing that exchange; that the maintenance of all toll line equipment in and near

Louisville had been charged as part of the expenses of the Louisville exchange; that the salaries of all toll line operators, messenger boys, bookkeepers, collectors and superintendents had been charged as a part of the expenses of conducting the Louisville exchange; that the earnings from the toll line department were due entirely to the existence of the Louisville exchange; that the appellee only credited to the Louisville exchange 15 per cent of the receipts collected on outgoing messages at Louisville, Ky., which 15 per cent amounted to about $7,000.00 a year, whereas the salaries paid to those employes whose duties were exclusively in connection with the toll line department amounted to over $12,000.00. This $12,000.00 did not include any portion of the cost of maintaining the toll property, taxes, insurance or incidental expenses, or the salaries of general officers, local manager or local superintendent.

In view of the foregoing findings the Master reached the conclusion that it would be fair to appellee to treat its receipts on outgoing messages from Louisville as receipts of the Louisville exchange. He accordingly found that to the earnings of the Louisville exchange, as shown by the books of the appellee, there should be credited not only the 15 per cent of the toll earnings which the appellee had credited as part of those earnings, but the entire 100 per cent.

As the logical sequence of such finding the Master held that the cost of the toll lines should be added to the cost of the exchange proper.

The appellee at no time contended that it was entitled to earn on its toll lines, or that the value of its toll lines should be added to the value of its exchange in determining

what amount it should be allowed to earn. And the attitude of appellee in this respect was logical, because it could not well claim that there should be charged against the Louisville exchange as a part of the expense of conducting that exchange $30,000.00 which was expended solely in conducting the toll department, and that it should at the same time be permitted to earn a dividend on the value of its toll property. In other words, appellee treated its toll lines as a separate investment as concerned its earnings, and as an exchange investment as concerned its expenses.

The Master, however, when he decided to add to the receipts of the exchange all the local receipts of the toll department, naturally concluded that the value of the toll lines should be added to the value of the plant, and the appellee allowed to earn a dividend thereon. In other words, the Master found that all the expenses of operating the toll department should be charged against the Louisville exchange, all of the receipts credited to the Louisville exchange, and the appellee allowed to charge rates sufficient to earn a dividend on the value of that property.

The Court took the opposite view, viz., that the toll department was a separate property and that the manner in which the appellee treated the expenses and earnings of the toll department in its relation to the exchange was correct. Accordingly in its findings the Court permitted the appellee to charge as a part of the expenses of the Louisville exchange all the cost of conducting its toll department, and required it to credit to that exchange about 25 per cent of the toll earnings, which amount did not even cover the salaries of those employes who were engaged exclusively in conducting the toll department.

After reaching the above conclusion it would have been logical for the Court to eliminate from the Master's finding the value of the toll lines, since they had been included by the Master solely because all of the receipts had been credited to the Louisville exchange. Instead of doing so the Court added to the value of the exchange proper the value of the toll lines as found by the Master, viz., $125,000.00. (Record, p. 1630.) The action of the lower Court in the foregoing respect was assigned as error. (Record, pp. 1648, 1650.)

It will be remembered that the Court fixed the value of the plant at $1,788,000.00 (see Record, p. 1630). From this there should certainly be deducted $162,000.00 representing the value of the real estate and $125,000.00 representing the value of the toll lines. These two sums deducted from the value fixed by the Court on this property leaves a balance of $1,501,000.00 as the value fixed on the plant by the Court.

Moreover, the Master excluded from the value of the plant on which appellee was entitled to earn a dividend the value of real estate (Record, p. 83). From this action on the part of the Master no exceptions were filed by the appellee.

AN ERROR OF LAW WHICH RESULTED IN THE LOWER COURT HOLDING THAT THE APPELLEE'S RECEIPTS FROM TELEPHONE USERS UNDER THE RATE ORDINANCE WOULD BE $49,000.00 LESS THAN THEY ACTUALLY WOULD HAVE BEEN.

After the appointment of the Master the City applied to him for leave to have its accountants examine the books and records of the appellee. The appellee objected stren-

uously to this. The Master submitted the matter to the Court and under the advice of the Court overruled the City's application (Record, p. 100).

Appellee then proposed that the City name an accountant, that it also name an accountant, and that the Master appoint these two accountants to examine its books and records.

The City agreed to this proposition still protesting that it had the right, irrespective of such an arrangement, to have its accountants examine appellee's books. Thereupon the Master appointed an accountant upon the recommendation of the City and one on the recommendation of the appellee, and instructed them to examine the books and records of the appellee and report to him the result of their findings either in a joint report or in separate reports. The accountants proceeded to examine the books and made a joint report to the Master wherein they stated that for the year 1908, the last year examined by them, the receipts of the company from its telephone users was $49,000.00 in excess of what they would have been had the rate ordinance been in force. No witness explains how this conclusion was reached except Mr. H. B. Warren, the City's accountant, who said that the two accountants reached this conclusion (Record, p. 1110):

> "By taking each telephone subscriber as it was listed on said exhibit (Smith's Exhibit No. 6), and taking the revenue that would be derived from the rental rate as indicated by the exhibit, and also taking the rental that would be derived if the rental charged were at the rate as fixed by the ordinance for the same classification of telephones, except in cases where the rate for the services were less than the regular rates for such service, in which case the revenue remained in

both places and in both statements the same as that charged by the Cumberland Telephone Company."

In view of the fact that this record shows that appellee has grossly discriminated among its patrons, the fallacy of the method adopted by the accountants is apparent. For instance, according to the plan adopted by the accountants, where A had a direct business telephone for which he paid $7.50 per month the accountants deducted $2.00 from that rate in order to make the rate conform to the ordinance rate, ($5.50). On the other hand, if B had a direct business telephone and paid only $3.50 per month the accountants in determining what the earnings would have been under the rate ordinance did not take into account the difference between the $3.50 and the $5.50, viz., $2.00; but assumed that under the rate ordinance the appellee would continue to collect from B only $3.50.

Here is a simple illustration of what I mean:

	Old Rate.	Ordinance Rate.
A	$ 7.50	$ 5.50
B	7.50	5.50
C	3.50	5.50
D	3.50	5.50
	$22.00	$22.00

Had the appellee charged A, B, C and D the ordinance rate it would have received from them the same amount that it did receive from them under the discriminatory rate which it charged in 1908.

The accountants showed, however, under the fallacious plan adopted by them that the appellee would only receive from A and B $5.50 and would continue to receive from C and D $3.50, which would result in appellee re-

ceiving $4.00 less under the rate ordinance than it did receive under the old rate.

This explanation of how the accountants arrived at the item of $49,000.00 is explained as above indicated by Mr. Warren, the City's accountant.

After Mr. Warren testified, Mr. Wilkinson, the appellee's accountant, gave his deposition and was not even asked whether Mr. Warren's explanation of the plan pursued was correct. Certain it is Mr. Warren's testimony in this respect is not controverted and must be accepted as true.

That the plan pursued by the accountants was fallacious is also clearly shown by a reference to the Bill of Complaint (p. 14, Record in Case No. 197) where it will be seen that appellee contended that the ordinance rates would have reduced its receipts for the year 1908 to the extent of only $33,504.00.

In accepting the $49,000.00 item above referred to as representing the fact, the Master said that in view of a statement made by him when he appointed the two accountants he felt it was incumbent on him to accept this $49,000.00 item. (Record, p. 101.)

Whatever may have been the Master's reason for accepting the $49,000.00 item as representing the loss, certainly the Court was not bound to accept it unless it was sustained by the evidence. *For instance, if the accountants had reported as a fact that the land on which was located the main exchange had cost $300,000.00, and had the actual voucher representing the purchase price been produced, showing that it cost only $100,000.00, there being no evidence to the contrary, would the Court have been bound to find that the property in question cost $300,-*

000.00? And consequently that appellee was entitled to a return on $300,000.00? Such is precisely the situation which is here presented.

The Court is in the attitude of holding that a matter referred to a Master, can in return be referred to an expert, and that the report of the expert not only unalterably binds the Master, but the parties and the Court.

The case of Kimberly vs Arms, 129 U. S. 512, was a case in which a *consent order* had been entered directing the Master to ascertain and decide all questions of law and fact arising under the issues in the case, and to report its findings to the Court. The lower Court set aside the Master's report and on appeal this Court (Mr. Justice Field delivering the opinion) discussed at length the effect of such an order of reference. In the course of the opinion it was said that while such a reference was not strictly a submission of the controversy to arbitration, yet it was in effect,

> "a submission of the controversy to a tribunal of the parties' own selection, to be governed in its conduct by the ordinary rules applicable to the administration of justice in tribunals established by law. Its findings, like those of an independent tribunal, are to be taken as presumptively correct, subject, indeed, to be reviewed under the reservation contained in the consent and the order of the Court, when there has been manifest error in the consideration given to the evidence, or in the application of the law, but not otherwise."

The order in this case was not a consent order.

If the parties cannot themselves by consent submit a matter to a Master and thereby bind the Court, how can the Master, to whom no such reference has been made, submit that question to some third person not known to

the Court, and without the knowledge of the Court, and thereby bind the Court?

The action of the lower Court in respect to this $49,000.00 item was assigned as error. (Record, p. 1650.)

Concerning this phase of the case the City's accountant testified at great length, and it was shown beyond a doubt that had the rate ordinance been in effect in 1908 the appellee's receipts from its subscribers would have been a few thousand dollars in excess of what they actually were under the old discriminatory rates. (See Record, p. 1100 to 1105).

That the accountants proceeded on the wrong theory is apparent. That it was error on the part of the Court to accept their figures is shown conclusively by the opinion of this Court in the Knoxville Water case where it was held that the water company had the right to charge every consumer the amount fixed in the ordinance and that if it chose to charge less it did so at its peril.

Here is what this Court said on that subject:

> "If it stood upon the letter of the ordinance, as it had the right to do, and exacted from the consumers the full charges prescribed by the ordinance, the amount which would have been realized would have been over $4,000.00 more than that found by the Master, or a net income of not less than, $40,000.00."

If, therefore, the appellee *stands upon the letter of the ordinance as it has the right to do*, and exacts from its patrons the full charges prescribed by the ordinance, its earnings for the year 1908 would have been a few thousand dollars in excess of what it actually did receive under the rates then in force.

The lower Court found the earnings for the year 1908 to be $330,926.38 (Record, p. 1631). The Court seems to have accepted the Master's findings as to expenses, viz., $216,363.07 (Record, p. 1632), making the net earnings for the year 1908, $114,563.07. From this amount the Court said there should be deducted $49,000.00 representing the difference between what the appellee did receive from its subscribers and what it would have received had the rate ordinance been in effect, and the Court then proceeded to hold that on its valuation of $1,788,000.00 appellee would earn under any state of case less than 6 per cent and possibly as low as 3 per cent.

The Court found that appellee was entitled to earn at least 7 per cent on its property (Record, p. 1639); that any amount less than 7 per cent on the value of its property would be equivalent to confiscation, but that if appellee could earn 7 per cent or more on the value of its property then the ordinance was not confiscatory.

When the palpable errors made by the lower Court as above detailed are taken into consideration, it will be shown beyond the peradventure of a doubt that according to the Court's own findings of fact the appellee would have earned in the year 1908 more than 7 per cent on the value of its plant had the rate ordinance been in force.

Court

The ~~Master~~ fixed the value of the plant at...	$1,788,000.00
From this should be deducted the value of the real estate	162,000.00
Leaving a balance of	$1,626,000.00
From this balance should be deducted the value of the toll lines	125,000.00
	$1,501,000.00
Gross earnings for the year 1908	$ 330,926.38
Expenses for the year 1908 including maintenance and depreciation	216,363.07
	$ 114,563.31
Net earnings for the year 1908	$ 114,563.31
7 per cent on $1,501,000.00	105,070.00
Margin over and above 7 per cent	$ 9,493.31

Every witness stated that the lowering of the rates would increase business and the Master found from the evidence that within two years after the rates were lowered the gross receipts would increase $49,000.00 (Record, p. 88).

These preliminary suggestions dealing with the opinion of the Court are made for the purpose of saving the Court the necessity of wading through a mass of evidence in order to determine the real merits of the appellee's contention concerning the confiscatory nature of the ordinance in question.

As to the two items representing the value of the real estate and the value of the toll lines I have said sufficient to show that the lower Court erroneously included those two items in its valuation.

That toll lines are not treated by the appellee as a part of the Louisville exchange, and that it nowhere contended in this record that the value of those toll lines should be added to the value of the exchange is shown in the exceptions which appellee filed to the Master's report (Record, p. 121). Appellee in expressly excepting to the action of the Master in adding to the value of the plant the value of the toll lines said:

> "The evidence is clear that the toll line construction is kept separate and distinct from exchange construction, and its cost or value does not appear in this record for the reason that Your Honor directed the Master to ascertain the cost and value of the Louisville exchange, and not the cost and value of the Louisville exchange plus the toll line system of the complainant." (See also record, page 211.)

That appellee never added to the value of its plant the value of its real estate and never sought to earn a dividend thereon other than the rental it charged therefor is shown clearly by the record. (See p. 214.)

Mr. Smith, the Auditor, in his direct examination testified as follows:

> "In this connection it would be proper to explain the following: first, the real estate owned by the company in the Louisville exchange is not included in the cost of plant as shown in Exhibit No. 1. The rental which the company would have to pay for the quarters occupied if leased from other parties, is estimated, and this rent is apportioned between the various items of expense on the basis of space occupied." (Record, p. 214.)

As to the $49,000.00 item representing what the loss would have been under the rate ordinance I have only

briefly discussed that phase of the case. The facts concerning that item are discussed in detail on page 147 of this brief.

Before discussing the value of the plant, the expenses and earnings of the appellee as shown by the record, I wish to call attention to one or two preliminary questions involved in this case which entitle appellant to a reversal irrespective of whether the ordinance if enforced would confiscate appellee's property.

APPELLEE IS A TRESPASSER AND NOT ENTITLED TO RELIEF IN A COURT OF EQUITY.

In the first place, if the contention made by the City in case No. 197, City of Louisville vs. Cumberland Telephone & Telegraph Company (which case is being heard with this case), be upheld, then at the time the Bill of Complaint was filed, appellee was occupying the streets of the City of Louisville without authority of law; was a wrong-doer and a trespasser, and under the maxims of equity was not entitled to seek relief in a Court of Equity. That appellee is not entitled to seek relief in a Court of Equity under the circumstances is upheld by the Court of Appeals of Kentucky, Michigan and Ohio.

I call attention to the case of Rough River Telephone Company vs. Cumberland Telephone & Telegraph Company, 119 Ky. 470. There it was contended by a telephone company which had no franchise to occupy the streets that it was being deprived of the power to earn money. The Court of Appeals of Kentucky in disposing of the case used this language:

> "The injury arises in both cases from depriving the corporation of the power to earn money by the

operation of its franchise. A mere trespasser cannot complain that he is prevented from continuing his wrongful act. No injury is claimed to the corporeal property of appellee. The sole injury is the prevention of the full exercise of its invalid claim of a franchise in the streets of the city. It follows, therefore, under the authorities cited, that, as it has no such franchise, it can have received no injury of which equity will take cognizance."

In the case of Rural Home Telephone Company vs. K. & I. Tel. Co., 32 Ky. Law Rep. 1072, the Court of Appeals said:

> "Upon what theory can the Kentucky & Indiana Telephone Company, that has no franchise to establish or conduct a telephone system in Owensboro, compel the Rural Home Company to do business with it? While violating the Constitution and the Statute, with one hand, the appellant company is asking with the other, the protection of the Court. This protection the Court, under the circumstances, will not afford."

See also East Tennessee Telephone Company vs. Russellville, 106 Ky. 669.

Bland vs. Cumberland Telephone Company, 109 S. W. 1180.

The case of Bridge Company vs. Prange, 35 Mich. 400, was a case in which Chief Justice Cooley delivered the opinion. That case involved the right of the Bridge Company to collect tolls after the expiration of its franchise. The Michigan Court denied to the Bridge Company the right to collect tolls, using the following language:

> "The estate of the corporation in it was expressly limited to twenty years, and when that period came to an end the estate ceased, also. There was no longer color of law for taking tolls, and the failure of the

> State to institute proceedings could no more continue the franchise or restore it to life than the like failure in the case of one who should erect a gate across a common highway and levy like tolls. * * * A waiver cannot renew an estate which has expired by limitation."

The case of Cincinnati Inclined Plane Railway Company vs. City of Cincinnati, 44 N. E. 327, raised the question of whether the Inclined Plane Railway Company had a franchise to occupy the streets of the City of Cincinnati and also whether it was liable for license fees after the expiration of its franchise. The Court held that the Railway Company was without a franchise and denied to the city the right to collect license fees after the expiration of the franchise. Here is an excerpt from the opinion touching the subject:

> "We cannot accept the contention of the city, however, that the defendant is also liable for license fees from 1884 to the date of the filing of the petition in this case, because the grant had expired in 1884, and, as we have previously found, was not renewed, either expressly or impliedly. The defendant, therefore, during that period of time, was a mere trespasser upon the streets, and did not occupy them by virtue of any contract between it and the city; and it is only by virtue of a contract, express or implied, that it could be made liable for license fees."

This record shows that the City of Louisville has offered and is willing to sell appellee a franchise to occupy the streets (Record, p. 41). Therefore, if appellee is a trespasser it is because it has not accepted the offer of the City. I submit that it is not consonant with the high functions of a Court of Equity to permit a complainant to convert to its own use, without right, a portion of the

streets of a city; to refuse to procure from such city a right to use its streets, and then, when the city seeks to make regulations governing the use of its streets, for such complainant to come into a Court of Equity and seek relief from those regulations.

WANT OF FRANKNESS ON THE PART OF THE APPELLEE IN THE MATTER OF DISCLOSING THE FACTS CONCERNING ITS BOOKS AND RECORDS.

I first call attention to the language of this Court in the Knoxville Water case (City of Knoxville vs. Knoxville Water Company, 212 U. S. 16):

> "It (rate regulation) is a dangerous and delicate function and ought to be exercised with a keen sense of justice on the part of the regulating body, *met by a frank disclosure on the company to be regulated.* The Courts ought not to bear the whole burden of saving the property from confiscation."

As both the Master and the lower Court based their calculation concerning the value of the plant upon what it had cost, it is therefore important to determine the reliability of the books of the appellee upon which the cost of the plant was necessarily based. Appellee purchased the plant in 1900. It charges that it expended $1,023,000.00 in construction work between that date and March, 1909.

The auditor of the company said in his deposition that of this amount $518,000.00 represented material furnished to the Louisville exchange from the supply department at Louisville. (Record, p. 1043.) It seems that appellee has in connection with its Louisville exchange a supply department which furnished to Louisville and the Louisville district all of its supplies. The Louisville district according to appellee's auditor (Record, pp. 283-296) comprises

the towns surrounding Louisville within a radius of one hundred miles, including those in Ohio, Indiana and Illinois.

The cross-examination of appellee's auditor constantly lead to the point where it was necessary to see the vouchers from the supply department. Mr. Smith was asked time and again to produce those supply vouchers, but he persistently refused to do so. (Record, pp. 362, 363, 280.)

The method of making these charges against the Louisville exchange was as follows:

The Engineering Department would at the end of each month send to the auditor a slip of paper on which he had written a memorandum to the effect that there should be charged against the Louisville exchange a certain sum representing material taken from the supply department during the preceding month. There was no record showing what material was furnished, when it was furnished, whether it was for reconstruction or construction purposes, or in fact anything whatever except an order to make a charge against the construction account of the Louisville exchange.

The auditor was the only official put forward by the appellee to make out its case and the only official who made any pretense of knowing what the appellee had expended in the construction of its plant in Louisville. The auditor was certainly on four different occasions asked to produce these vouchers and in every instance refused to produce them. In other words, the auditor of the company is in the attitude of giving testimony in substance as follows:

> Q. You have charged on your books as part of the cost of constructing the Louisville exchange the sum of $518,000.00. What does that item represent?

A. It represents material taken from the supply department at Louisville and turned over to the proper employes of the Louisville exchange.

Q. How do you know that to be true?

A. That is our system.

Q. Have you any records in your office showing that $518,000 worth of material was furnished the Louisville exchange?

A. None except memoranda such as this.

Read that memorandum.

A. To the auditor. Charge against construction account of Louisville exchange $500.00, signed Engineer.

Q. Are there any records showing of what that material consisted?

A. Yes, in the engineer's office adjoining my office.

Q. Will you produce those records?

A. I decline to do so.

In the argument below counsel for appellee insisted that he should have been requested to produce these vouchers. I submit that it was the duty of the appellee to produce them and permit an examination of them. It was not incumbent on the appellant to look up the attorneys of the appellee and beseech them on bended knee to produce these vouchers. The appellee put forward one man and only one man to make out its case in so far as the expenditures for construction were concerned. That man was asked time and again to produce these vouchers and he declined on every occasion to produce them.

Moreover, on one of these occasions when the auditor was asked to produce vouchers from the supply department, Mr. Granbery, chief counsel for the appellee, was present and declined to permit his witness to produce these

vouchers. Here is the evidence which speaks for itself (Record, p. 280):

"Q. Now, I show you another paper contained among the papers as a part of this voucher, dated Lewisburg, Tenn., April 20, 1900, Cumberland Telephone & Telegraph Co., Nashville, Tenn., a number of poles aggregating in value $127.15, freight $26.95, which seem to have been shipped from Nashville, Tenn., to O'Bannon, Ky., and which also has endorsed on it in pencil, Louisville, Ky. Will you examine that paper and tell me who placed that endorsement in pencil on that paper?

"A. Mr. J. L. Pearcy, Jr.

"Q. What does that endorsement mean?

"A. It means that the invoice should be charged to the construction—aerial account of the Louisville, Ky., exchange.

"Q. Do you know where O'Bannon, Ky., is?

"A. I do not.

"Q. Do you know it is at least twenty miles from Louisville?

"A. I do not.

"Q. Do you know whether or not these poles were used in connection with the construction of the Louisville exchange?

"A. I have no reason to doubt that they were.

"Q. Do you know that they were?

"A. Personally no.

"Q. Does anybody personally know connected with your office?

"A. I think the supply department would have secured information to determine that before charging it.

"Q. Can you produce anybody connected with the supply department and will you produce a witness who will testify that the poles represented on that paper I have read you, were used in constructing the Louisville exchange?

"Mr. Granbery: I object to the question because this witness is not supposed to be furnishing other witnesses. He is here to testify as to what he knows and not to produce witnesses for examination.

"Mr. Blakey:

"Q. You are an official of this company, are you not?

"A. I am."

There is scarcely a page of Mr. Smith's deposition covering 573 pages wherein evidences of lack of frankness does not appear.

The attitude of appellee's chief counsel as concerned the books of the company was most remarkable. After the two accountants had made their report to the Master, I proceeded to cross-examine the Auditor. One of the first questions asked the Auditor necessitated an inspection of certain books which were not in the chief counsel's office where the deposition was being taken. The witness started to retire and obtain the information when the following took place (Record, p. 249):

Mr. Blakey:

"Note there that Mr. Blakey asked Mr. Smith if he had any objection to Mr. Warren, who is assistant to Mr. Blakey, going with him. Whereupon Mr. Smith stated he had no objection and Mr. Granbery directed Mr. Smith to go ahead, that Mr. Warren had nothing whatever to do with the matter and would not permit him to go with Mr. Smith."

Mr. Granbery:

"Mr. Granbery states he does not know Mr. Warren to be Mr. Blakey's assistant, or a lawyer at all, but understands he is assistant to Mr. E. W. Farnham representing the Mutual Audit Co. who has made a report to the Master Commissioner in this case. Mr. Granbery also says he has not the slightest objection to Mr. Blakey going with Mr. Smith and looking at the original entries if he desires."

Mr. Blakey:

"Of course, Mr. Granbery, there will be a number of matters I will want Mr. Warren to examine, in connection with the books of the company, and I want to get a ruling of the Master as to whether he shall be permitted to make such examination of records as are called for. If you object to that, I should like to know in order that I may telegraph the Master to come here and make a ruling on it."

By Mr. Granbery:

"I am not prepared to deal with any question that may arise until it arises."

Mr. Blakey:

"I will then ask you, instead of having Mr. Smith to look these records up himself, to present them here for inspection."

Mr. Granbery:

"Mr. Smith will present any record pertinent to this law suit which you may call for for your inspection."

The witness retired and returned with the record which was handed to counsel for appellant, who thereupon began to examine it in connection with Mr. Warren, who was the City's accountant. The following then occurred:

Mr. Granbery:

"Mr. Warren, that book is not for your inspection."

Mr. Blakey:

"Mr. Warren, you are here for that purpose."

Mr. Granbery:

"If Mr. Warren is to look at those books, I shall have to insist he does not do so, and I am not going to permit Mr. Warren to look at the books, and there is

one way of preventing it but that, of course, I should regret very much to have to do. I have not the slightest objection to Mr. Warren being present and aiding counsel in any data or suggestions he desires, but so far as looking at the books of the company, they are not here for that purpose, and I shall not permit him to do so."

Mr. Blakey:

"I ask the stenographer to certify to the Master the fact that certain books were produced for inspection, the books referred to by the witness, and that counsel for complainant, after they were produced, objected to the representatives of the City inspecting the books, and that counsel for the defendant then and thereupon requested the stenographer to certify to the Master, the fact that such refusal had been made, and asked for a ruling as to whether the City's representatives should be allowed to inspect the books, which were called for and produced by the witness."

Mr. Granbery:

"Mr. Stenographer, just take this. In making any certification to the Master, you will please state exactly what occurred as indicated by your notes."

The further taking of these depositions was thereupon adjourned until the Master can be heard from.

A ruling was had from the Master to the effect that the City's accountant should be permitted to inspect all books and records which were produced by the witness. (Record, p. 251.)

When the cross-examination was resumed several questions were asked in regard to figures and items appearing on the book which Mr. Smith had produced, whereupon it became necessary for Mr. Smith to retire and produce another book. During the interval at the request of counsel for the City Mr. Warren examined the first book which

the witness had produced, whereupon the following occurred:

> Mr. Granbery for complainant:
>
> "Mr. Warren, that book is not for your general inspection, but we will just follow the rule of the special master. Thereupon Mr. Warren surrendered said book." (Record, p. 252.)

The following instances are only a few of the many evasive answers showing with what difficulty evidence was extracted from Mr. Smith, and showing conclusively his lack of frankness and willingness to disclose fully the facts in regard to the company's books and records.

On one occasion Mr. Smith produced a voucher showing that there had been charged against the construction of the Louisville plant, an item for constructing a toll line from Winchester to Mt. Sterling, Ky. Mr. Smith had been so emphatic in his statement that no toll line cost had ever been charged against Louisville that I saw fit to ask him about this particular voucher. Here is what he said:

> "Q. I hand you voucher No. 702 May 1907, which seems to be a pay-roll voucher for the East Tennessee Telephone Co., amounting to $220.60, $152.76 of which seems to be charged to Louisville. I call your attention to a notation on the voucher which reads as follows: 'Running line orders from August 1st, to August 9th, reconstructing Winchester and Mt. Sterling toll line August 10th to August 30th, and I will ask you whether any part of that pay-roll represented by this voucher was charged to Louisville exchange construction account, if so, what part and state whether it was correctly charged, if so charged.
>
> "A. Mr. Wilkinson's report, page 25, shows that this item was incorrectly charged to Louisville Construction Account and such is admitted by me.

"Q. Would not that notation indicate that at least a part of the work should have been charged to toll line reconstruction?

"A. It would indicate that an expenditure chargable to maintenance, or what we term, or the foreman terms, a line between Winchester and Mt. Sterling, was made. He calls it a toll route; at the present time I don't know just what is on the route.

"Q. Do you know whether it was a toll line or not?

"A. I do not.

"Q. Do you know how far Winchester and Mt. Sterling are apart?

"A. I do not.

"Q. If they are 30 miles apart would you call it a toll line?

"A. Might be.

"Q. If it was reconstructing a line from Winchester to Mt. Sterling, which are thirty miles apart, would you say it could be anything else but a toll line?

"A. Yes.

"Q. What could it be?

"A. It might be that part of the route which bears subscribers of the Winchester Exchange and also of the Mt. Sterling Exchange.

"Q. The presumption is that it was a toll line as it says toll line?

"A. Your presumption is.

"Q. What is your presumption?

"A. Mine is that I don't know. I want it to be clear though that the case does not affect Louisville.

"Q. Your presumption is when a voucher says it was done on toll line, you don't know what it was done on?

"A. I say, the foreman thinks it was done on a toll line.

"Q. If it was done on a toll line, then you have charged up as part of the construction of the Louisville exchange work done on a toll line?

"A. Absolutely none.

"Q. This was charged up as part of construction?

"A. No, reconstruction.

"Q. I didn't say anything about reconstruction. I said construction.

"A. A part of the pay-roll is incorrectly charged to Louisville Construction account.

"Q. Where was that voucher paid?

"A. It was cashed in the Louisville, Ky. office. Louisville cashier's office.

"Q. Was Winchester in the Louisville District?

"A. It is under the Superintendent at Louisville." (Record, pp. 294-295).

In connection with what constituted the district over which the chief officer at Louisville presided, Mr. Smith testified as follows (Record, p. 283):

"Q. What territory is embraced under the jurisdiction of your chief manager at Louisville, chief officer at Louisville?

"A. At the present time.

"Q. Just generally speaking, Mr. Smith?

"A. The exchanges are as follows: Anchorage, Ky., Borden, Ind., Greenville, Ind., Georgetown, Ind., Harrods Creek, Ky., Jeffersontown, Ky., Jeffersonville, Ind., Louisville, Ky., New Albany, Ind., Pewee Valley, Ky., Pleasure Ridge, Ky., St. Matthews, Ky., Utica, Ind., West Point, Ky.

"Q. What represented the district over which your chief officer at Louisville, had jurisdiction in the year 1900?

"A. I will have to send upstairs to get it. It will probably take an hour to do that, as we will have to go through the vouchers.

"Q. Have you any general idea about what district was covered in the district I have asked about?

"A. Well, New Albany, Jeffersonville—

"Q. The one you have already named?

"A. If they were in existence, probably, yes.

"Q. What other territory?

"A. No other. It was not as extensive in 1900 as in 1909.

"Q. Was it ever more extensive than it is now?

"A. No, never as extensive as it is now."

On page 296 of the record will be found statements from Mr. Smith which are at variance with the above testimony and which at least show that he was evasive (Record, p. 296):

"Q. Was Winchester in the Louisville district?

"A. It was under the superintendent at Louisville.

"Q. Over what territory has the superintendent jurisdiction?

"A. The Louisville superintendent.

"Q. Yes?

"A. Over Southern Indiana and Central Kentucky; at the present time his jurisdiction is as far west as the eastern counties in Illinois.

"Q. How far north?

"A. As far as the territory of the Cumberland Company extends now.

"Q. How far is that?

"A. It embraces the counties in Indiana which border the Ohio River.

"Q. How far does that territory extend?

"A. I will have to refer to my files.

"Q. How far south?

"A. The general answer I will give you is, Central Kentucky. If you wish more detailed information I will have to ask for time to get it.

"Q. This morning you gave a list of towns which were included in the Louisville District; that is a sub district is it, and the district over which the superintendent has jurisdiction?

"A. Yes, this morning you asked me for the jurisdiction of the manager."

On another occasion Mr. Smith was explaining the custom among connecting companies to credit to the exchange only fifteen per cent of the toll earnings. I wished to know whether those connecting companies were Bell or Independent companies. In other words, whether they were all companies owned by the American Company. I,

therefore, asked the following questions and got the following answers:

"Q. Are they what is know as Independent telephone companies or Bell Telephone companies?

"A. They are independent telephone companies.

"Q. Well, there is a Bell system of telephones and an independent system of telephones, are there not, in the United States?

"A. I believe there are systems designated as that; the exchanges of the telephone companies to which I refer are those which were built and are owned I think entirely locally.

"Q. Do you receive messages and transmit messages over any telephone system known as the Independent System of Telephones or affiliated with the Independent Telephone System?

"A. The hundred or more companies that I have just mentioned are in themselves independent.

"Q. I understand, they are independent from your company, but are they what is known as the 'Independent,' or 'Home' telephone system, in contradistinction to the 'Bell' system?

"A. They are not competing companies, if that is what you mean.

"Q. That is not what I mean; I mean are they affiliated with or associated with what is known as the Bell system of telephones as contradistinguished from the Independent or Home system of telephones?

"A. These companies that I refer to are independent in their management and I believe some of them have the word 'Home' in their titles." (Record, p. 467).

Whereupon I despaired of getting the real facts.

Again Mr. Smith testified as follows (Record, p. 225):

"Q. Now, in your deposition on Monday, the third item bills payable $221,005.09, can you furnish me an itemized statement showing those bills payable?

"A. I can.

"Q. Have you it before you?

"A. I have not.

"Q. Have you vouchers representing those payments?

"A. I think so.

"Q. Have you before you an itemized statement of those payments?

"A. I have not.

"Q. In what records do they appear in your office?

"A. In the ledger of the company.

"Q. Will you produce the ledger for inspection?

"A. I will do so.

"Q. On what page is it?

"A. You have the ledger. There is an index in there.

"Q. Will you kindly indicate to me in this ledger where I will find a list of the items that go to make up this total sum of $221,005.09?

"A. By referring to the index under notes payable you will find the page."

So much for the attitude of the Auditor and General Counsel of the company.

Mr. Caldwell, the President of the company, is the only other officer who testified to any material fact.

So far as Mr. Caldwell is concerned it is sufficient to call attention to the language used by the lower Court in speaking of Mr. Caldwell's deposition, which is as follows:

> "The grossly profane outbreak of the president of the complainant while giving his deposition was as inexcusable as it was suggestive." (Record, p. 1638).

Mr. Caldwell practically ordered the City's accountants out of the appellee's building at a time when they were working on the books of the appellee under the orders of the Master. (Record, p. 1044).

Before the motion for a temporary injunction was made the City made an application to the Court for leave to

have its Engineer inspect the plant of the appellee. Counsel for appellee opposed the motion and the Court refused to grant such permission. (Record, p. 651).

Where a public service corporation seeks to have a rate ordinance declared invalid because unreasonable, the burden of proof is on the complainant, and it is its duty to frankly disclose all the facts bearing on the subject.

Instead of refusing to the City the right to examine its books except under the espionage of one of its hirelings; instead of trying in every manner possible to conceal the real facts; instead of declining to produce its books and records until forced to do so; instead of giving evasive answers to questions concerning its records, the complainant should court investigation; should furnish to the City and to the Court every assistance in bringing out the real facts concerning its books and records. "The Courts ought not to bear the whole burden of saving the property from confiscation." The appellee has pursued a course diametrically opposite to the course which this Court said should be pursued by public service corporations when it questions a legislative rate. Appellee has thrown upon the Court the entire burden of saving its property from confiscation.

The action of the lower Court in the above respect was assigned as error. (Record, p. 1646.)

THE ORDINANCE RATES ARE REASONABLE.

The Court appointed a Special Master with instructions to ascertain the facts bearing on the question of whether or not the rates named in the ordinance were confiscatory. The Special Master made the examination called for in the Order of Reference, and reported to the Court concerning

the cost of the plant, the value of the plant, the earnings and expenses over a period of four years, what the probable earnings would be under the rate ordinance, and certain other facts not necessary to mention. In the following pages I will discuss the evidence under the headings above indicated.

COST OF PLANT.

The appellee charged in its Bill of Complaint that its plant in Louisville, Ky., had cost $1,700,000.00. (Record, p. 54).

The two accountants stated that according to the books of the appellee its plant at Louisville, Ky., had cost $1,702,000.00. (Record, p. 742).

The Master found that appellee's plant at Louisville, Ky., had cost it $1,381,000.00. (Record, p. 70).

The Court found that the appellee's plant at Louisville, Ky., had cost it $1,745,000.00. (Record, p. 1624).

As both the Master and the Court based their valuation of the plant to a certain extent on its cost it is essential to examine the record in order to determine what the plant of appellee did cost.

As stated above the two accountants in their joint report said that *the books of the company as they were kept* showed that the plant had cost $1,702,000.00.

The joint report also had the following qualifications embodied in it:

> "The foregoing joint report shows the money charged as the cost of the plant at Louisville * * * * as recorded on the books of the Cumberland Telephone & Telegraph Company. It is not an agreement that

the said accounts are properly distributed or charged as we believe they should be."

In separate report of the City's accountant it was shown that the plant did not cost in excess of $1,317,000.00. (Record, p. 1313).

PURCHASE OF THE OHIO VALLEY TELEPHONE COMPANY.

The appellee purchased the plant of The Ohio Valley Telephone Company at Louisville, Ky., including the toll lines and exchanges in nine cities and towns surrounding Louisville. The method of its purchase was by acquiring the stock of that company. That company had $550,000.00 capital stock. For 3557 shares of that stock it paid a premium of $40.00, which amounted to $145,135.00. The remaining 1937 shares of that stock had been issued to the American Telephone & Telegraph Company as a bonus and was exchanged for a similar number of shares in the appellee company, so that the appellee paid $550,000.00 plus the premium of $145,000.00 for The Ohio Valley Telephone Company. (See Record, pp. 60, 61, 62.)

Capt. Gifford, who organized The Ohio Valley Telephone Company and who was the general manager of it during its entire existence, stated that for ten years prior to the sale, the company had paid a 7 per cent dividend on its capital stock, was in excellent condition at the time of the sale, and that its current liabilities did not exceed its current assets. (Record, pp. 959-963.)

Appellee, therefore, acquired the property of The Ohio Valley Telephone Company for $700,000.00. After purchasing the property appellee proceeded to place on its

books separately the ten or eleven exchanges and the toll lines.

The balance sheet of The Ohio Valley Company showed that in placing a value on this property it valued the toll lines at $125,000.00. (Record, pp. 1326-273.) This would leave a balance of $575,000.00 as representing the value of the exchanges. The appellee treated the Louisville exchange as representing 80.4 per cent of the value of all the exchanges. (Record, p. 61.) On this basis the Louisville exchange would have been placed on its books as representing a cost of $460,000.00. Instead, however, of placing the Louisville exchange on its books at the last named figure, it placed on its books $835,918.00 as the sum representing the cost of the Louisville exchange. (See Record, p. 1573.) Later it seems to have realized the absurdity of such a charge and it reduced this figure to $678,000.00. (Record, pp. 245-246.) The auditor explained this $678,000.00 in his deposition by saying that the company added to the $550,000.00 capital stock of The Ohio Valley Telephone Company the $145,000.00 premium, and also $79.00 representing the premium which it would have been required to pay the American Telephone & Telegraph Company had it purchased its stock, and also the sum of $135,000.00 which The Ohio Valley Telephone Company over a period of ten years, had charged off the value of its plant on account of depreciation which it said had taken place over a period of ten years, and which the appellee said had not taken place. Of this total the appellee thought $678,000.00 was a fair representation of what the Louisville exchange had cost. (Record, p. 245.)

The Master refused to accept these figures of appellee's auditor and decided that the appellee had paid for The

Ohio Valley Telephone Company $457,000.00. (See Record, p. 62.)

The lower Court did not discuss this phase of the case at all, and it must be assumed that the exceptions to the Master's report in this respect were not overruled.

Of course, the accountants in reaching their conclusion accepted the items as they appeared on the books.

The item appearing on the books as the price paid by appellee for the Louisville exchange was $678,000.00 and the accountants simply accepted that item without question. It was only through numerous pages of cross-examination of the auditor that the facts were brought out which justified the Master in reaching his conclusion as above indicated. (See Record, pp. 246 to 275.)

COST OF CONSTRUCTION SINCE 1900.

The accountants found that beginning with $678,000.00 on January 1, 1900, the books of the company showed added construction up to January 1, 1909, amounted to $1,023,000.00 or a total cost of the plant of $1,702,000.00.

This added construction appears on the books of the company under the following headings:

Payrolls for labor.

Supplies.

Equipment.

Tools and teams.

Poles and wires.

Credits to construction.

PAYROLLS FOR LABOR.

The records in the appellee's office show monthly payrolls on which appear the names of all laborers doing

any work in connection with the Louisville exchange. Following the name of each laborer is a notation showing what class of work he does and whether it is construction or reconstruction work. When cross-examining the auditor I called for payrolls for January, March, April, July, September and November, 1900. (See Record, pp. 301 to 306.) Without exception the wages of every man who could possibly have done any kind of construction or reconstruction or maintenance work was charged to construction account. Vouchers amounting from $1,100.00 to $3,000.00 were charged exclusively to construction account during the entire year with the exception of small items running from $100.00 to $210.00. For instance, in the payroll of September, 1900, which is a fair example, Mr. Smith said the entire amount was charged to construction account except the wages of the following named men, who were paid $210.00 one month: F. Weick, foreman; J. Lally, night watchman; G. Wathan, clerk; C. Coon, trouble man; F. Freck, trouble man; D. Gwyn, instrument man; A. Moraweck, wire chief; L. Newhouse, assistant stockkeeper; C. Stephens, instrument setter. (Record, p. 305.)

It is self-evident that the company charged during the year 1900 to construction account not only the wages of the men who were engaged in construction work, but also the wages of men who were engaged in reconstruction work and maintenance proper.

The January, 1901, payroll shows the same state of case as that for the year 1900. (Record, p. 305.)

Beginning with July, 1901, however, the company seems to have realized that it had been charging entirely too

much to construction, so it veered around and in July, 1901, went to the other extreme and charged $2,013.00 of the payroll out of the total of $2,046.00 to maintenance. (Record, p. 306.) Mr. Smith said that this was erroneously done, that this amount should have been charged to construction, and that subsequently an entry was made for the year 1901 adjusting these charges as between construction and maintenance. (Record, p. 701.) The June payroll for 1901 shows the same situation as the July payroll. In October, 1901, however, the old system of 1900 was again installed and out of a total of $3,192.00, the payroll for that month, over $3,000.00 of it is charged to construction. (Record, p. 315.)

As Mr. Smith said these payrolls were a fair example of payrolls for the entire period I did not think I could afford to devote further time to the examination of these payrolls. (Record, p. 302.) I may say that the examination of these payrolls extended over at least three days.

SUPPLIES.

I have discussed the item of supplies from the supply department under the heading "Want of Frankness" and will content myself with simply referring the Court to pages 50 to 53 of this brief.

Attention should also be called to the fact that 10 per cent is added to the cost of all supplies furnished the Louisville exchange by appellee. (Record, pp. 64-327.) These supplies amounted to $518,000.00. Therefore, there were $51,000.00 added to the cost of the Louisville exchange which represents no part of the cost of the ex-

change. The auditor contended that this 10 per cent represented freight, drayage and rental.

As to rental the rent of the warehouse wherein the supplies are stored is paid by the Louisville exchange.

As to taxes, the taxes on all the property in Louisville is paid by the Louisville exchange.

As to freight, the auditor produced numerous vouchers showing that all freight is charged against the Louisville exchange. (See Record, pp. 284, 295, 296, 297.)

EQUIPMENT.

The equipment includes Central Office Equipment and Subscribers Equipment. Central Office Equipment consists of switchboards inside the exchange proper.

An ex-cashier of the appellee showed that the company installed during the year 1902, five sections of switchboards and thereafter removed the same sections from the building without ever having used them. (Record, pp. 983-984.)

The auditor produced a voucher representing the expenditure of $26,000.00 for installing five sections of switchboard in the main exchange in 1902. (Record, p. 335.)

Mr. Smith stated that, that $26,000.00 was now represented on the books of the company as part of the cost of constructing the Louisville exchange. Those five sections are not now in the main exchange and were never used in the main exchange, as will be shown in the discussion of the value of the plant. (See this brief, p. 111.)

SUBSCRIBERS EQUIPMENT.

This item involves a most complicated situation. The record discloses that the company has treated its sub-

scribers equipment, as concerns charging it to construction account, in every imaginable manner.

Mr. Smith said that the " subscribers stations equipment, including poles, extension bells, desk phones, booths, pay stations, apparatus, etc., and the labor and other expense incident to putting the apparatus in condition and ready for service" is charged to construction. (Record, p. 218.)

He also said "the total cost of installing new (speaking of subscribers) equipment is charged to construction." (Record, p. 349.)

I then proceeded to have him give his reason for this charge, whereupon he said that this plan was abandoned after a few years and only the apparatus charged to construction. (Record, p. 351.) I then asked him if any additional sum was charged to construction over and above the cost of the instrument and the labor of installing it, to which he replied that a charge of $10.00 was made against construction for all instruments gained, and he proceeded to explain that when instruments were lost no extra charge of $10.00 was made against construction. (Record, p. 351.) He said, however, that "in case Louisville had shown a loss Louisville would have been charged with some part of $10.00." (Record, p. 356.) He further said that the $10.00 plan was abandoned many years ago (Record, p. 353), and yet I had him produce a voucher showing that it was in effect as late as May, 1907. (Record, p. 354.)

Mr. Jagoe, an employe of appellee, said:

> "Q. Cost of installing is charged up as the cost of operating plant, is it not?

"A. No, sir; it is charged up as construction expense." (Record, p. 651.)

Therefore, taking into consideration all Mr. Smith said on this subject, which covers two or three days of examination, and the production of many vouchers, it would seem reasonably certain that the company charged against construction for many years all cost of material used in the subscribers station including the instrument, the labor for installing it, and until August, 1907, the additional sum of $10.00 for each instrument installed.

Mr. Jagoe valued the subscribers stations at $19.63 per station. (Record, p. 635.)

Mr. Smith said that from 1900 to 1909 inclusive the company put in 27,000 telephones and took out 20,823 telephones. (Record, p. 220.) And in many pages of Mr. Smith's deposition he deals with the credits given to construction on account of instruments taken out. I call especial attention to the record, pages 359 and 360. It would there seem that the construction account is only credited when the instrument is returned to the supply department and no credit is given either for the $10.00 theretofore charged to construction or for the cost of material used in installing the instrument. In other words, the instrument itself when returned to the supply department is supposed to be credited by the supply department to construction account, but the other items remain a part of the construction account.

Mr. Jagoe placed a value of the instrument proper at $11.35 (Record, p. 650), so that if it cost $19.60 to purchase and instal each instrument, as claimed by Mr. Jagoe, then there is certainly $8.00 for each of the 27,000 instru-

ments charged to construction, whereas there should only be charged $8.00 per instrument on 9,300 instruments. In other words, there are now 9,300 instruments and the company during the period of ten years charged to construction account an item of $8.00 per instrument for installing 27,000 instruments. 17,700 instruments, therefore, at $8.00 per instrument makes a total of $141,600.00, which should never have been charged to construction. In addition to this, from the time the company began operating up to May, 1908, a part if not all of $10.00 per instrument on all instruments installed was without rhyme or reason, charged to construction account. What this $10.00 item will total there is nothing in the record to show.

Smith's Exhibit No. 3 (Record, p. 476), shows that 6,800 subscribers were gained during that time, which, at $10.00 each, would make a total of $68,000.00 for this item alone.

Now, as to the credit given to construction when instruments are taken out. The Louisville exchange keeps on hand in its stock room a certain number of instruments. When the company is putting in more instruments than it is taking out it is constantly called upon to furnish instruments to the stock-room from its supply department. When more instruments are being taken out than are being put in, the stock-room at Louisville returns its excess instruments over the amount it usually carries to the supply department and is given credit therefor. Mr. Smith said: "Until the instrument reaches the supply department the Louisville exchange remains charged with the instrument." (Record, p. 357.) Mr. Settle said when an instrument was taken out of a subscriber's station

it was taken to the *stock-room* and when any considerable number of them were accumulated they were returned to the *supply department* and credit then given to the Louisville exchange. (Record, p. 1001.) It, therefore, seems certain that during the period from January 1, 1900, to September, 1907, during all of which time the company was gaining rather than losing subscribers, there was never any occasion to return an instrument to the supply department and, therefore, during those years no credit was given to the Louisville exchange on account of these instruments which had been charged to construction. It is moreover certain that during all of those years there were "put-ins" and "take-outs" constantly. If A had a telephone installed the cost of it was charged to construction account. If it were taken out the next month it was returned to the stock-room and no credit given to construction. If the next day the company installed it for B it would charge against construction the entire cost of installing that instrument in B's place of business. If B kept it a month and had it taken out it would be returned to the stock-room and if the next day the company installed it for C it would charge the entire cost of installing it to construction and when taken out of C's place of business would be installed in other places *ad infinitum*.

Mr. Smith's Exhibit No. 3 (Record, p. 476), shows that up to and including the year 1907, appellee put in 25,500 instruments and took out 18,500. That exhibit also shows that up to the year 1908 the company had always put in more telephones than it had taken out. Therefore, with a few exceptions where the instrument was destroyed or worn out, there could have been no credits given to con-

struction on account of these instruments being returned to the supply department.

Mr. Smith showed that during the year 1901, $36,000.00 of material representing subscribers equipment was furnished by the supply department to the Louisville exchange and charged to the construction account. (Record, pp. 350-362.) During that year, according to Mr. Smith's Exhibit No. 3, there were 3,183 instruments put in and 1,176 taken out. For that year alone, therefore, there were over 2,000 instruments put in and charged up to construction which were not really in existence at the end of the year, and yet the cost of installing those instruments was a part of the construction account for that year.

TOLL EQUIPMENT.

There is also charged up to construction account of the Louisville exchange the cost of all toll equipment. (Record, pp. 328-331.)

TOOLS AND TEAMS.

Without going into any extended discussion of how appellee has charged to the construction of the Louisville exchange tools and teams which were purchased, I simply call attention to the following pages of Mr. Smith's deposition showing vouchers about which he testified:

Record, page 364. Mules purchased for Bardstown charged to Louisville.

Record, page 365. Mules purchased for work at Harrods Creek charged to Louisville.

Record, page 365. Mules purchased for East Tennessee Telephone Company charged to Louisville.

Record, page 371. Mules purchased for Springfield charged to Louisville.

Record, page 372. Mules purchased for Shelby County toll line charged to Louisville.

Record, page 373. Mules purchased for Springfield charged to Louisville.

Record, page 374. Mules purchased for Lexington charged to Louisville.

Record, page 370. Mules purchased for East Tennessee Telephone Company charged to Louisville.

And numerous other similar charges are to be found in the record (pages 364 to 375.)

Mr. Smith said that if a horse were sold or died the original cost of the horse would be credited to construction, and yet he produced vouchers crediting Louisville with the sale price of horses (Record, p. 431).

An examination of the vouchers above referred to and the part of Mr. Smith's deposition dealing with these vouchers illustrates very forcible the importance of an investigation of the supply vouchers.

Items such as tools and teams are not furnished by the supply department and when the vouchers representing those purchases show such an indiscriminate manner of making charges against the Louisville exchange, then I submit it is fair to assume that the supply vouchers will be in substantially the same condition.

POLES AND WIRES.

Practically all poles and wires are furnished by the supply department and, of course, there is no way of telling whether items representing poles and wires have been

properly charged against the Louisville construction account. It, however, seems conclusive from Mr. Smith's deposition and his method of treating the credits to construction account that all items furnished the Louisville exchange by the supply department have been charged to construction account rather than distributed between construction and reconstruction.

In Mr. Smith's direct examination he went into some detail as to the method of treating the depreciation and reconstruction account.

On page 232 of the record, this question and answer will be found:

> "Q. Suppose you sell the old poles and wires out of that (meaning reconstructed line) for $1,000.00. What happens?
>
> "A. We credit maintenance reconstruction with $1,000.00"

That was the proper course to pursue, but when the facts were brought out and the vouchers examined an entirely different showing was made. Mr. Smith's evidence dealing with credits to construction appears on pages 430 to 436 of the record. Without exception these credits show that the sale price of old wire and junk which was taken out of the reconstructed lines, was credited to construction.

Now, if salvage from a pole line which is reconstructed is credited to construction, I submit that there is only one excuse for it and that is because the cost of reconstructing the line is charged to construction. Any bookkeeper who is going to charge to reconstruction the cost of reconstructing a pole line would certainly credit re-

construction with the salvage from the pole line so reconstructed.

Mr. Warren says that an examination of the books did not disclose a single item representing old wire or junk credited to the reconstruction account. (Record, p. 1110.)

As showing the unreliability of the appellee's books I call attention to the fact that the auditor's Exhibit No. 2 (Record, p. 475) showed that the conduit system had cost $287,918.71.

Mr. Wilkinson, the accountant for the appellee, showed that the conduit system had cost up to 1900, when appellee acquired the plant, $108,000.00 (Record, p. 756).

Mr. Hume, the general manager of the company, said that since the appellee had acquired the plant in 1900 it had constructed practically no conduits and had not added over 15 per cent to the conduit system since its purchase (Record, p. 695-681).

Mr. Jagoe, who placed a reconstruction value on the conduit system for the appellee, at double the cost of reproduction as fixed by the City's engineers, said that it could be reproduced new throughout for $170,384.00 (Record, p. 624).

The above facts speak for themselves.

Taking into consideration all the foregoing facts, and I submit they are all borne out by the record, it is self-evident that no reliance can be placed in the books of the appellee in so far as reaching even a semblance of certainty as to the cost of its plant.

The Master discussed the items above mentioned and found that unquestionably there were erroneous charges

against construction. In speaking of the character of evidence offered by the appellee the Master said (Record, p. 62-63):

> "It is not clear to my mind that this is the best evidence of the correctness of such charges. I have not felt justified in rejecting such evidence, but I have carefully considered all the evidence produced which tended to discredit any and all such entries.
>
> "The great mass of evidence, and the hundreds of detailed matters touching the correctness of charges that constitute the Construction Account, forbid any attempt to treat them singly. In fairness to both parties to this litigation, I am forced to treat these matters in a general way, and to arrive at what I consider a fair and equitable estimate of what I believe to be erroneous charges to this account."

Again the Master said (Record, p. 63):

> "Many vouchers were produced at the hearing, covering the wages of men employed in and near Louisville in connection with the aerial work, including toll lines. These vouchers show that certain wages and salaries had been expended on the aerial lines, and also on underground lines connected with the Louisville exchanges. A small proportion of these outlays was charged to Maintenance or Reconstruction, while the bulk of the outlays is charged to Construction.
>
> * * * * * * * *
>
> "The evidence tends to show that in nearly every instance the wages of the employes shown in the vouchers we are considering, were charged almost wholly to Construction, and no evidence of the correctness of such charges was offered, except that the vouchers bore a notation to that effect.
>
> "It is inconceivable that so little of these wages was properly chargeable to Maintenance or Reconstruction from 1900 to 1908. The aggregate amount of these vouchers was not shown in evidence."

Again the Master reported (Record, p. 64):

> "Vouchers from the Supply Department were called for but not produced by the company's auditor, the reason being given that he had no control over the Supply Department. (Smith's Deposition, p. 320.)
>
> "The evidence shows that the vouchers for supplies were sent into the Nashville office from the Louisville office accompanied by a notation as to how the amounts were to be charged—whether to Maintenance, Reconstruction or Construction. But the evidence is most unsatisfactory as to whether the supplies were accurately distributed in the books of account. Vouchers from the Supply Department showed totals only, and the amounts were entered on the books in accordance with the notations of the Supply Department clerks."

Similar criticisms are made by the Master concerning the construction account on pages 62, 63, 64 and 65.

Considering all of the evidence the Master found that the plant had cost appellee $1,381,124.41. (Record, p. 69.)

The lower Court in its opinion failed to discuss the items of cost, saying in this connection:

> "The large mass of testimony directed to the subject of the cost of the plant will demonstrate the extreme difficulty of reaching a satisfactory conclusion upon the subject upon any very reliable theory."

And the Court refused to pass on the exceptions filed by appellant to that portion of the Master's report wherein he found that it had cost appellee $1,381,124.41 to build its plant. In this connection the lower Court said (Record, p. 1624):

> "Under the circumstances we think we need not pass on those exceptions, inasmuch as whether they are sustained or overruled, the findings of the Master

> as to the original cost, whether correct or not, under the circumstances of this case, furnish no very valuable guide for ascertaining the 'present value' of the plant.
>
> * * * * * * * *
>
> "We think, therefore, that we may safely proceed to the consideration of the latter question without directly passing upon the exceptions to the Master's findings as to the former, though we incline to think that the testimony clearly shows that the original cost of the company's plant, exclusive of real estate and franchise, was as much as $1,600,000 beyond any premium paid for stock in the Ohio Valley Telephone Company."

The lower Court, therefore, did not sustain the exceptions to the Master's report in this respect, which, therefore, leaves the Master's report affirmed to the extent of finding that the plant had cost the appellee $1,381,124.41.

Had the Master actually found that appellee paid $1,600,000.00 for its plant "exclusive of franchise and premium paid for stock in the Ohio Valley Telephone Company" it would be a very simple matter to show the inaccuracy of such a finding. The franchise appeared on the balance sheet of the Ohio Valley Company as $100,000.00. (Record, p. 1326.) The Master found that appellee paid $145,000.00 premium on the stock of the Ohio Valley Telephone Company. These two items added to the $1,600,000.00 makes a total of $1,845,000.00 which the Court *thought* appellee paid for its plant, whereas, appellee only contended in its Bill of Complaint that its plant had cost $1,700,000.00 (Record, p. 13). Appellee, however, contends that instead of paying only $145,000.00 premium for the stock of the Ohio Valley Telephone Company, it paid $145,000.00, plus $79,000.00, plus $135,000.00. (Record, p. 756.) If these two sums are accepted, the cost

of appellee's plant according to the Court will be still further enhanced.

In connection with expenditures which have been charged as the cost of constructing the Louisville exchange, I now call attention to certain portions of the record which show that the earnings of the Louisville exchange have been invested in the plant. That is to say, the record shows that the expenditures for constructing the Louisville exchange have been paid in part out of its earnings. The amount so expended does not appear in the record, and if the rule adopted in the case of Railroad Commission vs. Cumberland Telephone & Telegraph Company, 212 U. S. 419, is to be applied, then the judgment of the lower Court must be reversed.

It will be remembered that in the Louisiana case Mr. Smith and Mr. Caldwell said that appellee had set aside 7 1-2 per cent per year to take care of incomplete depreciation; that this 7 1-2 per cent had been placed in the general treasury of the company, and that all of it had not been expended in reconstruction work; that the unexpended part had been used in transacting the business of the company and in enlarging its plant over its system generally. (See Transcript of Record, Case No. 182, October Term, 1908, Railroad Commission vs. Cumberland Telephone & Telegraph Company, pp. 54-65-169.)

The Railroad Commission contended that the appellee could not be permitted to earn a dividend on any portion of its plant which had been constructed out of earnings on the Louisiana business. The lower Court held that it was incumbent on the *Railroad Commission* to show exactly how much of the depreciation fund had been invested in the plant. This Court held, however (Mr. Justice Peck-

ham delivering the opinion), that the lower Court was in error in this respect, that if appellee had invested any of its Louisiana earnings in the Louisiana plant, then it could not be allowed to earn a dividend thereon, and that it was incumbent on the appellee to show exactly how much of its plant investment was derived from earnings on Louisiana business. In this connection this Court said:

> "It certainly was not proper for the complainant to take the money, or any portion of it, which it received as a result of the rates under which it was operating, and so to use it, or any part of it, as to permit the company to add it to its capital account, upon which it was paying dividends to shareholders. If that were allowable, it would be collecting money to pay for depreciation of the property, and, having collected it, to use it in another way, upon which the complainant would obtain a return and distribute it to its stockholders."

And so this Court held:

> "Now, although the books, it is said, do not show how much money collected for depreciation has been, in fact, used to increase the capital of the complainant, upon which dividends were paid to stockholders, yet still, even if the books do not show accurately, or even at all, what disposition was made of these moneys, at any rate the officers of the complainant must be able to make up some reasonable approximation of the amount, even if it be impossible to state it with entire accuracy; and this duty rests with the complainant, in order that it may discharge the duty devolving upon it to prove that the rates were not unreasonably high."

Appellee in this case has tried a different tack from that tried in the case above referred to. It does not propose to break on that particular rock, and yet I think I can show by the evidence that it has foundered at identically

the same place, and that this record shows identically the same situation as that shown in the Louisiana case.

Mr. Smith, the auditor of the company, was the first witness to testify. On pages 229 to 235 will be found Mr. Smith's labored attempt to explain depreciation and appellee's method of treating it. Mr. Smith concludes what he has to say on page 235 as follows:

> "Q. Now, I will ask you whether or not the company has set aside for Louisville, and if so how much, of a depreciation fund unexpended?
>
> "A. The company never earned enough money in Louisville to set aside any fund."

Mr. Caldwell, the president of the company, also said that the company had never set aside any amount to take care of depreciation. (Record, p. 840.)

Mr. Hume, the general manager, did not testify in chief, but was called to rebut the testimony of the City's engineers. His deposition is remarkable as concerns depreciation. A part of his deposition was taken on March 18, 1910, and it was concluded on March 19. On the first day he testified as follows (Record, p. 680):

> "Q. Now taking up first the question of depreciation, how much does the Cumberland Telephone & Telegraph Company set aside to take care of depreciation?
>
> "A. Seven and one-half per cent."

Again, on page 685, in answer to a question asked by the Master he testified as follows:

> "Q. Mr. Hume, since the Ohio Valley Telephone Company plant was obtained, it has been about ten years?
>
> "A. Yes, sir; about ten years.

"Q. Now in that time, as I understand, you have constantly set aside as a depreciation fund seven and one-half per cent?

"A. Yes, sir."

The next morning he answered a question concerning depreciation as follows (Record, p. 698):

"Of course, if seven and a half per cent is not available from earnings to set apart it cannot be set apart, and is not set apart, and unfortunately this has been the condition at Louisville."

On the first day Mr. Hume evidently had in mind the testimony he had given in the New Orleans Rate Case and did not know the legal significance of what he said concerning the company setting aside a depreciation fund. Over night he seems to have seen a great light.

As to the disposition made of the earnings of the Louisville exchange, I call attention to the following parts of the record. Mr. Smith said:

"As the depreciation is invested in plant, when you need the money to construct a part of the plant, you cannot sell any part of the plant to get that money, and therefore we get the money from capital. We repay the depreciation fund from capital.

"Q. So, if you put the money in your treasury and and do not use it, you must use a higher per cent than seven and one-half per cent for depreciation?

"A. Yes.

"Q. And, in order to get along on seven and a half per cent, you must use that unexpended portion of it in your business?

"A. Yes.

"By the Commissioner:

"Suppose that depreciation account is a mere credit on your books and you allow it interest. Now, suppose the time comes when you need that amount, plus the interest, where do you get it? You say

you take it from capital, that is what I didn't understand.

"A. We would have to borrow money on notes, or issue stocks or bonds in order to get the amount of money we need.

"Q. You don't do that, however,—you don't add that to the value of your plant. You don't make any increase in the value of your plant, on your books, do you?

"A. We do. Any amount of money that is expended, any additions or improvements in the plant, is added to plant, and if we did not do that and add it to plant, we would not make it earn any money." (Record, pp. 229, 230.)

Again Mr. Smith testified as follows:

"Q. From what source was the money derived which was expended and charged to construction account of the Louisville exchange?

"A. The money was all paid out of the treasury of the company. The larger part by far of all the construction which has been done throughout the whole of the company's system has been derived from the sale of its stock at par. There were no appropriations of money from specific sums for the construction of the Louisville exchange but think the money practically all came from its stock.

"Q. Where was the money placed which was derived from the sale of the stock?

"A. In the treasury of the company.

"Q. Where were the earnings from the Louisville exchange placed?

"A. In the treasury of the company, if there were any.

"Q. And was this money which was expended for construction account in Louisville paid out of the same treasury into which the proceeds of the sale of stock and the earnings were put into?

"A. Yes, but accounts were kept so that the earnings are known, if there were any." (Record, pp. 383-384.)

Again Mr. Smith said:

"Q. What have become of your earnings from the Louisville exchange?

"A. Whatever net earnings there were—and there has been precious little—have been placed in the general treasury.

"Q. Has any of it been set aside for a depreciation fund to take care of the Louisville plant when it ceases to be in operating condition?

"A. Not specifically.

"Q. Has any of it been used to pay dividends?

"A. Not specifically.

"Q. What has become of it?

"A. It has been placed in the general treasury of the company.

"Q. Are the earnings from the Louisville exchange sent direct to Nashville, or are they kept in Louisville and vouchers and payrolls paid out of those earnings?

"A. The gross earnings are remitted in toto to the treasurer at Nashville.

* * * * * * * * *

"If I understand you, then, Mr. Smith, all the earnings from the Louisville exchange are paid into the general treasury. That is correct, is it?

"The gross earnings, yes, that is a fact, all over the territory.

"Q. And no part of the earnings from the Louisville exchange have been set aside to take care of depreciation?

"A. The earnings have been so scant at Louisville that we have not been able to specifically set aside anything.

"Q. Have the expenses of operating the Louisville exchange been paid out of the general treasury?

"A. All expenditures for the benefit of the Louisville exchange have been paid out of the general treasury.

"Q. Then the difference between the gross earnings and the expenditures of conducting the Louis-

ville exchange have remained in the general treasury until they have been used for some other purpose, have they?

"A. Yes." (Record, pp. 389-390.)

Mr. Caldwell had this to say on the subject:

"Q. Now, speaking of the depreciation fund which you say is a part of your operations. What is done with the depreciation fund?

"A. Well, sir, I don't think there has been anything done with it in Louisville, for we have not made enough money to set aside any depreciation fund there.

"Q. What is done with it generally?

"A. It is preserved for the care of the property.

"Q. In what is it invested?

"A. It is invested in cash and supplies and working capital.

"Q. Invested in the plant?

"A. Invested in cash, and supplies and working capital.

"Q. Cash, supplies, etc., are placed in the plant?

"A. Cash is kept in the treasurer's drawer and in bank, and supplies are kept in the warehouse and when they are drawn from, and that put into the plant, they are charged to it." (Record, pp. 549-550.)

Here is Mr. Hume's remarkable testimony on the subject:

"Q. Now taking up first the question of depreciation, how much does the Cumberland Telephone and Telegraph Company set aside to take care of depreciation?

"A. Seven and one-half per cent." (Record, p. 680.)

The Master:

"Q. Mr. Hume, since the Ohio Valley Telephone Company plant was obtained, it has been about ten years?

"A. Yes, sir; about ten years.

"Q. Now in that time, as I understand, you have constantly set aside as a depreciation fund, seven and one-half per cent?

"A. Yes, sir." (Record, p. 685.)

Again he said:

"Of course if seven and a half per cent is not available from earnings to set apart it cannot be set apart, and is not set apart, and unfortunately this has been the condition at Louisville." (Record, p. 698.)

The foregoing facts, considered in the light of the Louisiana case, makes it apparent that the gross receipts of the appellee from the Louisville exchange are paid into the treasury of the company; that the expenses of the Louisville exchange are paid out of the treasury; that the costs of constructing the plant is paid out of the treasury, and that a part of the earnings of the exchange, if there have been any earnings (see Note), have necessarily been expended in constructing the Louisville plant. Appellee has not shown how much of these earnings have been so expended, and as it cannot under the law earn a dividend on that portion of its plant which has been constructed out of earnings, the decree should be reversed.

VALUE OF PLANT.

In his report (Record, p. 70) the Master found the value of the plant to be	$1,243,011.97
Value of toll lines and equipment	112,866.12
Total value of exchange plant and toll lines, not including real estate	$1,355,878.09

NOTE. The question of whether or not appellee has earned money is discussed in this brief (pp. 198-99), where it is shown that for the year 1900 the company earned 19 per cent on the value of the plant, for the year 1901 it earned 15 per cent and for the years 1905, 1906, 1907 and 1908 it earned from 6 to 12 per cent. (See this brief pp. 201, Rec. p. 85.)

The Master's finding on the subject of the value of the plant was arrived at after hearing and seeing the witnesses testify, and carefully considering all the evidence in the case; and unless there is abundant proof showing that the Master was in error, we assume his finding should not be set aside.

Appellee's counsel in the lower Court accepted the Master's finding of fact as to value provided the Court would add thereto a sum representing the following four items of value which it contended the Master did not include, namely:

Value of franchise.

Value of going concern.

Value of supplies.

Working capital.

We will first discuss the value of the plant as found by the Master, together with his reasons for so finding, and will then proceed to discuss the four items above mentioned, to-wit: franchise, going concern, supplies and working capital.

In discussing the value of the plant the following parts of the record are pertinent and were considered by the Master:

Jagoe's deposition.

Polk's two depositions.

Crumb's deposition.

Leving's deposition.

Mr. Caldwell, the president of appellee company, thought the property was worth what it cost. (Record, p. 501.)

Mr. Smith, the auditor of appellee company, thought the property was worth what it cost. (Record, p. 221.)

Mr. Hume, general manager, thought that Mr. Jagoe's statement showing a value something in excess of $1,700,000.00 was correct. (Record, p. 670.)

Mr. Jagoe went into detail showing of what the plant consisted, and what it would cost to reproduce its various parts. (No inventory 640 - 1 - 8 - 653 - 663

The deposition of Mr. Jagoe should be read in connection with Mr. Polk's second deposition inasmuch as the items of cost named by Mr. Jagoe were discussed by Mr. Polk.

In arriving at the weight that should be given the respective depositions of Mr. Jagoe and Mr. Polk it should be borne in mind that Mr. Jagoe constructed no part of the Louisville plant; that he had had no experience in constructing a telephone plant, or any parts of a telephone plant in Louisville, or elsewhere (Record, p. 641); whereas Mr. Polk had constructed complete telephone plants in Louisville and in many other cities.

Mr. Jagoe (Record, p. 622) said that his duties were to supervise construction and to "advise with the engineering department on all proposed work." There is no telling what he meant by this, but I assume he would have stated what plants he had constructed had he ever constructed any. He certainly was not a telephone engineer, and he admitted he had nothing to do with constructing the Louisville plant. (Record, p. 641.)

Mr. Polk, Mr. Crumb and Mr. Levings all testified for the City and detailed the extent of the experience which they had had in constructing telephone plants, stating city after city in which they had constructed such plants.

Mr. Polk, for instance, said that he was graduated as a civil engineer in the Ohio State University, and that,

"for 14 or 15 years my duties have been entirely in connection with construction work on telephone plants." (Record, p. 1492.) He said that he was employed by the Central Union Telephone Company, a Bell Telephone Company, for six years and in that connection constructed telephone plants in Columbus, Toledo, Akron, Canton, Dayton, Springfield and Zanesville, Ohio; Indianapolis, Terre Haute, Munsey, Anderson and Fort Wayne, Indiana; Rockford and Springfield, Illinois; that for the last eight years he has been engaged in constructing telephone plants for Independent Telephone Companies at Toledo. O.; Louisville, Ky.; Kansas City, Mo.; Utica, N. Y.; Mobile, Ala.; and numerous other places. He said that he spent eighteen months in Louisville, and had entire charge of constructing the Louisville Home Telephone plant; that he purchased all of the material for the plant, employed all the labor and knew exactly what it cost to construct a telephone plant such as the Cumberland plant in the City of Louisville; that this work was done in 1901 and 1902; that he was at that time familiar with the plant of the Cumberland Company and the character of its construction. (Record, p. 1493.) He said that he inspected the plant of the Cumberland Company shortly before giving his deposition; that he ascertained from the blue prints furnished by the company the exact extent of the conduit and cable system; that he inspected the switchboards and knew the number of instruments installed in subscribers' stations. The only three items on which his valuation is an estimate are the poles, the wire on the poles, (not including cables), and the tools and teams. He said he actually knew what it cost to construct conduits such as the appellee has, that he actually knew what it

cost to purchase the character of cable which the appellee uses, that he had actually purchased such cable, as well as the smaller items such as messenger wire, guy wire, etc., that he had actually constructed such cables in the City of Louisville, and various other places and knew exactly what it cost to purchase cable and what it cost to string it in the City of Louisville. (Record, p. 1391.)

Mr. Polk and Mr. Jagoe do not vary as to the amount or character of conduits in the system; they do not vary as to the amount or character of cable in the system; they do not vary as to the amount of equipment. They do vary as to the cost of reproducing all of the above items. They vary as to the number of poles and the amount of wire; and also as to the amount and cost of the wire and the poles.

The extent of the conduits and cables in the system is shown by blue prints which were filed by Mr. Crumb with his deposition, and Mr. Jagoe said that his figures were based on these blue prints and that the blue prints show the amount of material in the plant. (Record, pages 628, 629, 641, 654.)

Counsel for appellee at the argument below said very frankly that he had the highest opinion of Mr. Polk's integrity, ability and inteliigence.

Mr. Jagoe, (p. 635), and Mr. Polk, (p. 1411), put the following valuation on the plant:

	Jagoe.	Polk.
Conduit	$ 170,676.96	$ 95,082.00
Aerial cable	431,955.35	241,351.00
Aerial wire	77,035.87	52,000.00
Poles	331,769.40	176,000.00
Switchboard	309,102.92	203,000.00
Subscribers' stations	184,465.15	128,755.00
Underground cable	288,942.50	189,549.00
Miscellaneous supplies on hand		18,000.00
Furniture and fixtures		2,000.00
Taxes, rent and insurance		5,000.00
Soliciting and right of way		15,000.00
Engineering and supervision,		20,000.00
General Legal Miscellaneous,		50,000.00
Total	$1,793,948.15	$1,195,737.00

Mr. Crumb (Record, pp. 876 to 887) placed the following valuation on the plant:

Conduits	$ 100,000.00
Aerial cable	225,000.00
Aerial wire and poles	150,000.00
Switchboards	200,000.00
Subscribers' stations	100,000.00
Underground cable	200,000.00
Tools, teams and furniture	20,000.00
Supplies and working capital	20,000.00
Total	$1,015,000.00

Mr. Levings (Record, pp. 1526 to 1528) placed a valuation on the entire plant of $1,000,000.00.

Based on the unit of values found by Mr. Jackson, who valued the Boston plant, and placed a valuation thereon of $92.00 per station (Record, p. 660), the Louisville plant would be valued at $864,340.00, (it having 9,395 stations or subscribers).

The Chicago Commission valued the Chicago Bell Telephone Company at $100.00 per station. (See Record, p. 891.) On the same basis the Louisville plant would be valued at $939,500.00.

The witnesses who testified concerning the value of the telephone plant distributed the parts of the plant under the following headings:

Cables.

Aerial Wire.

Poles.

Switchboards.

Subscribers' Equipment.

Conduits.

I will, therefore, discuss the various parts of the plant in the above order:

CABLES.

Mr. Jagoe valued the cable as follows:

Aerial cable	$431,655.35
Underground cable	288,942.50

Mr. Polk valued the cable as follows:

Aerial cable	$241,351.00
Underground cable	189,549.00

Mr. Crumb valued the cable as follows:

Aerial cable	$225,000.00
Underground cable	200,000.00

Cables are placed in the conduits and also on poles. They are strands of copper wire encased in a lead sheath. They are used indiscriminately underground and overhead. There are different gauges of these wires running from 19 to 22. 19 gauge wire has more copper in it and costs more money. There are also different sizes of cables. For every subscriber there must be a pair of wires. Some of the cables contain 25 pairs, some 50, some 100, some 200 and some 400 pairs of wire. The size of the cable also has something to do with its cost. On page 1389 of the record will be found the values placed by Mr. Jagoe on various kinds of wire in the underground cable and on page 1390 will be found the corresponding values placed by Mr. Polk. The amounts do not greatly vary, but the prices materially vary. For instance, Mr. Jagoe is lower than Mr. Polk on items 1, 2, 4 and 9. These are all small items and the difference in dollars is small. However, on items 3, 6 and 8 which are large items, Mr. Jagoe is considerably higher than Mr. Polk. Here is a table showing the values placed by the two witnesses:

Jagoe. (p. 1389)

Underground Cable.

Pr.	Gauge.	Cts.	Dollars.
25	22	11	202
50	22	17	470
50	19	27	14,649
100	22	29	848
100	20	40	457
100	19	52	67,677
200	22	55	4,666
200	20	70	39,097
400	22	93	46,756
Wool cable			7,950
			$182,772
Installing, Splicing, Supervising, etc.			106,167
			$288,939

If 100 pairs 20 and 22 gauge is correct, then 19 gauge should be 45½ cts., whereas Jagoe fixed it at 52 cts.

Polk. (p. 1390)

Underground Cable.

Pr.	Gauge.	Cts.	Dollars.
25	22	12	223
50	22	20	387
50	19	24	9,527
100	22	31	341
100	20	38	417
100	19	43	56,006
200	22	52	5,185
200	20	68	39,781
400	22	96	50,748
			$162,615
9 cts. per foot for Installing, etc.			26,934
			$189,549
Cable boxes			3,000
Protectors			1,400
			$193,949

If 100 pairs 20 and 22 gauge is correct, then 19 gauge should be 41½ cts., whereas Polk fixed it at 43 cts.

Mr. Jagoe said that the prices given by him were current prices, (page 648). Mr. Polk said that he knew the prices; that he had bought cable right along for years, had the price lists sent to him constantly, and knew that the prices named by him were prices at which cable could be purchased and delivered in Louisville. (Record, p. 1393.)

Mr. Polk explained (Record, pages 1392 to 1396) how

Mr. Jagoe's figures were inconsistent and necessarily not reliable. For instance, there is not the same proportionate relation between 100 pairs of 19 gauge and 100 pairs of 20 gauge that there is between 100 pairs of 20 gauge and 100 pairs of 22 gauge. If Mr. Jagoe's figures as to 100 pairs of 20 and 22 gauge are correct, then his figures on 100 pairs of 19 gauge are necessarily too high.

There is practically no difference between Mr. Jagoe and Mr. Polk on the cost of cable except as to the 19 gauge cable. Mr. Polk's valuation on 19 gauge is proportionately the same as the price placed by him on the 20 and 22 gauge cable, whereas Mr. Jagoe placed a value on the 19 gauge cable out of all proportion to the price fixed on 20 and 22 gauge cable.

Mr. Jagoe itemized the various articles necessary to install cable. Of this Mr. Polk (Record, p. 1391) said:

> "Q. 32. Mr. Jagoe also mentioned splicing, lead sleeve, wiping solder, boxes with protectors, pot heads, labor of pulling in cable, laying out pairs of main frames, paraffine, paper sleeves, etc. What have you to say in regard to those items, have you placed any value on those various items? If so, how did you arrive at the value you placed on the items covered by those?
>
> "A. I know from past experience, how much it cost to install cables per foot, and I figured my cost at so much per foot as installation, and did not go into these various materials used in installation.
>
> "Q. 33. Which is the customary method of reaching the cost of installing an underground cable system, the method you pursued or the method Mr. Jagoe pursued?
>
> "A. The method I pursued at so much per foot for laying the cable.
>
> "Q. 34. Why is that?

"A. Because its cost does not vary materially in various systems.

"Q. 35. Under what circumstances would the itemized bill of material such as Mr. Jagoe has used become necessary?

"A. It only becomes necessary when it becomes necessary to place the order for material. In making the estimate, those items are not considered at all.

"Q. 36. What do you say is the value of installing the cable system including these various items you have mentioned here, and also freight, if there is freight?

"A. I include my freight in the cost of cable, which is the proper way, as cable is practically always purchased, delivered or with a freight allowance.

"Q. 37. Answer the balance of my question.

"A. I allow nine cents per linear foot for installation of cable.

"Q. 38. How much does that amount to in dollars?

"A. That makes a total cost of the underground cable system $189,549.

"Q. 39. Is nine cents per foot a sufficient amount to cover all those items?

"A. *It is a very liberal, as I know that the Western Electric Co. which has taken several contracts for installation of cables for the Bell Telephone Co. has done so often at seven cents a foot.*"

Mr. Jagoe made a great point of the fact that in valuing cable he took the average price over a period of eight years. But on page 648 Mr. Jagoe gave this evidence:

"Q. How does the price now compare with the average price?

"A. It is very close to the same. There has been very little change in the market price now, as compared to that."

Mr. Smith's exhibit No. 2 (Record, p. 475) shows that fully 85 per cent of the cable was installed prior to 1905, and Mr. Polk stated (pages 1446-1447) that prices were lower prior to 1905 than they were in 1909.

Mr. Jagoe after putting a high price on the cables added an item of $147,065.00 for supervision. (Record, pp. 643-644).

Aerial and underground cable cost the same. (Record, p. 1391).

Mr. Polk showed (Record, p. 1395) the amount of cable which appears on the blue prints with no description as to its gauge and in some instances as to its size, and explained what valuation he placed on this part of the cable. He told why he placed certain values on this cable.

Mr. Polk also showed how much dead cable there is in the system, namely, 31,242 feet. (Record, p. 1398).

He showed that a considerable part of the cable appearing on the map is marked proposed plans for cable, and he also showed (Record, page 1398) that he went along one route which was marked "proposed plan" and found no such cable in existence. With the exception of this particular route he included in his valuation all the cable that appeared on the blue print whether it was marked dead cable or proposed cable.

He showed that the cable system had 21,200 cable pairs entering the four exchange offices, and showed that according to Mr. Jagoe there were only 5800 pairs being used. (Record p. 1398.) It therefore, necessarily appears that there are 15,400 pairs of wire within these cables which are not being used. This is almost three times as much as is actually in use. Mr. Polk said that when a company had

5800 pairs in use it should have 8000 or 9000 pairs constructed in order to take care of the anticipated business. In other words, that if a company installs a plant to begin with 5,800 pairs it should have 8,000 pairs of wires connected at the beginning. It is therefore, certain that over two-thirds of the cable in the system is not in use. Mr. Polk desiring to be more than liberal, said that certainly 35 to 40 per cent was useless in its then condition and should never have been constructed. (See Record, p. 1399). If 35 per cent of the cable be deducted from the value of the cable as found by Mr. Polk, it will appear that his valuation of the plant will be $1,045,000.00 instead of $1,195,000.00. If 35 per cent of this cable be deducted from what Mr. Jagoe placed as the value of the cable, namely: $720,000.00. it will mean a deduction of over $250,000. from his figures, leaving his total valuation at $1,543,000.00, instead of $1,793,000.00. It will be remembered, however, that in Mr. Jagoe's valuation of $1,793,000.00 there is $206,000.00 which represents overhead charges and which overhead charges the lower Court said could not be considered in arriving at the value of the plant. (See this brief, p. 33). Therefore, on this basis Mr. Jagoe, the only witness for the appellee who placed a reproduction value on the plant, is on record as saying that the plant could be reproduced for $1,340,000.00. whereas the Court found that the plant was worth $1,788,000.00.

In this connection we call the Court's attention to the case of Spring Valley Water Company vs. San Francisco, 165 Fed., 697, where the Court said:

> "It is not just to compel consumers to pay for more than they receive, or to pay complainant an income on

property which it not actually used in gathering and furnishing water."

In the case of San Diego L. & T. Co. vs. Jasper, 189 U. S. 429, Justice Holmes, of this Court, said:

> "If a plant is built, as probably this was, for a larger area than it finds itself able to supply, or apart from that, if it does not yet have the customers contemplated, neither justice nor the Constitution requires that, say, two-thirds of the contemplated number should pay a full return."

In Water District vs. Water Co., 99 Me., 376, S. C. 59 Atl. 539, the Supreme Court of Maine used this language:

> "Suppose that a five-hundred horse power engine was used for pumping when a one-hundred horse power engine would do as well. As property to be fairly valued, the larger engine might be more valuable than the smaller one, yet it could not be said that it would be reasonable to compel the public to pay rates based upon the value of the unnecessarily expensive engine."

Now, when we come to compare Mr. Jagoe's costs of replacing the cable with Mr. Smith's statement of what it cost to construct this cable, we find the following facts:

Mr. Smith's Exhibit No. 2 (Record, p. 475) shows that the aerial construction after adding the excess valuation on the Ohio Valley up to January 1, 1909 cost the company $832,364.43. This item includes all of the cables, all of the poles, and all of the wire. Mr. Jagoe has the following figures representing the same items:

Poles	$331,760.00
Aerial & underground cable	720,897.85
Aerial wire	77,035.87
Total	$1,129,693.72

In other words, after all the excessive charges made against construction as has been shown, Mr. Smith said that the aerial construction cost the company only $832,000.00 whereas Mr. Jagoe said it would cost $200,000.00 more to reproduce it. This showing should be a sufficient refutation of Mr. Jagoe's figures.

Reference was made in Mr. Jagoe's deposition to the report of Mr. Jackson to the Highway Commission of Massachusetts. We have, therefore, prepared a table showing the value placed by Mr. Jackson, and the value placed by Mr. Jagoe on the cable. Mr. Jagoe, (p. 635), said that there were 40,000 miles of cable used in connection with the Louisville exchange and 9,325 subscribers. Mr. Jackson said there were 200,000 subscribers to the Massachusetts exchange, and 452,000 miles of cable. This table is as follows:

Jagoe, 40,000 miles, $18.00 per mile,—$720,000.—$72 per subscriber.

Jackson, 452,000 miles, $13.50 per mile, $6,100,000., $30 per subscriber.

In other words, if Mr. Jagoe's figures are to be accepted, then it means that the complainant has invested in its Louisville plant in the way of cable $72.00 for every subscriber it has, whereas Mr. Jackson said that in Massachusetts the Bell Company had invested in its cables only $30 for every subscriber.

Mr. Jagoe admits (p. 660) that Mr. Jackson found the Boston Exchange only cost in its entirety $92.00 per subscriber.

There is also in this record the report of the Chicago Telephone Commission of the City of Chicago which has

figured frequently in the deposition and in the argument below. I have prepared a table showing the percentage which the cable bears to the total plant as shown by Mr. Jagoe, Mr. Polk and Mr. Jackson and by the Chicago report. I have based the percentage of Mr. Jagoe and Mr. Polk on the value of the plant as found by the Master, namely $1,243,000. That table is as follows:

Mr. Jagoe	58 per cent.
Mr. Polk	35 per cent.
Chicago report	30 per cent.
Mr. Jackson	20 per cent.

AERIAL WIRE.

Mr. Jagoe valued the aerial wire as follows:

5528 miles of aerial wire $77,035.87

Mr. Polk valued it as follows:

3500 miles of aerial wire $52,000.00

Aerial wire means separate strands of wire on poles. In other words, wire not encased in cables.

Both Mr. Jagoe and Mr. Polk estimated the amount of wire (Jagoe, Record p. 653), Polk, (Record p. 1404), it being impossible to measure it.

As to the character of wire, there is practically no difference between them. Mr. Jagoe claimed there was some No. 12 wire, but Mr. Polk showed (pages 1400-1402) that there was nothing but No. 14 wire in use by the appellee.

Mr. Jagoe said there were 5548 miles of this wire and Mr. Polk said there was only 3500 miles of wire.

No material difference was made in the value of the wire. In fact Mr. Jagoe placed a value of $14.00 per mile, whereas Mr. Polk placed a value of almost $15.00 per mile.

The only difference was in the number of miles. Both Mr. Jagoe and Mr. Polk based their estimate of the amount of wire on the number of poles which they said were in the plant, and the variation between them as to the number of poles, (which will be discussed later) is the occasion for the difference between them as to the gross amount of wire.

Below is a table showing the number of miles and the value and amount of wire per subscriber as shown by Mr. Jagoe, Mr. Jackson and Mr. Polk:

Jagoe: 5548 miles—9300 subscribers—3-5 miles of wire per subscriber.

Jackson: 67000 miles—200,000 subscribers—1-3 mile of wire per subscriber.

Polk: 3500 miles—9300 subscribers—1-3 mile of wire per subscriber.

It, therefore, seems that Mr. Polk and Mr. Jackson agree on the amount of wire necessary for each subscriber in a telephone exchange, whereas, Mr. Jagoe says a great deal more is necessary.

POLES.

Mr. Jagoe valued the poles as follows:

13870 poles, $23.92 each $331,759.40

Mr. Polk valued the poles as follows:

11000 poles, $16.00 each $176,000.00

Poles are used in all sections of the City except where the wires are in conduits.

Mr. Jagoe (Record, p. 654) said he caused the poles to be counted; that he did not count them himself. Mr. Green said he counted the poles.

Mr. Jagoe, (Record, p. 654) said there were 9787 poles in the City and 4000 in the country.

Mr. Polk said there were 10,000 in the City and 1,000 in the country. There is, therefore, practically no difference between the two witnesses as to the number of poles in the City. The only difference is in the number of poles in the country.

Mr. Smith's Exhibit No. 6 shows that there are only 303 subscribers to the exchange outside of the City limits. (See Record, p. 1103). If 9700 poles are sufficient to accommodate 9000 subscribers in the City certainly it would seem that 4000 poles would be out of all reason for the accommodation of 300 subscribers outside of the City.

Mr. Polk said that 4,000 poles in the country to serve 300 subscribers could not represent the facts. (Record, p. 1399).

As to the value of poles we simply have the statements of the two men.

Mr. Jagoe said it cost $23.92 to put them in position. Mr. Polk said he had constructed a plant in Louisville with many thousands of telephone poles, that they were practically the same character of poles; that he knew what he was talking about when he spoke of purchasing and erecting poles, and that the poles of the appellee could be reproduced at a cost of $16.00 per pole.

Mr. Jagoe talked a great deal about certain creosoted poles which he thought were of considerable value. He named the location of some of these creosoted pole routes. Mr. Polk said that he went to the locations mentioned by Mr. Jagoe and found no creosoted poles at all. (Record, p. 1450).

Mr. Polk said creosoted poles cost about the same as chestnut poles, (the kind used in the Home Telephone plant,) and gave reasons for his statement. He went into detail as to when and how he purchased such poles and spoke of having invoices representing the purchase of such poles. (Record, p. 1450).

Mr. Polk's deposition was adjourned over one night and Mr. Granbery in a conversation with him at the Seelbach Hotel, remarked that Mr. Polk was in error about the creosoted poles and that he (Mr. Granbery) would have a witness to produce vouchers showing the purchase of creosoted poles at the price indicated by Mr. Jagoe.

The next morning, when Mr. Polk resumed the stand. (page 1450) and was again asked about these creosoted poles and about this conversation, and he stated that he knew what he was talking about, that he had sent to the Mobile Telephone Company, of Mobile, Ala., which he constructed, and obtained from them the invoice representing the purchase of creosoted poles 40 feet in length, of the highest grade, that he had this invoice and that it would be produced and filed if necessary.

Complainant thereafter took other depositions, but no witness was asked in regard to the value of creosoted poles.

There is some evidence in the record dealing with the price actually paid by the complainant for poles, some of them 40 feet in length, many of them 33 feet in length. This evidence came out with the production of vouchers by Mr. Smith, the Auditor. *These vouchers show that the company paid only from one to two dollars per pole.* (See Record pages 279, 290).

Again, we have prepared a table based on what Mr. Jagoe, Mr. Jackson and Mr. Polk said as to the value of

poles. Mr. Jagoe said that there were 13,870 poles on which he placed a value of $23.92 each. Mr. Polk said that there were only 11,000 poles on which he placed a value of $16.00 each. The table is as follows:

Jagoe: 13,870 poles at $23.92 each.....$ 331,700.00
Jackson: 310,000 poles at $13.50 each $4,260,000.00
Polk: 11,000 poles at $16.00 each .....$ 176,000.00

That is to say, Mr. Jagoe said that it cost $23.92 each to reproduce the poles as they were whereas Mr. Jackson said it would cost only $13.50, and Mr. Polk said it would cost $16.00 per pole.

Again, when we consider the percentage of pole lines to the entire plant, we find that basing the calculation on the Master's valuation of the plant, namely, $1,243,000.00. Mr. Jagoe's valuation will show that the pole lines represent 25 per cent of the entire cost of the plant.

Mr. Polk's valuation shows that the pole lines represent 13 per cent of the entire valuation.

Mr. Jackson's report shows that the pole lines represent 14 per cent of the entire valuation.

Mr. Crumb, speaking of the number of poles, said that experience among telephone engineers had shown, "that the number of poles employed in the construction of a telephone exchange bears a very close relation to the number of stations in that exchange." (Record, p. 886).

The facts as brought out by Mr. Jagoe's count and Mr. Polk's estimate establish this proposition. Mr. Jagoe said that with 9395 subscribers there were 9870 poles.

Mr. Jagoe said that 4,000 poles were needed in the country to take care of 300 subscribers. If this state-

ment is correct, it means that to accommodate 300 subscribers in the county, the Louisville exchange has gone to the following expense:

4,000 poles at $23.92 each	$95,680.00
4-13 of the aerial wire	23,700.00
300 subscribers' stations at $19.63 each	5,889.00
Switchboards for 300 subscribers at $33.00 each	9,900.00
Total	$134,169.00

Of course, poles, cables and conduits are used to carry these wires to the exchange after they get inside the City Limits. Also according to Mr. Jagoe, supervision should be added.

If the above valuation is correct then appellee has invested the sum of $447.00 on each of its country subscribers. The entire plant in Boston, according to Mr. Jackson, cost only $92.00 per subscriber.

As the country subscribers are connected with the Louisville exchange, the appellee, the accountants, the Master and the lower Court all treated the receipts of country subscribers as exchange earnings; the expenses of maintaining country lines being charged as expenses of the exchange. Likewise the investment in the country lines has not been separated from the investment inside the City limits. The City, however, has the right to demand a separation of these items. Its rates cannot be declared confiscatory because of losses sustained by appellee on subscribers outside of the City limits. If, therefore, appellee's valuation on its property outside the City limits is to be accepted, then the City insists on eliminating from

consideration every item bearing on the country subscribers including the 4,000 poles, the wire on those poles, and every other item of value. The contention of the City in this respect is upheld in the Knoxville Water Case.

SWITCH BOARDS.

Mr. Jagoe valued the switch boards at: $309,102.92.

Mr. Polk valued the switch boards at: $203,000.00.

Mr. Crumb valued the switch boards at $200,000.00.

Switch boards represent the apparatus inside of the four exchanges, Main, East, South and West, by means of which subscribers communicate with each other.

The Western Electric Company, as shown by the vouchers produced by Mr. Smith, installed all of the switch boards.

Mr. Jagoe made no pretense of knowing the value of that equipment. He based his valuation on the invoices. (Record, p. 649).

Mr. Polk said he knew what equipment equally as good could be purchased and installed for. Mr. Crumb said the same thing. (Record, p. 896).

Mr. Levings said that the standard switch board furnished by the Independent Companies was as good as the switch board furnished by the Western Electric Company. (Record, p. 1524).

All three of these gentlemen have had wide experience with switch boards constructed by the Western and by other companies. Mr. Levings worked for two years with the Western Electric Company. (Record, p. 1521).

Mr. Jagoe placed a value of $188,000.00 on the main exchange.

Mr. Smith, (page 330), Mr. Crumb, (page 877), and Mr. Polk, (page 1507), all testified that the main exchange was equipped for 4,800 circuits.

When the appellee bought the Ohio Valley plant in had only the main switch board. Mr. Jagoe, (page 648), said that switch board originally cost $100,000.00 which was in 1896 or 1897. Starting with this $100,000.00 it is an easy matter from Mr. Smith's deposition to determine the cost of the additions to this switch board.

Mr. Polk, (page 1507), said the main exchange was equipped for 4,800 lines or circuits. Mr. Crumb, (page 877), said the same thing. Neither of these statements is denied anywhere in the record.

Mr. Crumb, (page 877), said there were now 20 sections of switch board in the main exchange. Mr. Jagoe, (p. 648), said that it had 15 sections in 1900. Turning to Mr. Smith's deposition, we find what equipment has been installed in the main exchange since 1900.

Mr. Smith produced a voucher dated November, 1900, for $12,000.00, which he said represented the purchase of the 16th and 17th sections of the switch board in the main office. This was the first voucher representing an expenditure for switch boards after the purchase of the Ohio Valley. (Record, p. 329).

Mr. Smith produced a voucher dated December, 1901, representing the expenditure of $17,000.00 which Mr. Smith said represented additional switch board sections installed in the main office. (Record, p. 330).

On page 330, Mr. Smith read part of the above voucher which showed that these sections were sufficient to take care of 4,800 lines or circuits.

Now, if the $12,000.00 mentioned in the first voucher represented the cost of sections 16 and 17, it would be

natural to assume that the $17,000.00 mentioned in the second voucher represented the additional three sections going to make up the 20 sections which Mr. Crumb said were there. Added weight is given to this assumption when the record discloses the fact that the $17,000.00 voucher purchased sufficient new sections to take care of 4,800 subscribers, and further that the present switch board in the main exchange has now a capacity of only 4,800 subscribers. The total of the above two items added to the $100,000.00 representing the cost on January 1, 1900, makes a total cost of the main switch board of $129,000.00 as against Mr. Jagoe's present valuation of $188,000.00.

As to the cost of the switch boards in the East, West and South exchanges, Mr. Smith produced vouchers showing what they cost and there is, therefore, little chance to escape those figures.

In valuing those three switch boards Mr. Polk, Mr. Crumb and Mr. Jagoe show substantially the same figures.

It should be borne in mind, in this connection, that Mr. Polk and Mr. Crumb placed on these three switch boards a valuation without knowing what they had cost, whereas Mr. Jagoe said in so many words that he obtained his valuation from the actual invoices.

While cross examining Mr. Smith, page 336, I was handed one voucher by inadvertence which contained among other things a voucher representing the purchase of a switch board in Nashville from the Western Electric Company. I had Mr. Smith read into his deposition a part of that voucher, which is as follows:

> "Cost of Nashville switch board, power plant, power switch board, generator, equipment, storage

> plant, conduit and cable in this building, chief operators, wire chief section, etc., $75,769.87, connected and ready for use as equipment for 4,500 circuits, cost per circuit $16.83. Cost of toll board not included."

According to Mr. Jagoe's valuation the switch board in the main exchange is over $39.00 per circuit (there being 4,800 circuits in that exchange), which is more than twice what the actual invoice from the Western Electric Company shows that the appellee paid for a switch board of a similar character and practically of the same capacity.

Again, Mr. Jagoe included as a part of the cost of equipment about $22,000.00 for supervision. (Record, p. 649). It is apparent from what Mr. Polk said (page 1410) and from Mr. Smith's deposition that the Western Electric Company supervises the installation of all exchange equipment and turns it over ready for use. (See Record, pp. 331, 332, 339, 340). I call especial attention to the language of one of the invoices furnished by the Western Electric Company, which contained the following language (Record, p. 340):

> "The invoice, dated August 1, 1903, reads, in part, as follows: 'To first installment of 25 per cent due this date for the *furnishing and installing* of 5 sections 6 panel 2 operator No. 1 relay multiple switch board equipped for 9 subscribers' and 1 testing operator; 2 1-3 sections 6 panel 2 operator No. 1 relay multiple switch board equipped for 3 trunk and 1 switching and incidental trunk operators, at West Exchange, Louisville, Ky., amount $4,095.00."

Mr. Polk, said that his experience with the Western Electric Company was to the effect that they do not even permit the employes of the appellee in the room where the equipment is being installed. (Record, p. 1410).

Certain it is that $22,000.00 for supervising something which the Western Electric Co. does not permit supervision of can not be accepted.

Now when we come to compare the switch board values as placed by Mr. Jagoe, Mr. Jackson, Mr. Polk and Mr. Crumb, we find a marked difference between Mr. Jagoe and the other witnesses. Here is a table showing the valuation and the investment for each subscriber as shown by the four witnesses. The amounts appearing opposite the names of Mr. Jagoe, Mr. Polk and Mr. Crumb, represent the value placed by each of them respectively on all four of the switch boards. The value appearing opposite Mr. Jackson's name is the value placed by him on all of the switch boards of the Bell Company in Massachusetts, there being 200,000 subscribers to that entire system.

Jagoe: value $309,000; 9,300 subscribers; $33 per subscriber.

Jackson: value $4,000,000; 200,000 subscribers; $20.00 per subscriber.

Polk: value $203,000; 9,300 subscribers; 21.00 per subscriber.

Crumb: value $180,000; 9,300 subscribers; $19.00 per subscriber.

SUBSCRIBERS' EQUIPMENT.

Mr. Jagoe placed a valuation on subscriber's equipment as follows: $184,465.15.

Mr. Polk placed a valuation on subscribers' equipment as follows: $128,755.00.

Mr. Crumb placed a valuation on subscribers' equipment as follows: $100,000.00.

Subscribers' Equipment means the desk stand or wall bracket used by the subscriber when he wishes to connect with other subscribers.

Here again it is simply a question of whose valuation is to be accepted.

We especially call the Court's attention to the method used by Mr. Jagoe in arriving at the value of this equipment, (p. 650). He placed a value of $11.35 on each of the 9,395 instruments, or a total of $106,000.00. He then placed a value of $15.50 on each of 2,417 stations connected with private branch exchanges. These 2,417 instruments are simply extension sets and are a part of the 9,395 instruments first valued. It would, therefore, seem that Mr. Jagoe in his first item of 9,395 instruments at $11.35 each should have deducted the 2,417 instruments connected with private branch exchanges as they seem to be valued separately.

Mr. Jagoe also added $24,045.79 for supervision. This means that for every telephone instrument installed the company has been compelled to expend almost $3.00 to have some one go around and tell the instrument setter where to put the instrument whereas, the well known practice is for the instrument setter to put the instrument wherever the subscriber wants it.

Again, Mr. Jagoe said there were 112 private branch exchanges as shown by the *telephone directory*. Mr. Smith showed in his Exhibit No. 6 that there were only 75 private branch exchanges. Mr. Jagoe said that if Mr. Smith's Exhibit No. 6 showed only 75 private branch exchanges then there were only 75 private branch exchanges. Mr. Polk pointed out in the telephone directory the names of

several subscribers who appear therein as having private branch exchanges. It was there shown that these subscribers have what is termed an intercommunicating plug-box, which possibly cost $2.00.

Mr. Polk (p. 1408), Mr. Crumb (p. 896) and Mr. Levings (p. 1529) all said that they were familiar with the instruments and apparatus used in subscriber's stations in connection with telephone service and that the standard equipment used by independent companies was equally as good, if not better, than that used by the appellee; that it could be purchased by the appellee from the independent manufacturers, that it would perform the same functions in identically the same way as that used by the appellee that they knew the cost of it, and that they knew it could be furnished and installed for the values fixed by them. It does not appear that Mr. Jagoe ever purchased or installed any such equipment, and, in view of the inconsistencies in his figures, it seems to us that the Court should accept Mr. Polk's, Mr. Crumb's and Mr. Levings' valuation rather than the valuation of Mr. Jagoe.

CONDUITS.

Mr. Jagoe placed a value on the Conduits at
40 cents per foot $170,676.96
Mr. Polk placed a value on the Conduits at
20 cents per foot $95,082.00
Mr. Crumb placed a value on the Conduits at
20 cents per foot $100,000.00
Mr. Levings placed a value on the Conduits at
20 cents per foot $100,000.00

Mr. Jagoe said that he never built a conduit system in Louisville, and it does not appear that he ever built one anywhere. (Record, page 641).

Mr. Polk said he had built a conduit system in Louisville and he gave the names of 16 other cities in which he had constructed such conduit systems (p. 1493).

He said that the conduit system he built for the Home Telephone Company in Louisville was better and would last longer than the appellee's conduit system and that it cost less than sixteen cents per foot.

Mr. Jagoe agreed with Mr. Polk as to the number of duct feet and character of construction of the conduit system, but placed a reproduction value of $170,384.21 which is at the rate of 40 cents per duct foot.

Mr. Wilkinson in his report (p. 756) showed that the underground conduit for the entire system had cost the Ohio Valley Company, $108,313.61.

Capt. Gifford showed that there was considerable conduit construction in New Albany, Ind., at the time of the consolidation.

It is, therefore, impossible to tell the extent of the conduits in Louisville in 1900.

Mr. Hume, the General Manager, said that the conduit system as it now existed in Louisville was practically all constructed by the Ohio Valley Company, and said further that perhaps as much as 15 per cent of the conduit system as it now exists had been constructed by the Cumberland Company. (Record, p. 695). If 15 per cent be added to the $108,313.61 above referred to, it will show a total of $124,000.00.

Mr. Crumb placed a value on the conduit system of $100,000 which is at the rate of 20 cents per foot and said that he had built conduit systems in Chicago, Pittsburg and numerous other cities and that he knows it can be constructed here in Louisville for twenty cents per foot. He said he would contract to do so and give a bond to carry out his contract.

Mr. Jagoe said that the report of Mr. Jackson of the Massachusetts Highway Commission showed that he (Jackson) placed a value on the conduit of 53 cents per foot.

Mr. Jackson's report shows, and the evidence in this case shows, that it was based on an inventory made by the telephone company itself and that Mr. Jackson simply checked up part of it to ascertain in a general way whether the inventory was correct.

Mr. Polk said that Mr. Jackson was an electrical engineer and not a construction engineer; that he had never constructed a telephone plant and that he knew nothing about what it would cost to construct conduits. (Record, p. 1433).

Mr. Polk further said that he believed he had constructed more conduits than any other construction engineer in the United States, and that he absolutely knew what it would cost to construct such conduits, and that he never heard of a conduit system costing over 25 cents per foot.

Moreover, it is impossible to know anything about the nature of the streets under which the conduits were constructed in Massachusetts. It may be that those conduits are constructed through solid rock, or of an entirely different material, for all this record discloses. Certain it is

that a conduit system such as the appellee has in the City of Louisville can be constructed new throughout for 20 cents a foot.

Appellee's counsel say that if Mr. Jackson's figures are correct then basing his valuation on the amount of material in the Louisville plant as found by Mr. Jagoe it would appear that the plant was worth more than $1,700,000.00. In this counsel are in error. I have made a careful calculation based on Mr. Jackson's figures as to unit of cost, the result of which is as follows:

Conduits	$235,000.00
Cables	540,000.00
Aerial wire	120,000.00
Poles	148,000.00
Switch boards	186,000.00
Subscribers equipment	148,000.00
Total	$1,377,000.00

The above figures for conduits are excessive to the extent of at least $135,000.00, due to his valuation of 53 cents per foot.

It is also excessive because it includes all of the cable, appearing on the blue prints, whereas 35 per cent of the cable, as shown by Mr. Polk and Mr. Jagoe is not being used and is not in reality a part of the plant. 35 per cent of $540,000.00, the value placed on the cable, is about $180,000.00. Deducting these figures from the above total, the result, according to Mr. Jackson's figures, shows that the plant of the appellee in Louisville can be reconstructed for less than $1,000,000.00.

Mr. Jagoe says that a calculation based on Mr. Jackson's figures would show that the Louisville plant would cost over $1,700,000.00 to reproduce it.

Mr. Jackson's report is part of the record and it can be definitely ascertained what it would cost under his figures to reproduce the Louisville plant. Mr. Jagoe is simply mistaken.

Certain it is that Mr. Jackson in his report valued the entire Boston plant at $92.00 per station.

Mr. Jagoe admits this to be true, (Record, p. 660) but contends that there is more material per subscriber in the Louisville exchange than there was in the Boston exchange. $93

The question, therefore, is whether Mr. Polk's figures as supported by the record, and as supported by Mr. Crumb, and Mr. Levings, are to be accepted, or whether Mr. Jagoe's figures as discredited by the record are to be accepted.

There is in the City of Louisville another telephone plant, viz., that of the Louisville Home Telephone Company. This telephone plant was built in 1901, and in 1908 it had 9,938 subscribers, about 400 more than the appellee had (see Record, p. 1520). The City employed Mr. Polk (the engineer in charge of constructing that plant) to inspect and value the appellee's plant because it realized that Mr. Polk would know more concerning the character of construction than any other telephone engineer. Mr. Polk said that the Home Telephone plant was built more substantially and of better material than the plant of appellee; would perform its functions better than the appellee's plant and would outlast that plant (Record, p. 1406). In speaking of what it had cost to construct the Home Telephone plant Mr. Polk said:

> "It was less than $1,000,000.00 at the time they had the same number of circuits in use that the Cumberland Company now has." (Record, p. 1411.)

That was when the plant was new, not at a time when it had been constructed by piece-meal over a period of twenty years. Mr. Polk said he had purchased all the material that went into the Home plant; employed all the labor used in constructing the plant, and that he knew exactly what it had cost to construct that plant (Record, pp. 1494, 1495). He said he knew the nature of the material and character of construction of appellee's plant, and that the plant of the Home Telephone Company was constructed as substantially as was the plant of the appellee. *Mr. Polk's evidence in this respect is not controverted anywhere in the record.* (Record, p. 1494.)

As to the rates, earnings and expenses of the Louisville Home Telephone Company's plant, see this brief, pp. 192 to 193.

RESUME AS TO VALUE OF PLANT.

Mr. Crumb, (page 887) and Mr. Polk (page 1511) both said that the plant in its present condition was worth from 20 to 25 per cent less than it would be if constructed new throughout. The Master found that certainly it was 10 per cent less valuable.

Mr. Hume said that most of the plant had been in existence for more than five years (p.694).

The main switch board was installed 14 years ago, and all the witnesses with the exception of Mr. Jagoe, said that the life of a switch board was from 15 to 20 years. Mr. Jagoe said that it was indestructible (Record, p. 648).

The Master found that after deducting 10 per cent from the reproduction value of the plant, which 10 per cent represented what the plant had depreciated since its

construction, that the plant was now worth $1,243,011.97. These figures are certainly more than liberal to the complainant. There is nothing in the record which will justify the appellee in objecting to that finding of the Master. Appellant might justly object to the Master's conclusion as to value, but certainly the appellee has no ground for complaint.

The lower Court discusses at length the above mentioned finding of the Master and held that there was no occasion for the 10 per cent reduction because, according to the Master's report, the plant was in prime condition and performing its functions as well as a new plant.

In view of the opinions of this Court in numerous cases the conclusion of the lower Court is inexplicable. It is self-evident that appellee can only be allowed to earn a return on the value of the plant as it was when the Bill of Complaint was filed. The plain, simple method of determining that value, is to ascertain what it would cost to reproduce the plant new throughout and then deduct therefrom a sum sufficient to represent the difference between the reproduction value of a new plant and a plant that has been used for years. This was the course pursued by the Master, and is the course which the lower Court held was erroneous. It is apparent that the switch board in the main office of appellee, which cost $120,000.00 and which has been in service for twelve years, is not as valuable as a new switch board. That switch board performs its functions as well as a new switch board no doubt, but it will not perform those functions longer than four or five years, whereas a new switch board would perform those functions fifteen or twenty years. Likewise a line of poles con-

structed ten years ago. Such line of poles will perform its functions as well as a new line of poles. However it will last only three or four years more, whereas a new line of poles will last fourteen or fifteen years. The same is true of every part of a telephone plant.

Appellee's plant at Louisville has been in existence since prior to 1886. Some parts of it have been reproduced many times. Some parts of it are practically new. Other parts will have to be renewed from year to year. It is, therefore, self-evident that appellee's plant is at least ten if not twenty-five per cent less valuable than it would be if new throughout.

When the lower Court's erroneous findings of fact as to the value of the plant, referred to on pages 34 to 38 of this brief, are deducted from the Master's valuation of the plant, the valuation was shown to be $1,501,000.00.

Had the lower Court observed the plain logical rule laid down by this Court, viz: of deducting from the reproduction value of the plant, a reasonable sum to represent depreciation, then the value as found by the Court would not have exceeded the value as found by the Master, viz: $1,243,000.00.

VALUE OF PLANT ACCORDING TO THE ARGUMENT OF COMPLAINANT'S COUNSEL.

Counsel for appellee in their argument below stated that the appellee would accept the valuation of the Master, to-wit, $1,243,011.97, provided there should be added to this figure, the following items:

(a) Franchise.

(b) Supplies on hand.

(c) Working capital.

(d) Business as going concern.

Making a reasonable allowance for these items counsel stated that the value would be brought up to $1,500,000.00. That this figure would be satisfactory to them.

We think we can demonstrate that no additional allowance should be made for the items mentioned.

In the first place if the contention of the City is upheld in the franchise case (No. 197, October Term of this Court) then appellee has no franchise to occupy the streets of the City of Louisville.

In Knoxville vs. Knoxville Water Company, 212 U. S. 1, the Court said that the true valuation would be the cost of reproduction less depreciation.

(a) Should value of franchise be considered?

Counsel referred to the case of Monongahela Navigation Company vs. United States, 148 U. S. 312, an opinion by Justice Brewer. The question discussed there involved the purchase of a lock and dam and it appeared that its owner had valuable rights in the nature of tolls; and being a sale of the property the Court, very properly, we think, states that an allowance should be made for this item, to-wit, the franchise, or right to collect tolls.

In Willcox vs. Consolidated Gas Company, 212 U. S. 19, also referred to by counsel, it appeared that the Consolidated Company had actually expended $7,000,000.00 for franchises they had purchased. And hence covering this outlay, the Court stated that in arriving at the value of the plant this should be taken into consideration, but it will be noted that nothing was stated about any franchise rights the Consolidated Company had as such, distinct from those purchased and actually paid for.

No case will be found involving the fixing of rates, where the value of franchises are included in finding the valuation of a plant. It is easy to see how the two foregoing cases are distinguished. One being the actual expenditure of money for franchises, the other involving the sale of property.

In Beale and Wyman's Work on Railroad Rate Regulation, Section 362, the author lays down the rule that the value of franchises should not be considered in estimating rates. Part of said section being as follows:

> "It must be clear that in estimating the capital upon which a public service company is entitled to a fair return, the value of a franchise enjoyed by the company cannot be considered. The value of the franchise is itself based on the capacity of the company to earn profits; and it becomes greater when the earnings of the company are increased. If, therefore, a high rate of income could be justified on account of the great value of the franchise, this fact would in turn enhance the value of the franchise itself and so justify a still higher charge; and there would be no limit to the legal charge of the company until the limit of charge which was in fact possible as a matter of business had been reached."

To same effect is Brunswick & T. Water District vs. Maine Water Company, 99 Me. 371, 59 Atl. 537.

We desire to call the Court's attention to the fact that the only franchise anywhere mentioned in the proof was the amount paid by appellee to the Ohio Valley Telephone Company. The purchase price paid that company did include a valuation placed upon said company's franchise.

Having expended that sum the Master allowed it in his findings. Thus we see he has literally followed the rule in Willcox vs. Consolidated Gas Co., *supra*.

The lower Court refused to add anything to the value of the plant representing the value of appellee's franchise. (Record, p. 1627.)

(d) Business as a going concern.

We desire to call the Court's especial attention to the fact that all the cases referred to by complainant's counsel wherein the item of a going concern was allowed, are those involving the sale of the properties. This item (going concern) is in the nature of the good will, and we do not think counsel seriously contends it should be considered. It is certainly true that appellee never thought of giving any such an item in making its return for taxation, or when it filed its Bill of Complaint.

The cases referred to by counsel are as follows:

(a) Gloucester Water-Supply Co. vs. City of Gloucester, 177 Mass. 365, 60 N. E. 977. This involved the sale of a water plant to the City of Gloucester, under statute, and the Court refers to this item as a proper item for consideration.

(b) National Water Works vs. Kansas City, 62 Fed. 853. This involved the sale of the water works of Kansas City. The company sought to have a valuation of $4,500,000.00 fixed, as they claimed on a 6 per cent basis. The city contended the value should be the actual cost of reproduction. The lower Court fixed the value at $2,714,000.00; the Circuit Court of Appeals fixed it at $3,000,000.00. The difference was due, as is shown in the opinion of the Court, to the fact that the value of the connections between the water mains and the houses of the customers was included. In other words, the Court reached the only conclusion possible, that the mere reproduction of the pumping station, reservoir and mains could accomplish nothing. That

it was necessary that the connections be made to give value to the company as a going concern, and that these connections were valuable rights and should be considered. This same rule would not apply in the case at bar because the valuation as fixed by the Master embraced all the property of the Telephone Company, and necessarily includes the wires from the trunk lines into the residences or business houses as well as the telephone instruments and all paraphernalia. The telephone company owns all these, whereas in the water works case all the attachments from the property line were owned by the customers. Hence it is clear that the same rule should not and could not apply in this case.

But as before stated, that was a case of a sale and not the fixing of rates.

(c) City of Omaha vs. Omaha Water Company, 218 U. S., decided May 31, 1910, in an opinion by Mr. Justice Lurton. The Court, after referring to the Knoxville Water Co. case and the Consolidated Gas Company case, makes this very positive and significant statement:

> *"Both cases were rate cases, and did not concern the ascertainment of value under contracts of sale."*

Language could not have been used to more clearly fit the case at bar. The pending suit does not involve the sale of the property, but only the fixing of rates, and hence the item contended for by complainant is not a proper one, and should not be allowed.

The lower Court refused to add anything to the value of the plant representing the value of appellee's good will.

There is not one line of evidence in the entire record showing the value of either the franchise or the good will

of complainant company. Numerous witnesses testified and were cross-examined most extensively, and yet no one was ever asked to place a value on either the franchise or the good will. (Record, p. 1627.)

SUPPLIES.

Concerning the question of supplies on hand, it has been shown in the former part of this brief that the appellee has a supply department at Louisville for a large territory; that to all the supplies taken out of its supply department for the use of Louisville there is added 10 per cent on the cost price thereof. (See this brief, pp. 50-69.)

In discussing appellee's method of treating the supply department the Master used the following language in his report (Record, p. 64):

> "Mr. Smith, on page 256 of this deposition, says as to the added charge of ten per cent for supplies, that it was to cover freight, drayage, rentals, etc.
>
> "I find that this charge on all supplies furnished is at least a burden on the business in Louisville, and should not be allowed. The company in the first instance must have paid freight and drayage on all supplies furnished. The company doubtless received the usual trade discount for cash. As to how the freight and drayage were charged, or the cash discount discount credited, the record is silent. I do not doubt that proper and correct entries were made on the company's books as to the rent of the supplies warehouse. This is doubtless charged to expense of supplies."
>
> * * * * *
>
> "I find, therefore, that this added charge of ten per cent on the cost of supplies furnished to the Louisville exchange must be disallowed."

It is conceded that a telephone company operating a plant in one city needs supplies, and that such company

would be entitled to earn a dividend on the value of the necessary supplies. That is not the situation as it exists in the case at bar. The plant at Louisville does not own any supplies or keep any supplies on hand. The company which owns the Louisville plant keeps a large supply house at Louisville for a large district and sells to the Louisville plant the supplies that it needs, adding ten per cent to the cost price thereof. Appellee is, therefore, earning ten per cent on the value of its supplies at Louisville, and it cannot in addition thereto be allowed to earn seven per cent on the value of those supplies.

Moreover, there is not one line of evidence in the record to show the value of the necessary supplies for the Louisville plant.

The allowance of an amount to cover the item of supplies by the lower Court is assigned as error. (See Record, p. 1647.)

WORKING CAPITAL.

In Mr. Polk's estimate of reconstruction value of the plant there is added a sum to represent working capital. There is nothing in the Master's report to show that his valuation of $1,243,000.00 did not include a sum representing working capital. But irrespective of whether the Master included working capital, the fact remains that the valuation fixed by him at $1,243,000.00 is in reality in excess of what the evidence justified and there is no occasion for adding any sum to his finding to represent working capital.

The fact is, the telephone business is a cash business. As operated in the past telephone patrons have paid their rentals three months in advance in order to get the discount, the rates on almost all classes of service being sub-

ject to a discount of fifty cents per month. (See Record, p. 1618.) This being true, there is no necessity for working capital to any considerable extent.

Consideration of the average cost of reproduction.

Counsel in argument suggested that they should not be held to an estimate of the cost of reproduction in a given year. Especially where there is any material change in the cost of reproduction. That an average should be found as to what it would cost in a given number of years and the average taken. We call the Court's attention to the fact that the Cumberland Company is complainant here, and furthermore that there is nothing in the record to show that the year the ordinance was passed was an off or bad year. But, be this as it may, Willcox vs. Consolidated Gas Company, *supra*, settles this proposition, the Court stating on page 52 that the value should be fixed as of the date of inquiry.

Mr. Jagoe said that the present price was about the same as the average price for the last eight years.

Mr. Polk said that up to 1905 the prices were higher.

Mr. Smith's Exhibit No. 2 shows that only a very small proportion of the entire construction cost has been added since 1905.

EARNING.

The two accountants who examined the books and records of the appellee reported to the Master concerning the earnings for the years 1905, 1906, 1907 and 1908.

In arguing the case before the Master, and before the lower Court, counsel confined themselves to the earnings and expenses for the year 1908, and the conclusions of the

Court below are based on the earnings and expenses for 1908, and the application of the rate ordinance to those earnings and expenses.

In order to avoid confusion, I will discuss only the earnings for the year 1908.

The accountants reported to the Master in their joint report that the earnings for 1908 were $325,838.30, (see Record, p. 78).

This item, as shown by the Master's report, and by the joint report of the accountants, included $7,632.11, which represented 15 per cent of the earnings of the toll department on outgoing messages from the Louisville exchange. The other 85 per cent of the toll earnings were credited by the appellee at its home office in Nashville, as earnings of the toll department. This 85 per cent for the year 1908 amounted to $43,248.70, (see Record, p. 79).

The Master reached the conclusion that all of the toll earnings taken in at the Louisville exchange, were earnings of the Louisville exchange and he therefore added to the $325,838.30, the additional sum of $43,248.70, representing the balance of the toll earnings (the 85 per cent) making a total of $369,087.00, being the amount which the Master found to be total gross earnings of the appellee on its property. The Master's finding in this respect was vigorously attacked at the argument below, and the lower Court overruled the Master's finding, but held that a small portion of the $43,000.00 above referred to, viz., $5,088.00 should be credited to the Louisville exchange as the earnings of that exchange, (see Record, p. 1631). This $5,088.00 added to the $325,838.30, which the accountants found to be the earnings, or a total of $330,918.00, the Court found

to be the earnings of the appellee for the year 1908, as against $369,087.00, the amount which the Master found to be the earnings for that year. (Record, p. 1631.)

The reasons given by the Master for his findings, in this respect, may be found on page 78 of the record, and are as follows:

> "The Toll Department, which handles long distance messages, is so intimately connected with the exchange and its operations, that it is difficult to segregate them; the operators are largely engaged in handling both local and long distance business; the pole lines leading out of the exchange carry both toll lines and exchange lines; the maintenance of these pole lines is borne by the exchange, and nearly all of the cost of operating the toll business is borne by the exchange; the Toll Department occupies a part of the Main Exchange Building, yet it pays no rent nor taxes nor cost of repairs or maintenance. In addition, Mr. Smith, the auditor of complainant, pages 258, 265 and 266, frankly states that the cost of construction or reconstruction of the toll switchboard, was paid for by the exchange and charged to Construction Account of Exchange.
>
> "I fail to see any just reason for separating the earnings of the Toll Department from the earnings of the exchange. If all the toll earnings be given to the exchange, and the expense of toll operations and the taxes and insurance be paid out of exchange earnings, the result will not affect the net cash receipts of complainant.
>
> "I have given this matter much thought and consideration, and I am satisfied that the arbitrary division of the toll revenues at Louisville between the complainant and the exchange, under all the existing conditions above enumerated, is unjust and inequitable and should not be approved.
>
> "It is, perhaps, not unnatural in this controversy, that complainant should, by all plausible means, undertake to increase its expense account and decrease its revenue account. This effort on its part involves

> no moral problem, but is purely and simply a question of business propriety. It is more strictly a matter of bookkeeping."

Mr. Smith, (Record, pages 331-327), produced vouchers showing that the cost of toll equipment in Louisville had been charged as a part of construction of the Louisville exchange.

On pages 443-4, 286-7, 456-7, he said that where toll lines were built in the city, which toll lines were used in part for exchange wires, the cost was charged to construction.

It is true that Mr. Smith, (and possibly Mr. Caldwell), did say that the construction of the toll exchange and toll lines was kept separate and distinct from the construction of the exchange proper. If so it is one of their general statements which is absolutely refuted by the record. *Every voucher produced wherein any part of the cost of constructing toll lines was involved, was charged up directly as a part of the construction of the Louisville exchange. All toll equipment was charged up as a part of the cost of the Louisville exchange.* It, therefore, seems to us that the Court should not accept the general statements of the officers on this subject when their records absolutely refute their statements.

Here is one extract from Mr. Smith's deposition on this subject (Record, p. 331):

> "Q. I notice on page 6 of this invoice, third section of toll equipment and on page 7, keyboard equipment and on page 8, fourth section of toll switchboard, and on page 9 keyboard equipment, and I would ask you if the items following the third section, toll switchboard on page 6 and the other items down to miscel-

laneous switchboard material on page 9, was for material used in connection with toll switchboard?

"A. The invoice states so.

"Q. Are the items for toll switchboards and other material and labor in connection therewith, which appear in this invoice for $17,000, a part of the $178,000 charged to construction of the Louisville exchange for the year 1901?

"A. These vouchers are for the year 1902. The total of this invoice is included in the total of the Louisville construction account and properly so, for the year 1902."

As to maintenance: Men whose payrolls were charged against the expenses of the Louisville exchange maintained the toll lines not only in the City limits, but outside of the City limits. (Record, pp. 286, 287, 288.) Here is a part of what Mr. Smith said on that subject:

"Q. What was the money represented by that amount paid out for?

"A. For the board of 22 head of horses for the month of July and for the hire of horse and buggy to go to Pleasure Ridge Park on local trouble.

"Q. Where were those horses used?

"A. They were used for many purposes. Some of them for repairing telephones, some of them were dray horses with construction gangs.

"Q. Were they used at all in the construction or repairing of toll lines?

"A. There is nothing here to indicate that.

"Q. Do you know whether or not they were so used?

"A. If the toll line in the district was in trouble that could be reached by a vehicle, they probably repaired it." (Page 286.)

Again in this connection Mr. Smith said:

"Q. And would they take these horses and use them out on these toll lines?

"A. They possibly might have done so." (Page 287.)

Again in this connection Mr. Smith said:

> "Q. I didn't get a satisfactory answer, or rather a succinct answer to my question about whether you would send out wagons and teams from Louisville, Ky., to Anchorage or to Jeffersontown and places of that size surrounding Louisville, should you have occasion to make any repairs or to do any new construction work in those vicinities?
>
> "A. If it is necessary I should say we would do so." (Page 287.)

Again in this connection Mr. Smith said:

> "Q. If it was the regular team, that would not be charged up to toll lines?
>
> "A. Well, probably not."

Mr. Warren, the City's accountant, testified as follows (Record, p. 1052):

> "Q. Now during the time you were examining the construction vouchers, did you ever come across *any payroll* vouchers wherein any employes seemed to have been paid or appeared to have been paid for services in connection with toll line construction in the City of Louisville?
>
> "A. No, sir."

Mr. Warren, in his Exhibits Nos. 9, 10, 11 and 12, (Record, p. 1122) showed that the expenses made necessary on account of the toll department for the four years in question were as follows:

1905	$22,536.25
1906	24,671.90
1907	24,478.86
1908	20,239.65

It will be remembered the Master reported, (Record, p. 75) that the 15 per cent credit to the earnings of the

Louisville exchange on account of the toll department for the four years in question was as follows:

1905	$6,539.92
1906	7,064.91
1907	8,030.15
1908	7,632.11

The above figures of the City's accountant were arrived at as follows, as shown by Mr. Warren's deposition (Record, page 1086):

> "Q. Did the payrolls for the year 1905 show any salaries and wages paid out on account of employes in the toll department?
>
> "A. They did.
>
> "Q. Just explain in a general way what class of employes appear on those payrolls as employes in the toll department?
>
> "A. Toll operators, the toll chief operator and assistant, the telegraph operator, the toll trouble man, the messenger boys, toll clerks, and the toll switching operators."

Mr. Warren then said that the above employes were designated on the payrolls as toll employes and their salaries were charged up as a part of the expenses of the Louisville exchange.

Mr. Warren further testified as follows (Record, p. 1087):

> "Q. I notice in the report made by the Mutual Audit Company to the Master in this case, that it shows that salaries and wages under the heading of operating expenses to the extent of $13,269.95 were required and expended at the Louisville plant on account of salaries and wages for employes connected with the toll department. Will you please explain how that item was arrived at?

"A. We listed from the payrolls of the salaries and the wages paid to the toll operators, we also listed all the salaries paid to toll wire chief and the telegraph operators and their assistants whenever they had any. We also took the chief toll operator and the private branch exchange operators in hotels and buildings, and charged one-third of their time to the toll work. Our reason for so doing was the knowledge that the private branch exchange operators in all the hotels do a great deal of long distance toll work and our information was to the effect that the chief operator spent a great deal of her time in the toll department. We therefore considered one-third of the pay of these people mentioned to be a fair proportion chargeable to the toll department. We added to these figures all of the toll clerks' salaries, all of the messengers, and one-tenth of the salaries of various collectors. We did this for the reason that the toll clerks are busy making out statements of toll accounts and the messenger boys are used for service on long distance calls only, and the collectors we considered one-tenth of their time to be a very small percentage occupied in the collection of accounts and indebtedness due to the toll messages. I could go on and say that these items which I have just outlined added together make a total of $13,269.95."

Mr. Warren then showed the percentage of the toll earnings to the gross earnings of the exchange.

For 1905 the toll earnings represented 16.92 per cent of the total earnings. For the year 1908, 15 per cent.

In his depositions, (Record, page 1100), we had him give a detailed statement of what the general expenses and other items of a similar nature made necessary on account of the toll business and exchange business amounted to, and had him show what amount was properly chargeable to the toll department. The items on which this

percentage was estimated are stated by Mr. Warren in his deposition and are in a general way as follows:

16.92 per cent of the amount paid for rent on the main exchange.

On page 1088 of the record, Mr. Warren said:

> "The rental of the main exchange for the year was $7,200, and we proportioned 16.92 to the toll department on that amount only, charging them nothing for light or heat because it was impossible to arrive at any light or heat figures, and we did not charge any proportion of rent, light or heat on the sub-exchanges," (meaning East, West and South).

16.92 per cent of the insurance paid on the main exchange.

Mr. Warren said (Record, p. 1089) that this item represented "insurance on toll board and equipment, etc., pertaining to the handling of toll business."

On the same page (1089) occurred this question and answer:

> "Q. I notice on the same page an item opposite damages and under the head of 'Charge toll department,' of $1,500. Explain that item.
>
> "A. That consists of the amount of damages paid to an operator for injuries received while in the performance of her duties at the Louisville exchange. This girl was a toll operator and performed toll work only, and was injured in the toll department.
>
> "Q. How did you ascertain that fact?
>
> "A. I inspected the voucher calling for the payment of this money. It had several papers attached to it, describing the nature of the injury, the cause thereof and the date thereof, and I inspected the payrolls on or about that day and for some time previous and found on that date and for several weeks previous she had been working as a toll operator."

On page 1089 of the record appears this question and answer:

> "Q. Now the figures appearing on Exhibits Nos. 9, 10, 11 and 12 other than those agreed to by the accountants are derived from what source?
> "A. They are derived from direct information which was taken from the books, records and accounts of the Cumberland Telephone Co."

None of the above facts are controverted.

In the $20,000.00 which Mr. Warren said was shown by the books to be directly chargeable to the toll department there was not included any part of the salaries of the general officers or employes, superintendent or foreman, etc. On page 1100 of the record occurs this question and answer:

> "Q. In connection with these expenses, (meaning the $20,000.00), is there any part of the salary of the General Manager, Mr. Boardman, or the Superintendent, Mr. Hall, charged to the operations of the toll department?
> "A. There is not."

On page 1098 of the record occurs this question and answer:

> "Q. Does there appear in any of these Exhibits, Nos. 9, 10, 11 or 12 any percentage or portion of the salaries of any of the employes of the company such as foreman, laboring men, reconstruction force, maintenance forces, charged by itself to the toll department? I mean have you in these Exhibits deducted any portion of their salaries on account of labor they might perform in connection with the toll lines and the upkeep of the toll property?
> "A. We have not."

Mr. Warren's Exhibit No. 12 for the year 1908 (Record, p. 1122) shows that the maintenance for that year amounted to $54,000.00 and that the reconstruction amounted to $31,000.00. It is fair to assume that 15 per cent of this was made necessary on account of maintenance and reconstruction of the toll lines, and toll equipment. This item in itself amounts to $12,750.00.

The American Telephone & Telegraph Company owns the complainant. Only 8 per cent of the receipts for long distance messages going out of Louisville over the American Company's lines are credited to the Louisville exchange. Mr. Smith (Record, p. 370) said:

> "Q. What does the American Telephone & Telegraph Company pay the plaintiff company for handling its toll messages?
>
> "A. The average for the three months, December, 1908, January and February, 1909, averaged eight and two tenths per cent."

Of course, the American Company can force the complainant to make any kind of contract it sees fit to make. The matter is purely a question of which pocket the money will go into.

The Master showed (Record, p. 150) that the receipts from the American Company on outgoing messages for the year 1908 were $3,200. This was 8 per cent on $40,000. Therefore, the Louisville exchange earned for the American Company, during the year 1908, $40,000, and was only paid $3,200, for its services. To earn this $40,000 and the $50,000.00 for complainant the Louisville exchange incurred *expenses amounting certainly to over* $30,000.00, and in addition thereto a sum representing a portion of the salaries of the exchange operators (all of whom per-

form some service in connecting up the long distance calls).

The Master credited to the Louisville exchange for the year 1908 with toll earnings to the extent of only $50,880.81. (Record, pp. 75-81.)

Appellee credited the exchange for the year 1908 with toll earnings to the extent of only $7,632.11 (Record, p. 72).

The difference between the appellant and appellee as to how the earnings of the toll department should be treated may be stated thus:

Appellee contends that the exchange should be charged with the cost of all toll equipment; that the expenses of conducting the toll department should be borne by the exchange, and that 15 per cent of the toll earnings should be credited to the exchange to reimburse it for its outlay and services.

Appellee insists on this course being adopted because it is the plan pursued by it with all of its other exchanges.

If the appellee's contention is upheld then the exchange will receive for its expenditures and services in connection with the toll department the sum of $7,632.11 per year.

The City, on the other hand, shows from the appellee's records that the actual salaries paid out by appellee during the year 1908 for all toll operators and employes was $11,500.16 (Record, p. 1097), which amount includes no part of the general expenses, rent, taxes, insurance, maintenance, reconstruction and incidental expenses, all of which expenses are common to both the exchange and the toll department.

Appellant shows, however, from appellee's records that the earnings from the toll department represent 15 per cent of the gross earnings from both exchange and toll depart-

ments (Record, p. 1097), and that it is therefore logical to assume that 15 per cent of the gross expenses were made necessary on account of toll department.

This assumption should be given additional weight because of the failure on the part of the appellee to furnish a definite basis for separating the toll expenses from the exchange expenses.

Both Mr. Crumb and Mr. Polk stated that the basis insisted on by the City was fair to the appellee (Record, pp. 898, 899, 1508).

The City, therefore contends,

First, that the plan adopted by the Master should be upheld, or

Second, that all of the expenses made necessary solely on account of the toll department should be paid by that department, and that in addition thereto the toll department should bear 15 per cent of all expenses common to both the exchange and the toll department, such as general expenses, maintenance, reconstruction, rent, taxes, etc., or

Third, the toll department should be required to bear 15 per cent of the gross expenses of both exchange and toll departments as found by the Master.

The first plan contended for by the City will show:

Exchange and toll earnings for the year 1908..$369,087.00
(See Master's Report, Record, p. 79.)

The second plan contended for by the City will show:

Expended *solely* on account of toll earnings for the year 1908 .....$ 11,590.16
(See Record, p. 1097.)

Expenditures *common* to both exchange and toll department:

General expenses	$ 42,076.75
Maintenance	54,705.91
Reconstruction	31,450.07
Total	$128,232.73

(See Record, p. 72.)

Fifteen per cent of $128,232.73 .....$ 19,234.00

Total of expenses to be borne by the toll department .....$ 30,824.16

The third plan contended for by the City will show:

Total expenses as shown by the Master $216,363.07, 15 per cent of $216,363.07 .....$ 32,454.00

In the Bill of Complaint a clean bill of health was given appellee by the Board of Trade. In the depositions of both Mr. Caldwell and Mr. Smith they speak at length about Mr. Munster's report. Mr. Munster was the accountant who investigated the books of the appellee for the Board of Trade. I had Mr. Smith produce that report and to read certain extracts from it into his depo-

sition. Those extracts deal with the earnings from the toll department and Mr. Munster there said (Record, p. 452):

> "In the statement of results in Louisville, I have credited the full amount received from toll line service over the Cumberland Company's lines originating in the City of Louisville to the latter city's revenues, and the distribution sheets also show such credit. My opinion is that it should be so credited."

It seems therefore that Mr. Munster, the accountant for the Board of Trade, after examining the records of the appellee, reached the same conclusion that the Master reached.

Counsel for appellee contend, however, that if the Master's finding be sustained it will result in there being no fund available out of which to maintain and pay a dividend on the toll lines between the exchanges. If it be true, as we have shown, that the cost of the toll lines in each town and city and for a certain radius outside of the City limits, is charged as a part of the cost of the exchange; if it be true, as we have shown, that all the cost of maintaining those toll lines inside and outside the City limits is charged as part of the expense of the exchange, then there is no other expense, and there should be no such amount set aside out of earnings.

Take for instance Jeffersonville and New Albany. These two towns are six miles apart. Assuming that the toll calls over the line from New Albany to Jeffersonville and from Jeffersonville to New Albany amount to $1,000 per year. The New Albany exchange we will say cost $200,000 and the Jeffersonville exchange $100,000. The American Telegraph & Telephone Company's report for

1909 shows that the toll lines cost $610 per mile, so that including exchanges and toll lines the company has a total expenditure of $303,660.00; $300,000.00 of this is in Jeffersonville and New Albany. Only 15 per cent of the thousand dollars earnings is credited to each of these towns, or a total of $150 for each town. Now this six mile toll line is maintained by Jeffersonville and New Albany. The cost of it is charged against Jeffersonville and New Albany. The earnings are all made possible by reason of those towns. And yet only $300 of the $1,000 earnings is credited to these two towns. The balance of $700 goes into the general treasury of the company to swell dividends. The figures we have given may not be accurate, but this illustrates the point we are trying to make, which is, that as the cost and expenses of the toll lines is borne exclusively by the exchange, all earnings ought to be credited to the exchanges. 315 - 320 - 736

But, says the complainant, there is a custom existing between telephone companies to credit to the exchange only 15 per cent. The Master in dealing with this phase of the complainant's contention said (Record, p. 74):

> "Custom of trade among merchants has generally received the sanction of the courts. The reason of this is obvious, because merchants trade with each other at arm's length, and what is generally done under such circumstances, ought to be and is generally upheld by the courts. But the custom here testified to is a very different thing from the custom of merchants. The parent company manages and controls its subsidiary departments as it deems best. The subsidiary department occupies no position of independence, and in fact does not and cannot raise a protest. And when it appears, as in this record, that the Louisville exchange is required to pay all or

> nearly all of the operating expenses of the toll line department, and in return, is given compensation that is utterly insufficient to pay the expenses it is required to pay, such a custom does not and ought not to appeal to the judicial mind."

Moreover, the record discloses the fact that the toll department of the complainant, in the City of Louisville, actually earns over $90,000 a year from the complainant, whereas the Master is only giving the Louisville exchange credit for about $50,000.

It is a fact that the toll lines all carry lines for exchange subscribers, to farms, cross-roads merchants and doctors who are connected with either the Louisville or some other exchange, and this is true over the appellee's entire system.

Moreover, it is a fact that toll earnings are made possible solely by reason of the existence of the exchanges. If complainant did not have an exchange in Louisville its long distance business would not amount to $5,000.00 a year. In such state of case it would be necessary for those desiring to talk over appellee's lines to go to its office. The result would be that practically no one would use the toll lines.

Mr. Caldwell and Mr. Hume try to make it appear that the toll lines are greatly advantageous to exchange subscribers. Of course, it is an advantage for the exchange subscriber (if he is a business man), to be connected with the toll lines, but it is more of an advantage for the complainant to have its exchange connected with its toll line. On this subject see Mr. Hume's deposition (Record, p. 695).

Again, three-fourths of appellee's subscribers do not make use of the long distance lines. To require the Louis-

ville exchange to maintain and provide the expense of the toll department is therefore to make three-fourths of the subscribers pay for something which they do not make use of and do not want.

The Master made his calculation on the theory that the toll lines, which he valued at $112,000.00, should be added to the value of the plant. This course was pursued by him, because he credited all toll earnings on outgoing messages to the Louisville exchange.

If he is not upheld in this respect, then the value of the toll lines should not be added to the value of the Louisville change.

It is true the Master found that the earnings for the year 1908 would have been $49,000.00 less had the rate ordinance been in force than they were under the rates actually in force. Exceptions were filed by the appellant to this finding of the Master, which exceptions were overruled by the Court and this ruling by the Court is assigned as one of the errors on which this appeal is prosecuted. (Record, p. 1650.)

THE $49,000.00 ITEM.

In the early part of this argument (see p. 38 of this brief), I had occasion to refer to this $49,000.00 item, but did not discuss it in detail. It will be remembered that the Master appointed two accountants, one on the suggestion of the City and one on the suggestion of the appellee. These two accountants reported to the Master (Record, pp. 100-103), that the earnings of the appellee, under the rates charged in 1908, would have been at least $49,000.00 less than they were had the rate ordinance been in effect during that year. I have already exposed the

fallacy of the plan whereby the accountants reached this conclusion, (see this brief, pp. 39 to 44.)

Mr. Smith's Exhibit No. 6 shows the name of every subscriber to the exchange, and the class of service such subscriber had, that is, whether business direct, business party, residence direct, residence party or private branch exchange.

The rate ordinance in litigation declares what rate the appellee may charge for each of the above classes of service. When the rates named in the rate ordinance are applied to each subscriber whose name appears in Mr. Smith's Exhibit No. 6, according to the class of service such subscriber has, it will be seen that instead of there being a loss of $49,000.00 as agreed to by the accountants there will be an actual increase in earnings.

In Mr. Smith's Exhibit No. 6, above referred to the names of the subscribers appear in alphabetical order from A to Z without any separation of the subscribers as to class of service. I had Mr. Warren, the City's accountant, go over Mr. Smith's Exhibit No. 6 and separate the subscribers as they appeared in that exhibit according to the class of service. Mr. Warren filed his Exhibits Nos. 14, 15 and 16, which is the result of his classification. (Record, pp. 1103 to 1107). In this Exhibit No. 14, Mr. Warren showed that he had gone through Mr. Smith's Exhibit No. 6 and classified the subscribers according to the character of service given each subscriber. For instance, all subscribers having direct business lines were placed together; all subscribers having direct party lines were placed under another head, etc. Mr. Warren (page 1101) said that he had placed every subscriber under the classification indicated on Mr. Smith's Exhibit No. 6 with

the exception of 41. These he had changed from the classification made by Mr. Smith to some other classification, and he explained (Record, p. 1102) why this change was made. These 41 names appear in Warren's Exhibit No. 15. (Record, p. 1102.) I can conceive of no criticism of Mr. Warren's figures in this connection except possibly in so far as private branch exchanges and pay stations are concerned. As to the private branch exchanges, Mr. Smith's Exhibit No. 6 shows that most of them are furnished free. These private branch exchanges as shown by Mr. Jagoe (Record, p. 651) are quite expensive. Mr. Smith's Exhibit No. 6 shows that the company charges $5.50 to the Kentucky Distilleries & Warehouse Company for a private branch exchange with 10 stations attached. It charged the Louisville Lighting Company $10.50 for a private branch exchange with 27 stations attached. It charges the P. C. C. & St. L. R. R. Co. $6.25 for an exchange with 24 stations attached. It charges the Standard Oil Company $5.50 for a switchboard with 6 stations attached. (See also Record Case No. 197, p. 181.)

Of course it must be assumed that the company will charge all of its subscribers alike and will not discriminate.

The New Orleans report filed with Mr. Smith's deposition (Record, p. 420), shows that private branch exchanges with 20 stations or less are charged for at the rate of $5.50 per month. Private branch exchanges with 20 stations or more are charged at the rate of $10.50. Inasmuch as $5.50 is the lowest rate charged any Louisville subscriber for a private branch exchange, it must be assumed that the company will charge for all of its private branch exchanges at least $5.50 per month. The ordinance fixes

no rate for private branch exchanges, and the Knoxville case is authority for holding the company is entitled to charge a reasonable price for service such as this.

The depositions taken at Toledo and the other cities all show the rate for private branch exchanges to be from $5.50 to $10.50 per month. (Rec. 1558, 1587, 1590, 1611.)

As to the trunk lines leading to private branch exchanges the company charges all manner of rates, but generally $7.50. We, therefore, assume that they treat the trunk lines as subscribers and have, therefore, placed a rental on them of $5.50 per line, which is the ordinance rate.

The pay station proposition requires more discussion. The company has something over 1,400 pay stations. Mr. Jagoe (Record, p. 651) said that some of the pay stations cost $9.05. Mr. Smith (page 420) showed the rate on pay stations in New Orleans to be $6.50 per month guaranteed. Mr. Warren (page 1104) showed that there were 560 direct line pay stations and 851 party line pay stations. He also showed the number of business and residence pay stations. Mr. Warren gave some interesting facts concerning pay stations. (Record 1063, 1064.) For instance, in December, 1905, the company had 565 pay stations (all business), and 5,990 actual subscribers. In September, 1907, it had 1,861 pay stations (mostly residence), and 5,600 actual subscribers. In other words there was a total gain in subscribers between the two months of nearly 1,000, and yet the earnings on these two classes of telephones for the month of September, 1907, were $395.88 less than they were in December, 1905, and this too, notwithstanding the fact that in March, 1907, the rates on regular subscribers had been

increased. These facts detailed by Mr. Warren, taken in connection with Mr. Settle's statement (page 1000), wherein he showed that for many of the residence pay stations no receipts whatever were had, and that the average receipts were about 30 cents per month (which statement is not denied), the reason for this falling off in receipts can be easily determined. We ask Mr. Smith to produce the receipts from the pay stations, but he declined to do so. (Record, p. 423.)

The position we take in regard to a pay station subscriber is that he is and should be on the same footing as any other subscriber; that if the company desires to install that class of telephone, or any other class of telephone not named in the ordinance and charge therefor a rate less than the ordinance rate, it is discriminating and necessarily violating the law. Moreover, it must be assumed that the company will charge to every subscriber at least as much as the rates named in the ordinance. In the Knoxville Water case this very question was discussed in connection with the discount the company was in the habit of allowing to its customers. It was claimed that in determining the amount which would be earned under the ordinance, a 5 per cent discount for prompt payment should be taken into consideration. The Court said:

> "The fallacy in the process employed by the Master consisted in substance in assuming that the ordinance rates would be subject to a discount for prompt payment. The company it is true, might, if it chose, allow such a discount from the ordinance rates, but the ordinance required no discount from the rates established by it, and the company, therefore, was bound to offer none. If it stood upon the letter of the ordinance, as it had the right to do, and exacted from the consumers the full charges prescribed by the ordi-

> nance, the amount which would have been realized would have been over $4,000.00 more than that found by the Master, or a net income of not less than $40,000.00."

So in the case at bar, if the company stands on the letter of the ordinance and charges all subscribers alike at the rates fixed by the ordinance, as it has the right to do, then it will certainly earn on these pay stations the rates shown in Mr. Warren's exhibit.

It is self-evident that a telephone company cannot be permitted to require one set of subscribers to pay a high rate in order to make up losses which it may sustain on a class of subscribers who are charged a lower rate. This is especially true where the company is operated under rates established by a rate-making body. We, therefore, submit that the assumption must be indulged in that all subscribers will be charged at least as much as the rates fixed in the ordinance.

Because certain business subscribers have a pay station device attached to their telephone instrument does not do away with the fact that they have a business direct telephone or a business party telephone, as the case may be, and the same is true of residence telephones. Primarily these subscribers fall under the classification named in the ordinance and are so designated by Mr. Smith. A pay station is merely a device for collecting the rent, and does not alter the classification of the service. If it be contended that the pay station subscribers should not pay the ordinance rate, then their telephones should be removed. If the company loses these pay station subscribers, it is practically certain to more than make them up with live, paying subscribers.

In so far as free telephones are concerned, appellee has no right to install free telephones. It simply means that the subscribers who pay regular rates are required to pay more for one service in order that some subscribers may not be required to pay anything.

Mr. Warren showed (Record, p. 1107), as the result of the classification made by him, and assuming that all the subscribers whose names appear in Mr. Smith's Exhibit No. 6 were to be charged the rates fixed by the ordinance according to the class of service which those subscribers were shown to have, then, the total exchange earnings (not including toll earnings) would have been $327,283.43.

It will be remembered that the Court fixed the earnings at $330,918.00. This finding of the Court included $12,720.00, representing toll earnings. Deducting this item from the finding of the Court, the result will show $318,198.00 representing exchange earnings as found by the Court, which is $9,085.00 less than the exchange earnings would have been in the year 1908, had the rate ordinance been in force during that year.

It should be borne in mind that the evidence given by Mr. Warren in this respect is based on Mr. Smith's Exhibit No. 6, and is refuted nowhere in the record.

It should also be borne in mind that in order to ascertain what the earnings of appellee would have been for the year 1908 had the rate ordinance been in effect it is necessary to add to the above item of $327,000.00 a sum representing the toll earnings of the Louisville exchange.

Appellee contends only 15 per cent of the toll earnings, viz., $7,000.00 should be added. The Master held that all of the toll earnings, viz., $50,000.00 should be

added. The Court held that only $12,720.00 of the toll earnings should be added.

That expenses of conducting the toll department amounting to at least $30,000.00 are paid by the Louisville exchange, is apparent. Therefore, if the Louisville exchange is not to lose money on account of the toll department, at least $30,000.00 should be added to the above item of $327,000.00 in order to ascertain what the exact earnings would be under the rate ordinance.

EXPENSES.

The appellee charged in its Bill of Complaint (Record, p. 14), that its expenses for the year 1908 amounted to	$239,710.48
In Mr. Smith's Exhibit No. 1 (Record, p. 474), he shows the expenses for the year 1908 to have been	227,495.66
The two accountants found the expenses for the year 1908 to have been (Record, p. 746)	217,395.53
The Master found the expenses to have been (Record, p. 83)	216,363.07

In Mr. Warren's Exhibits Nos. 9, 10, 11 and 12 (Record, p. 1122), he starts with the expense item above mentioned, viz., $217,395.53 for the year 1908 as found by the accountants, and then made certain deductions therefrom representing items which were not properly expenses of the Louisville exchange. These items so deducted are explained by Mr. Warren beginning with page 1081 of the record. They are in a general way, taxes, insurance and expenses of conducting the toll department.

Taking up first the items of taxes and insurance:

Mr. Smith's Exhibit No. 1 (Record, p. 474) shows the amount of taxes, insurance and rentals paid on all prop-

erty, including that paid on the real estate and buildings. It will be remembered that the complainant treats its real estate as an outside operation and charges against the Louisville exchange, as a part of the operating expenses of the Louisville exchange, a certain sum as rent. It also charges against the Louisville exchange as a part of its operating expenses all the taxes and insurance which it pays on that real estate and on the buildings. (See Record, pp. 1083-1086, also Warren's Exhibit No. 8.)

As a result of this method of making charges against the Louisville exchange, appellee gets a rental equal to 8 per cent net on the book value of its property. If the taxes and insurance were paid out of this rent the company would earn about 6 per cent net on the book value of its real estate. (Record, pp. 1100-1101-1083). Inasmuch as the exchange is required to pay the taxes and insurance in addition to the rent it results that the Louisville exchange is paying appellee 8 per cent net on that book value. (See Record, pp. 1083-1084). The evidence shows that 4 1-2 to 5 1-2 per cent net is the amount which property owners usually receive for property of a similar nature. (Record, p. 973). The Master deducted from the expenses the amount paid as *taxes* on the *main exchange*, whereas he should have deducted the amount of *taxes* and *insurance* on *all four* exchanges. (Record, p. 80).

The record shows that the appellee paid insurance on these buildings and real property for the year 1908 amounting to $1,308.30. (See Warren's Exhibit No. 8, Record, p. 1122). There should, therefore, be deducted from the amount found by the Master the additional sum of $1,308.30.

Included in the $216,363.07 which the Master found to be the expenses of the exchange is an item representing instrument expense. This item for the year 1908 amounted to $13,722.52, and represents the rental paid by the appellee to the American Telephone and Telegraph Company for the use of the transmitter and receiver, (Record, p. 72). The transmitter is the round biscuit-shaped part of the telephone apparatus into which the subscriber talks. The receiver is the gutta-percha apparatus which hangs on the hook of the desk set and which is placed to the ear.

Mr. Polk, Mr. Crumb, and Mr. Smith, show that about 10,000 of these instruments are used by the appellee in Louisville; that these instruments last about eight years and cost about $2.00 per instrument. Mr. Polk and Mr. Crumb say that these instruments, or instruments as good or better, can be purchased in the open market for $2.00 each (Record, p. 1506). The instruments, therefore, on which the appellee is paying out $13,722.52 per year can be purchased for $20,000.00. The Louisville exchange is therefore being compelled to pay out over 65 per cent per year on the value of these instruments ($13,000.00 being 65 per cent of $20,000.00). If the receiver and transmitter last eight years, about 12 per cent depreciation should be allowed. But grant that 14 per cent depreciation should be allowed. The owner of the instruments, the American Company, should not be entitled to earn over 6 per cent thereon. This makes a total of 20 per cent. If, therefore, the appellee were to purchase these instruments outright, it could do so for $20,000.00, and if it be allowed to earn 20 per cent thereon the amount of instrument expense which would then be charged

against the Louisville exchange would be $4,000.00 instead of $13,722.52. It, therefore, seems that the appellee is charging $9,000.00 per year as instrument expense more than it should charge against the Louisville exchange. This $9,000.00 should, therefore, be deducted from the total expense item as found by the Master.

In this connection it should be borne in mind that the American Telephone and Telegraph Company owns the transmitter and receiver; that the American Telephone and Telegraph Company owns the appellee and can, of course, compel it to pay whatever price it demands for the use of these transmitters and receivers. (Record, p. 445).

Mr. Smith tried to make it appear that the instrument rental paid entitles it to certain engineering services, and advice generally, from the American Telephone Company. The record shows that the appellee does its own engineering, even to the extent of matters connected with the installing of switchboards, if Mr. Caldwell, the president is to be believed. (See Record, p. 835).

The Chicago Telephone Report considered the question of instrument rental as charged against the Bell Company by the American Telephone Company and reported as follows (Record, p. 446):

> "Taking an average rate of 12 per cent depreciation, making due allowance for the scrap value, and allowing 8 1-2 per cent for interest, insurance and taxes (of which 2 1-2 per cent is allowed for the latter two items), and 3 1-2 per cent for maintenance, makes a total annual item of cost to the American Bell Telephone Company for furnishing these pieces of apparatus to the Chicago Telephone Company that amounts to 24 per cent of their first value of $3.00

per set. As the Chicago Telephone Co. in the Chicago business, has now (January 1, 1907), more than 130,000 telephones in actual use, we assume that our estimate of an average of 150,000 complete telephone sets in use and in stock during 1906, is approximately correct, though we have not had time to verify this figure. At $3.00 per set, the total value of these 150,000 sets is $450,000.00, and 24 per cent of this amount is $108,000.00, which is a fair payment to the American Bell Telephone Company for furnishing these instruments. This leaves a balance of approximately $174,000.00."

A report was made by the New Orleans Board of Trade on the operations of the company of appellee in New Orleans. That report is filed by Mr. Smith as a part of his deposition and on pages 64 and 65 of that report (Record, p. 446) appears the following language:

> "It may be stated, as a general proposition, that the rental charged for the instruments by the American T. & T. Co., is about twice the amount that would suffice to give it a fair return. In 1906, the amount paid for instrument rental was $26,418.76 on a total average number of 12,339 instruments, or a little more than $2.14 per instrument. Admitting that the total annual item of cost to the American T. & T. Co. for furnishing these telephone sets, each containing a transmitter, receiver and induction coil, is 33 1-3 per cent of their original cost, which is stated to be $3.00, it will be seen that under this contract something in excess of $14,000 is paid by the Cumberland Company, over and above what may be strictly considered as a fair rental charge."

Another item of expense included in the $216,363.07 found by the Master is an item representing the revenue which the company would receive were it to charge for its free telephones. In other words, appellee has a great many telephones from which it derives no revenue. On

its books it places a credit representing what the revenue from these telephones would be were the company to charge therefor. To offset this item it charges a corresponding amount as a part of its expenses. Mr. Warren (Record, pp. 201-1096) explained this charge and what he there says is nowhere denied. If, therefore, the appellee has 100 free telephones (and Mr. Smith's Exhibit No. 6 shows a great many more than that) then the appellee's books show that it had collected a rental on these free telephones of say $500.00 per month, or $6,000.00 per year. To offset this amount it would charge on its books $6,000.00 as an expense item representing what it would have received had it charged the regular rental for the free telephones. So far as showing what the earnings and expenses were for the year 1908 under the old rate, this item is immaterial, but with the rate ordinance in force under which appellee will be entitled to charge every subscriber the rate fixed in the ordinance, this item will make a very considerable difference.

It must be assumed that when the appellee operates under the rate ordinance it can charge all of its subscribers alike and furnish no free telephones and it will certainly not be entitled to charge as part of its expenses a sum of money which it did not expend, but which merely offsets earnings which it might have made had it charged the free users of telephone service regular rates.

I have not taken time to go over Mr. Smith's Exhibit No. 6 to determine how many telephones are furnished by appellee free of charge, nor the class of service furnished such telephone users. There are certainly more than one hundred such users.

The Master disregarded all the foregoing items I assume because a consideration of them was not essential to decide that the ordinance rate was valid.

Exceptions, however, were filed to the findings of the Master in respect to all of these items (Record, pp. 198-203), which exceptions were overruled by the Court. If these items are proper deductions from the expenses, and I submit that the uncontroverted evidence sustains the facts as herein stated, then there should be deducted from the expenses as found by the Master the following items:

Insurance	$ 1,308.30
Instrument expenses	9,722.52
Expenses charged up on account of free telephones	
Total at least	$11,030.82

Deducting the total of the above items from the total expenses as found by the Master, viz., $216,363.07, leaves a balance of $205,333.00 as the total expenses incurred by the complainant in conducting its plant in the City of Louisville for the year 1908.

Items representing identically the same character of expenses in substantially the same amounts, should be deducted for the years 1905, 1906 and 1907.

Another deduction made by Mr. Warren from the expenses as found by the accountants, viz., $217,000.00 represented the expenses of conducting the toll department. This item is discussed at pages 131 to 147 and also pages 35 to 38 of this brief.

Both the Master and the lower Court allowed these items to remain a part of the expenses of the exchange, and added to the earnings a sum to offset these expenses—

the Master adding all of the local toll earnings, the Court $12,000.00 of these earnings. It should be remembered that the toll receipts on *outgoing* messages was (Record, pp. 75-79) $50,000.00

Assuming that the toll receipts on *incoming* messages is equally as large, viz. 50,000.00

The toll receipts on American Telephone Company's business was (see this brief, p. 140).. 40,000.00

Then the result will show total receipts by the Louisville exchange on the toll department of $140,000.00

The lower Court only allowed to the Louisville exchange as its portion of those earnings and as representing its services and expenditure on account of appellee's toll department $12,000.00

On account of American Telephone business... 3,200.00

Total $15,200.00

It has been shown that the expenses charged against the exchange to conduct the toll department is (see this brief, p. 143)..... $ 30,000.00

Loss to Louisville exchange on toll business... 14,800.00

Clear profit to appellee on toll business $124,800.00

No wonder Mr. Munster, the accountant who examined the books for the Board of Trade, said in his report (Record, p. 453):

> "My opinion is that the most productive part of the company's business is the toll line."

The Master found that the toll earnings were due solely to the existence of the exchange (Record, p. 78), and if

such is the case then it is fair to consider the receipts from both the outgoing and incoming messages.

It is immaterial whether these items be considered in connection with the earnings or expenses. Certainly some account should be taken of them. The City insists on the following treatment of the toll department:

A: The Master's findings were logical and should be sustained. If so, then:

All of the receipts on *outgoing* messages over toll lines at Louisville should be credited to the earnings of the Louisville exchange.

All of the expenses of conducting the toll department at Louisville should be borne by the Louisville exchange.

The value of the toll property should be added to the value of the exchange property and the appellee allowed to earn a fair dividend thereon.

B: If the Master is not to be sustained then one of the following two courses should be pursued:

One. Credit should be given the Louisville exchange on account of toll earnings to the extent of at least $30,000.00 instead of $12,000.00 which the Court allowed. This $30,000.00 does not exceed the amount the Louisville exchange is compelled to expend each year in conducting the business of the toll department. If this course is adopted, then the expenses of the toll department should be borne by the Louisville exchange, but the value of the toll lines should not be included as a part of the value of the plant.

Two. The toll department should be treated as a separate and distinct property; none of the earnings should be credited to the Louisville exchange; and there should

be deducted from the expenses at least $30,000.00, which item represents the actual amount of expenses of the toll department, and which amount is paid out every year and charged as expenses of the Louisville exchange. If the toll department is treated in this manner of course the value of the toll department should not be added to the value of the plant.

The following figures show the alternative methods of treating the expenses of appellee for the year 1908, the adoption of any one of which will be satisfactory to the City:

Expenses found by the Master		$216,363.07
Insurance on real estate	$ 1,308.30	
Excess instrument expense	9,722.52	
Expenses charged on account of free telephone		
Total		$ 11,030.82
Balance representing actual expenses		$205,332.25

If the Court is to adopt the plan denominated "A" on the preceding page, then the following will be the result:

Earnings as found by the Master, including all toll earnings	$369,081.00
Expenses as shown above	205,332.52
Net earnings	$163,748.48
Twelve per cent on the value of the plant, including toll lines, as found by the Master namely, $1,355,878.00	$162,700.00
Balance over and above twelve per cent on value of plant	$ 1,048.00

If plan denominated "B One" is adopted, then the following figures will result:

Exchange earnings as found by the Master (toll earnings eliminated)	$318,000.00
Portion of toll earnings, representing actual expenses paid by the exchange	30,000.00
Total earnings	$348,000.00
Expenses (toll and exchange)	205,332.25
Net earnings	$142,667.75
Eleven per cent on the value of plant, not including toll lines, namely, $1,243,011.97	$136,730.00
Balance over and above eleven per cent	$ 5,937.00

If the plan denominated "B Two" be adopted, then the following figures will result:

Exchange earnings as found by the Master (toll earnings eliminated)	$318,000.00
Total expenses of conducting both exchange and toll department	$205,332.25
Deduct amount representing expenses of toll department	$ 30,000.00
Total expenses of exchange	$175,332.25
Net earnings	$142,667.00
Eleven per cent of the value of plant as found by Master, not including toll lines, namely, $1,243,011.97	$136,730.00
Amount in excess of eleven per cent	$ 5,937.00

As shown in this brief (p. 153), the actual exchange earnings for the year 1908, had the rate ordinance been in force would have been $327,000.00 or $9,000.00 in excess of what they were found to be under the old rates.

DEPRECIATION.

This record discloses a most extensive discussion of the question of depreciation.

As I understand the question it simply means that a telephone plant, or a railroad or a factory or any character of enterprise which uses personal property or fixtures in conducting its business, finds it necessary every year to repair and renew parts of its property. It is, of course, incumbent on the managers of such plants to provide out of its earnings each year a fund which, together with its accumulations, will be sufficient to replace and renew worn out parts of its plant. A simple illustration can be made in connection with an engine used by a water company. If such an engine costs $100,000.00 and lasts twenty-five years, then the company should set aside a sufficient percentage of the $100,000.00 each year which, together with its accumulations, will purchase a new engine at the end of twenty-five years. It would not be necessary to set aside four per cent each year or $4,000.00, because if such sum were set aside it would be found that the amount plus the accumulations would far exceed $100,000.00 in twenty-five years. Just what amount should be set aside I do not know, but it should certainly not be four per cent.

This I conceive to be the general principle governing depreciation.

Public service and industrial concerns seem to have two methods of treating depreciation.

First. One is to set aside a sum each year and keep it separate and distinct from its other assets and which is to represent the depreciation in the value of a plant due to wear and tear, and which sum is to be used immediately or ultimately in replacing parts of the plant.

Second. Other concerns (and railroad and telephone property seem to be in the number) have learned that a given plant after being in operation for fifteen or twenty years will require year in and year out about the same amount of money to replace and reconstruct the parts as they wear out. Such concerns accordingly set no sum aside for depreciation, but simply charge to expenses each year the amount made necessary to maintain and reconstruct the property.

The evidence shows beyond a doubt that the appellee has been and is pursuing the second course.

There is a great deal said by the witnesses concerning maintenance, reconstruction and depreciation. Appellee attempts to show that maintenance is the ordinary current repairs of the property and that reconstruction is the wholesale repairs such as removing a switch-board and putting in a new switch-board, tearing down one line of poles and putting in another line of poles, etc.

After all the proof was taken the Master requested that the deposition of Mr. Caldwell, the president of the company, be re-taken in order that he might have Mr. Caldwell explain more in detail the appellee's attitude concerning depreciation. In that deposition the Master questioned Mr. Caldwell closely and among other things elicited the following proof (Record, p. 841):

"Now then the distinction between maintenance and reconstruction is more or less shadowy?

"A. It is."

Again Mr. Caldwell (Record, p. 840) said:

"Q. 33. Is this item of depreciation an expense of conducting the business?

"A. It undoubtedly is.

"Q. 34. To what should be charged the expense of reconstruction?

"A. It should be charged to repairs."

The lower Court found that reconstruction and depreciation are interchangeable terms. In this connection the lower Court used the following language (Record, p. 1634):

"It is apparent from the record that persons in the telephone business use the words 'reconstruction' and 'depreciation' almost if not quite interchangeably, so far as money spent or to be spent is concerned. In their art the two things are substantially the same from that standpoint."

The Master found that the plant was worth $1,243,000.00; and that the amounts expended for the four years for maintenance were as follows (Record, p. 72):

1905	$49,819.14
1906	52,796.93
1907	65,616.31
1908	54,705.91

The Master also found that the amounts expended by appellee in reconstruction work for the four years were as follows:

1905	$41,051.02
1906	40,626.07
1907	41,895.10
1908	31,450.07

The Master showed in his report that the total of the above two items represents 7 per cent of the value of the plant and he reached the conclusion that if a plant had been in operation for more than twenty years, and if the last four years of that period showed that 7 per cent was all that was required for maintenance and reconstruction, then it was fair to assume that 7 per cent was a sufficient sum for all time to maintain and reconstruct the property. In this connection the Master said (Record, p. 91):

> "I think it is reasonable and fair to assume that the amounts actually expended by complainant during 1905, 1906, 1907 and 1908 and to March 6, 1909—made, as they were, when this or similar litigation was not contemplated—indicate more clearly than opinions of witnesses what expenditures were necessary to properly repair, maintain and reconstruct the plant. The plant was acquired in 1899, and complainant took care of and maintained the plant up to 1905 just as it has done since that time.
>
> "In that part of the report where the cost of the plant was considered, reference was made to a questionable entry in the books of the Ohio Valley Company. It appeared that that company paid dividends on its capital stock, maintained and reconstructed its plant from year to year out of exchange earnings during a period of eight or nine years. At the end of each fiscal year the Ohio Valley Company wrote off from its 'Construction' Account, and passed to 'Depreciation' an amount aggregating $135,505.70.
>
> "Complainant attacks those bookkeeping entries vigorously and in its construction account it has reversed the entries made by the Ohio Valley Company *supra*, and that aggregate item of $135,505.70 appears as an integral part of the cost of complainant's plant immediately after it was purchased from the Ohio Valley Company in 1899.
>
> "As to the correctness of this addition of $135,505.70 to construction account, and therefore to the cost account of the plant, its expert accountant, Mr.

Wilkinson, on page 13 of his report, says: 'No such charge for depreciation was called for at all. *The amount actually expended by the Ohio Valley Telephone Company upon the up-keep of its telephone plant, was ample to provide for all reconstruction.*'

"This argument, when applied to the claim of complainant for an additional allowance out of earnings for 'incomplete depreciation' over and above the annual outlay for maintenance and reconstruction, is conclusive. In further support of the justness of my position, I may refer again to the testimony of complainant's witnesses who say that the physical condition of the plant is first class in every respect. (Wilkinson's Report, page 26.) (Smith and Caldwell.)"

It will be my purpose in the following pages to show that the Master was correct in his findings, and that over a period of twenty years 7 per cent on the value of the appellee's plant at Louisville had been ample to maintain and reconstruct all parts of the plant as they became useless from wear and tear.

I will also show that over appellee's entire system extending from the Ohio River to the Gulf of Mexico, 7 per cent on the value of its entire plant has been ample to maintain and reconstruct that plant.

I will also show that the American Telephone & Telegraph Company, which owns all of the Bell operating companies in the United States, has found after an experience of thirty-six years that 7 per cent is ample year in and year out to maintain and reconstruct all parts of a telephone plant.

I first call attention to the theory of depreciation as laid down by Mr. Smith in his direct examination.

On page 227 he told what depreciation was and on page 228 he said: "This depreciation would partly be spent from year to year and part of it would go into the

reserve account." On page 229 he said that this depreciation fund should be reinvested and should earn interest. On page 229 occurs this question and answer:

> "Q. In other words, to get along on as low percentage as 7 1-2 per cent of the original cost of the property, you must allow that money to accumulate interest, otherwise you would have to use a larger per cent for depreciation?
> "A. Exactly."

On page 233 occurs this question and answer:

> "Q. Now it very often happens, I assume, that you use more than 7 1-2 per cent in one year in reconstruction?
> "A. Yes."

I will show a little later that over a period of ten years last the largest percentage used for reconstruction in any one year was in the year 1900 when it was 3 7 10 per cent. For the year 1908 it was 1 1-10 per cent.

Mr. Caldwell on page 511 said that a 7 1-2 per cent depreciation fund was required. Mr. Hume placed the depreciation fund at 7 1-2 per cent. (Record, p. 680.)

Mr. Smith (page 235) said the company had never set aside any depreciation fund. Mr. Caldwell said the same thing. (Record, p. 840.) See also Hume's deposition (Record, p. 698).

If it be true as asserted by the appellee's witnesses that there comes a time when the plant wears out in its entirety, then such period will certainly arrive within thirty years after the construction of the plant. Capt. Gifford showed that this plant was constructed in 1879. (Record, p. 957.) In 1890 it was a well developed plant. Since 1900 it has been operated by the appellee. Mr.

Hume said that the amounts expended on reconstruction for the last years of the period are greater than the amounts expended during the first years (Record, p. 686), and yet the amount expended in 1908 in reconstruction, according to Mr. Smith (page 217) was only $19,000.00. Mr. Smith's Exhibit No. 2 (Record, p. 475) shows that since 1904 the new construction has cost only $155,000.00, so that practically the entire plant is now over five years old.

If we assume that Mr. Smith's figures representing the cost of the plant are correct, then beginning with 1905, the cost of the plant represented an expenditure of $1,532,657.90 and the amount expended for reconstruction $41,051.02 (Record, p. 72), a calculation will show for that year the amount expended on reconstruction was 2 6-10 per cent on the cost of the plant. The following table shows for 1905, 1906, 1907 and 1908 the cost of the plant as shown by Mr. Smith, the amount expended for reconstruction and the percentage which the reconstruction bears to the cost of the plant:

	Cost.	Reconstruction.	Percentage.
1905	$1,532,657.90	$41,051.02	.02.67
1906	1,593,623.91	40,626.07	.02.54
1907	1,682,905.41	41,895.10	.02.43
1908	1,704,397.09	19,535.72	.02.14
		Average,	.02.19

I do not believe the plant cost what Mr. Smith said it cost at the beginning of 1905. There is no way of ascertaining what it did cost at the beginning of 1905 except

Note. The figures representing the cost of the plant as above indicated are shown on Mr. Smith's Exhibit No. 2. (Record, p. 475.) The figures showing the amount expended for reconstruction are shown in the joint report, except for 1908 which is shown by Mr. Smith, p. 217.

by making an estimate based on the number of subscribers. Between 1900 and 1905 the company gained 5,500 subscribers. If we assume that the plant was worth $450,000 when purchased, then by adding $100,000 to Plant Account for each subscriber gained (Mr. Crumb's estimate, p. 875) or $550,000.00, the plant was worth in 1905 $1,000,000.00. During the year 1905 120 subscribers were gained, which, at $100.00 per subscriber, would make a total of $1,012,000.00. In 1906 about 1,000 subscribers were gained, which, for the beginning of 1907, would make a total investment of $1,112,000.00. During 1907 more subscribers were gained, but during 1908 still more were lost, so that for the years 1907 and 1908 I have taken $1,112,100.00 as representing the value of the plant, and have prepared a table similar to the one above showing the percentage of reconstruction to the estimated value of the plant based on the theory above detailed. The table is as follows:

	Plant.	Reconstruction.	Percentage.
1905	$1,000,000.00	$41,051.02	.04.10
1906	1,012,100.00	40,626.07	.04.01
1907	1,112,100.00	41,895.10	.03.76
1908	1,112,100.00	19,535.72	.01.75
		Average,	.03.40

I have prepared the following table based on the Master's valuation of the plant and toll lines from 1900 to 1908 inclusive. This table shows the actual amount expended for both maintenance and reconstruction each year

as shown by the records and also shows the percentage which such expenditure bears to the value of the plant:

Year.	Value of exchange and toll lines.	Maintenance and reconstruction.	Per cent.
1900	$582,985.87	$50,000	.08
1901	722,000.00	68,000	.09
1902	875,000.00	53,000	.06
1903	1,067,000.00	51,630	.05
1904	1,207,000.00	66,000	.06
1905	1,312,000.00	90,800	.07
1906	1,347,000.00	93,400	.07
1907	1,355,878.00	107,500	.08
1908	1,355,878.00	86,000	.06
		Average, 7 per cent.	

The above table is based on what the Master said the plant had cost. If the appellee's own figures on valuation of plant be taken, and the amounts expended for maintenance and reconstruction over a period of ten years be based thereon, the following facts will be shown:

Year.	Value of exchange and toll lines.	Maintenance and reconstruction.	Per cent.
1900	$638,196.74	$50,000	.07
1901	804,000.00	68,000	.08
1902	982,000.00	53,000	.05
1903	1,200,000.00	51,630	.04
1904	1,363,000.00	66,000	.05
1905	1,494,000.00	90,800	.06
1906	1,554,000.00	93,400	.06
1907	1,670,000.00	107,500	.06
1908	1,700,000.00	86,000	.05
		Average, 5 4-5 per cent.	

In addition to the facts above detailed the record fortunately has in it other facts which should be conclusive of this question.

Mr. Caldwell in his second deposition filed as Exhibit A with his deposition the annual report of the directors

of the American Telephone & Telegraph Company to the stockholders. This annual report contains a statement of the plant account for the years 1908 and 1909 and the amount expended for those two years for maintenance and reconstruction. (Record, p. 846.) On page 7 of this report (Record 849) will be found the statement in question. It will be noted that this statement includes only the operating companies controlled by the American Company, such as appellee, and does not include the long distance lines operated exclusively by the American Company. It will also be noted that the amount representing the expenditures for maintenance and reconstruction is entitled "Maintenance and depreciation." However, on page 8 of the same report, this item is more fully described as "Current repairs and maintenance of property and *provision for depreciation.*" As maintenance and reconstruction are not separated in this report it is necessary to determine how much of the sum set opposite this item represents maintenance and how much reconstruction.

It will be remembered that no separation was made between reconstruction and maintenance for the years 1900 to 1904 inclusive. During those years all maintenance and reconstruction work was charged as expenses of the plant under the head of maintenance. (Record, p. 338.)

It is, therefore, impossible to tell accurately how much of the maintenance charges for those years was used in reconstruction work. The only way to approximate the amount expended during those years for reconstruction is to ascertain the ratio that maintenance and reconstruction bore to the total of both for each of the years, 1905, 1906 and 1907 inclusive, as shown by the record and as indicated above. It will be remembered that those are the

only three years wherein appellee separated its maintenance from its reconstruction.

The joint report shows what the maintenance and what the reconstruction amounted to for those three years (Record, p. 72), and a calculation will show that 42 4-10 per cent of the total expenditure for maintenance and reconstruction represented reconstruction and that 57 6-10 per cent of the total expenditure represented maintenance.

In determining how much was expended for maintenance and reconstruction by the American Telephone Co., I have adopted the percentage above indicated, viz., 42 4-10 per cent representing reconstruction and 57 6-10 per cent representing maintenance.

Therefore, of the $37,204,300.00 representing maintenance and reconstruction for the year 1908, 42 4-10 per cent thereof represented reconstruction, and of the $42,418,000.00 representing maintenance and reconstruction for the year 1909, 42 4-10 per cent represented reconstruction. The amount invested in the subsidiary plants for the year 1908 was $475,034,000.00 and for 1909 was $501,757,100.00. I have placed below a table showing the plant account for each of these years, showing 42 4-10 per cent of the total items representing maintenance and reconstruction for each of the two years and the percentage which this item bears to the amount invested in the telephone plant:

Year.	Plant.	Reconstruction.	Percentage.
1908	$475,034,000.00	$15,774,500.80	.03-32
1909	501,757,100.00	17,985,232.00	.03-58

This report shows that this company began business in 1876. It would, therefore, seem reasonable to assume that

at the end of thirty-three years the amount actually expended in reconstruction would be a fair amount to set aside as the annual expenditure for reconstruction purposes for any telephone plant.

Again, the total of maintenance and reconstruction as appears on page 7 of the above report, is about 8 per cent of the value of the plant.

But this is not all. Mr. Caldwell has filed in this case his annual report to his stockholders for the years 1906, 1907, 1908 and 1909. (Record, pp. 561, 567 and 585.) In those reports under the heading "Expenses" he shows one gross sum as the amount expended for maintenance and reconstruction. He also shows the amount invested in the plant for each of those years. I have used the same basis of calculation for preparing another table, namely, assuming that 42 4-10 per cent of the amount expended for maintenance and reconstruction was expended for reconstruction, and have then ascertained the percentage which that amount bore to the plant account for the particular year in question. Here is the table:

Year.	Plant.	Reconstruction.	Percentage.
1906	$22,724,781.24	$801,076.17	.03-52
1907	23,895,126.87	832,020.46	.03-48
1908	24,381,297.64	819,639.26	.03-36
1909	26,042,429.91	861,083.09	.03-36

It, therefore, seems that the Cumberland Company, which has been operating telephone plants over a large territory since 1886, finds at the end of over twenty-four years' experience that the actual amount required yearly for reconstruction is 3.4 per cent.

All the witnesses agree that the plant of the appellee is in excellent physical condition. (Wilkinson's Report, Record, p. 769.)

In Mr. Wilkinson's separate report (Record, p. 758), he said:

> "From 1890 to 1899 inclusive the Ohio Valley Telephone Company had expended upon its telephone plant the total of $511,675.66, or equal to an average of $51,167.56 a year. This sum included all repairs, maintenance and reconstruction and in addition it included almost *all new aerial* construction.
>
> "Not one dollar was added to reconstruction account on the books from 1890 to 1897. This actual expenditure which was all charged against earnings is equal to 10.39 per cent per annum of the cost of the plant as shown by the books."

Bearing in mind that Mr. Smith's Exhibit No. 2 shows that the aerial construction from 1899 to 1908 inclusive was in excess of $560,000.00 (over one-half of what was expended during the entire period of nine years) it would certainly seem fair to assume that 3 3-10 per cent of the 10 3-10 per cent referred to by Mr. Wilkinson represented aerial construction. If this be a fair assumption, then during the ten years prior to the acquisition of the Ohio Valley plant, 7 per cent of the value of the plant was all that was needed to maintain and reconstruct the plant.

Finally, there is in this record one deposition given by the appellee's treasurer which shows beyond the peradventure of a doubt that the position taken by the Master and contended for by the City is the only logical conclusion of which the record will permit.

I refer to the deposition of Mr. Webb, treasurer of the company, and three exhibits filed by him with that deposition (see Record, p. 1580).

Those exhibits show for the year 1900 that $42,115.40 was set aside for depreciation which amount appeared in his statement as a part of the expenses, but not expended. Those exhibits show that for the year 1901 the complainant set aside $39,850.00 for depreciation which amount was included as a part of the expenses for that year, but not expended. (Record, p. 1582-394.)

Now, what has become of this $80,000.00 which was set aside in 1900 and 1901 to take care of depreciation? Was it expended in 1907 and 1908? If so, then no part of appellee's expense for reconstruction for those years should have been charged against Louisville. In reality appellee did not set aside $80,000.00 in 1900 and 1901. There was no occasion for setting aside any such sum. It maintained its property during those two years just as it has maintained it ever since, the cost of such maintenance being charged to expenses. Those two items, aggregating $80,000 are simply bookkeeping items.

I have already shown that according to this deposition of Mr. Webb appellee earned during year 1900, 19 per cent on the value of its plant and during the year 1901, 16 per cent on the value of its plant. (See this Brief, p. 199.)

Now, if the appellee had continued to earn money from 1901 to 1908 as it did in 1900 and 1901 and had continued to set aside a part of its earnings for depreciation, it would now be in the attitude of having maintained its property in the highest state of repair for nine years, of having expended and charged up against the Louisville Exchange the cost of maintaining its property in this high state of repair, and in addition thereto having set aside out of earnings certainly 3 per cent on what it says its plant cost. We have prepared a table showing what those

items would amount to. This table is based on Mr. Smith's Exhibit No. 2.

1899	$ 678,354	3 per cent	$20,300
1900	845,293	actually set aside	42,115
1901	1,024,145	actually set aside	39,850
1902	1,237,615	3 per cent	37,000
1903	1,401,102	3 per cent	42,000
1904	1,532,657	3 per cent	46,000
1905	1,593,623	3 per cent	47,000
1906	1,682,905	3 per cent	50,000
1907	1,682,905	3 per cent	51,000
1908	1,700,045	3 per cent	51,000
			$426,265

Now, over a period of twenty years, there has been no occasion to set aside or use any such fund. No such fund has been set aside or used and no such fund will ever be needed. It is a bookkeeping device, pure and simple, and as Mr. Munster says is only made use of when regulations of rates are attempted. (Record, p. 451.)

The appellee would have the Court believe that the Master did not understand the question of depreciation.

As showing that the Master did understand the question of depreciation we call the Court's attention to the following question propounded by the Master to Mr. Caldwell (Record, p. 841). Mr. Caldwell's second deposition was taken specifically for the purpose of explaining what depreciation was.

The Master:

> "Now these two amounts, that is, the amount first given as having been actually expended for maintenance, reconstruction and replacement, and the latter amount as being unexpended together, amount as he states it, to more than 10 per cent of the cost of the plant. Now, what I want you to explain is whether

> or not in your judgment the 7 1-2 per cent claimed for depreciation ought to include the amount expended for maintenance?"

Mr. Caldwell then proceeds to say that the items of expenditure, for reconstruction and maintenance are so shadowy it was practically impossible to separate them. The Master certainly was impressed with the fact that they should not be separated, and that 7 per cent of the value of the plant was sufficient to take care of both maintenance and reconstruction.

Both Mr. Smith (Record, p. 239) and Mr. Caldwell (Record, p. 536) speak of the report made by Mr. Muster to the Board of Trade of Louisville in the highest terms. Mr. Caldwell approved that report. I had Mr. Smith read a part of that report which is as follows (Record, p. 451):

> "As it is claimed that the company's plants are now in prime condition and that all the subscribers' stations are equipped with the highest type instruments, it may be difficult to see why from 5.74 to 7.5 per cent of the original cost of the property should annually be contributed out of the earnings to cover wear and tear and decay, as proclaimed by telephone people, not in their statements to their stockholders or investors, but when the matter of franchise and rates for service is up for discussion."

It would, therefore, seem that Mr. Muster, who was employed by the Board of Trade, was impressed by the evidence which he gathered as was the Master.

The fact is, the amount of reconstruction required depends almost entirely on the amount expended in maintenance. If a company tightens up a bolt at one place, straightens up its poles at another place, and watches its switchboards carefully, and maintains the

plant in first-class condition, necessarily the reconstruction items will not be very large. All the witnesses say that the plant of appellee is well maintained. The cost of maintaining this plant appears in the items of expense under the head of "Maintenance." The subscribers should not be required to pay out large sums of money in the way of maintaining the property and then in addition pay into the coffers of the company excessive sums of money to be treated as surplus when it will never be required for reconstructing the plant. There may come a time when the switchboards will have to be replaced new throughout (though Mr. Jagoe on page 648 said that switchboards are indestructible), but there is no other part of the plant which year in and year out cannot be taken care of in the way of maintenance, representing in the main the same expenditure each year.

It is self-evident that all the protestations made by Mr. Caldwell and Mr. Smith and Mr. Hume that 7 1-2 per cent depreciation is based on past experience is fallacious. Past experience as shown by the books is exactly the converse of their contention.

Again, if the plant depreciates 7 1-2 per cent per year, then I submit that at the end of the year the plant is worth exactly 7 1-2 per cent less than it was at the beginning of the year. In other words, if the plant is worth $1,000,000.00 at the beginning of the year, and depreciates 7 1-2 per cent a year, then at the end of the year it is worth only $925,000.00. However, if $20,000.00 of the $75,000.00 which represents the 7 1-2 per cent is expended in reconstruction, then the plant should be represented on the books and should be actually worth $945,000.00, and there should be $55,000.00 in the depreciation fund. This

plan is worked out by Mr. Warren in his Exhibit No. 5 (Record, p. 1050). Mr. Warren in this exhibit takes the figures as they appear on the books representing the cost to the company and also the figures representing the reconstruction and shows that if this method were pursued then assuming that the company had set aside 7 1-2 per cent a year for depreciation, the plant would now be worth but little over $1,000,000.00 and there would be over $600,000.00 in the depreciation fund.

If the plan worked out by Mr. Warren on the book value of the plant were worked out on the actual value of the plant, an even more startling state of case would be shown.

The treatment of depreciation by the lower Court is confusing.

The Master found that over a period of years 7 per cent on the value of the plant had been ample to maintain and reconstruct the plant.

(It will be remembered that reconstruction and depreciation are the same as found both by the Master and by the lower Court. (See Brief, p. 167.)

The Court discussed the question of depreciation on pages 1630 to 1636 and also on page 1642 of the Record.

On page 1633 of the Record the lower Court used this language:

> "The Master expressed his own conclusions as follows: 'In view of the foregoing, I find that the fair and reasonable amount or proportion of annual income of complainant that should be set aside as a substantial provision and allowance for depreciation of complainant's plant and property employed in its business in Louisville, and including everything except cash working capital and supplies, would be an

amount equal to 7 per cent of the value of the plant, as above limited, and that the amount expended annually for maintenance and reconstruction of the plant should be deducted from the 7 per cent fund.'

"It is obvious that the last clause of what he says makes it difficult to understand his findings, and especially difficult to reduce it to a percentage which will apply to the future. These difficulties, however, are somewhat moderated when we find that the Master himself appears to have figured depreciation upon the basis of about 7 per cent of his valuation of the property, and we shall go upon the idea that he meant to find that 7 per cent was proper. If any of the exceptions reach this finding, the question to be considered is, what proportion of the company's annual earnings shall, in the language of the Supreme Court, which we have just quoted, be set aside 'for making good the depreciation and replacing parts of the property when they come to the end of their life?' This provision is altogether apart from and beyond current repairs."

The Master found (Record, p. 90) that the average amount expended on maintenance and reconstruction per year for the years 1905 to 1908 inclusive was $94,000.00.

The Master further found that this $94,000.00 represented an expenditure of 7 per cent on the value of the plant.

Fifty-four thousand dollars was expended in the year 1908 for maintenance. (Record, p. 72).

The lower Court from its language on page 1633 seems to hold that appellee should be allowed to earn not only the $54,000.00 which it expended in maintaining its property, as above shown, but also 7 per cent on the value of its plant as found by the Court ($1,575,000.00).

If the Court intended to allow any such sum the result would be that appellee for the year 1908 would be entitled to charge as expenses against the plant $164.000.00

(7 per cent on $1,575,000.00, being $110,250.00, to which should be added $54,700.00 representing maintenance for that year). The fact is that for both maintenance and reconstruction for the year 1908 appellee only expended $86,000.00. (Record, p. 72.)

As the evidence shows that an expenditure of 7 per cent on the value of the plant over a period of twenty years has maintained and reconstructed the plant and kept it in prime condition, the fallacy of the Court's conclusion in this respect is apparent. Had appellee set aside $80,000.00 a year for ten years to represent incomplete depreciation, it would now have in its treasury $800,000.00 and no incomplete depreciation to be taken care of.

The Court, however, does not seem to have meant what its language implied. For on page 1632, where he applied his conclusions to the value of the plant, earnings and expenses, he treats the 7 per cent as if it were intended to cover both maintenance and depreciation. Here is what the Court said:

> "The Master found that the total operating expenses of the Company for 1908, though greatly less than those for the three preceding years, were $216,363.07. *In this is included $86,155.98, the amount which he finds was actually expended by the company for what he calls 'maintenance and reconstruction.'* He found the average amount spent for that purpose for the four years to be $94,490.19. The company did not, therefore, spend in 1908 the average amount by $8,334.21. *Depreciation calculated on the basis of 7 per cent on the Master's valuation of the plant, viz.: $1,355,878.09 would call for $94,911.46 per year, which is $8,775.48 in excess of the amount actually expended on that account in 1908.* The Master finds that the net income on the company in 1908 was $150,673.19, but when we deduct from the gross earnings as we find them, viz, $330,926.38, the full amount of $216,-

363.07, found by the Master to be the gross expenses, we find the apparent net income to be only $114,-563.07, which would be 6 7-17 per cent upon $1,788,-000, which we find to be the value of the company's property. Can we accept the $114,563.31 as fairly representing the company's net earnings in 1908, the year always most favorable to the City, and upon which, therefore, we have based all our calculations? We conceive the answer to this question to depend upon the valuation of the plant and upon how we treat the matter of depreciation. While we shall soon come to the latter, we may so far anticipate it as to say that *if we shall find 7 per cent on the present value of the company's destructible property (which we have fixed at $1,575,000.00) to be the proper provision for depreciation, the difference between that sum, viz., $110,250.00 and the $86,155.98, which was actually spent for depreciation in 1908, will be $24,-095.02*, which would reduce the net earnings to $90,-468.29 equal to 5 10-17 per cent on the value of the company's entire property here. If we estimate the 7 per cent on the original cost of the plant as it was found by the Master, viz., $1,506,531.21, we find the difference between $105,457.19, the sum thus produced and the $86,155.98 to be $19,301.20. This would reduce the net earnings to $96,262.11, which would be 5 6-17 per cent on the value of the company's property. Of course, the amount needed to restore the values lost by depreciation necessarily varies from year to year because some parts of the plant have shorter life than others." *(Italics mine.)*

It is clear from the foregoing language that the Court adopted the views of the Master and found that 7 per cent on the value of the plant was all that was needed to maintain and reconstruct the property, and that maintaining and reconstructing the property included all sums which might be required on account of depreciation of any nature whatever.

That the question of depreciation is treated differently by different concerns is shown in Mr. Caldwell's deposition (p. 838) where, in discussing the subject, he said:

> "As to how it may be treated, or how it may be kept, is a subject that will vary and has varied with different people in different lines of business."

In view of the above language of the President of the Company and of the foregoing facts it is apparent that appellee was, when it filed its Bill of Complaint, proceeding on the theory that it would require the same amount year by year to maintain and reconstruct its plant.

That such was the case in conclusively shown by the fact that for the years 1900, 1901, 1902, 1903 and 1904 it did not separate maintenance and reconstruction. (See Webb's Exhibits, Record p. 1580 Smith's Deposition, Record pp. 338, 394). For the years 1905, 1906 and 1907 it did separate reconstruction from maintenance, but in the year 1908 it returned to its former plan and did not separate maintenance from reconstruction. (See Record, p. 412). 408-338-719

TELEPHONE CONDITIONS IN OTHER CITIES.

In order that the Master might have before him for consideration the rates and data concerning telephone companies in other cities, depositions were taken in Toledo, Kansas City, St. Louis, Detroit, Cincinnati and Columbus. (See Record, pp. 1557 to 1613).

The witnesses all admit that Louisville is as favorably situated from a telephone standpoint as any of the cities named, and there is nothing in this record to show why comparisons are not logical and fair to the complainant,

except the mere statement of Mr. Caldwell that such is not the case. We submit that Mr. Caldwell's statement on the subject is but a creature of his imagination, and has no foundation in fact or in reason. If he wanted to break down the effect of these comparisons he should have stated facts showing why they should not be considered, and not merely contented himself with saying that they were not fair.

In the case of Interstate Commerce Commission vs. Southern Railway Co., 115 Fed. Rep. 741, the Court in discussing the weight to be given evidence touching the reasonableness of a rate, said:

> "The criterion to which I think the greatest weight should be given are as follows: The opinion of expert witnesses, the effect of present rates on the growth and prosperity of Danville, and the cost of transportation as compared with the rates charged; *and the rates in force in numerous cities* where the circumstances are as nearly similar as may be to those prevailing at Danville."

Judge Severens in the case of Interstate Commerce Commission vs. East Tennessee, Virginia & Georgia Railway, 85 Fed. 107, in speaking of such comparisons, said:

> "Such comparisons are applied to every other kind of business, and the fact that there may be competition in said business will not be a controlling consideration, for the presumption would always be that the compensation charged for the service or thing is sufficient to be reasonable. The presumption is not, of course, a conclusive one, but would seem a fair one, in the absence of special circumstances."

It appears from the opinion of this Court in the case of Railroad Commission vs. Cumberland Telephone & Tele-

graph Company, 212 U. S. 419, that the appellee was then before this Court contending that its rates were lower than the rates of telephone companies in other sections of the country and for that reason should not be disturbed. In connection with the above contention this Court said:

> "The complainant's charges for rates in Louisiana before the promulgation of the order No. 552 were also shown to be as low as those of any of the companies in the country, and lower than most of them."

That was a case in which no proof was taken by the Railroad Commission and the general statement of the officers of the company to the effect that its rates were lower was not controverted.

In the case at bar, however, the appellant has controverted those statements and has shown conclusively that the rates charged by appellee as compared with the rates charged in cities of a similar size are exorbitant. This being the fact appellee seeks to break down the effect of this comparison by having its president say that such comparisons are not fair.

For the purpose of comparing these rates I have prepared a table showing the facts in regard to these telephone companies in other cities. The population of each city is given, the number of subscribers, the number of instruments installed, the net rate charged for direct business telephones, and the amount which each subscriber to a business telephone pays for the privilege of being connected with each of the other subscribers in the exchange. Both Mr. Smith and Mr. Caldwell said that the more subscribers there were to an exchange the more it costs

per subscriber to operate the exchange (see Record, p. 416) and they said, moreover, that the more subscribers a telephone company had the more it was worth to each subscriber for the privilege of being a subscriber to that telephone system. In other words, their position is that if a telephone plant has 10,000 subscribers it is worth more to each subscriber connected with the exchange for the privilege of speaking to each of the other 9,999 subscribers, than it would be worth to him if there were only 5,000 subscribers connected with that exchange.

In Louisville, for instance, there are 9,000 subscribers. A subscriber having a direct business telephone is charged $96.00 a year or $90.00 net. He, therefore, pays one cent per year for the privilege of talking to each of the other subscribers to the exchange provided he desires so to do.

In Cincinnati there are 50,000 subscribers and a subscriber to a direct line in Cincinnati pays $100.00 per year. The Cincinnati subscriber, therefore, pays two mills for the privilege of speaking to each of the other 49,999 subscribers to the exchange if he so desires. (Rec. 1558).

The table above referred to is as follows:

Population being according to 1910 census:

ST. LOUIS.

687,029 inhabitants.

Instruments.	Rate Per Year.	Rate Per Subscriber
Home 38,000	$60.00	1 1-2 mills
Bell 49,000	72.00	1 1-2 mills

(Record, pp. 1583-1586).

KANSAS CITY.

248,381 inhabitants.

Home 25,000	$60.65	2 mills
Bell 25,000	60.00	2 mills

(Record, pp. 1595-1601).

DETROIT.

465,766 inhabitants.

Home	12,500	$60.00	4 mills
Bell	47,200	72.00	1 1-2 mills

(Record, pp. 1611-1613).

COLUMBUS.

181,548 inhabitants.

Home	12,600	$40.00	3 mills
Bell	14,000	54.00	3 4-5 mills

(Record, pp. 1589-1593).

CINCINNATI.

364,463 inhabitants.

Bell	50,000	$100.00	2 mills

(Record, p. 1558).

TOLEDO.

168,497 inhabitants.

Home	14,500	$48.00	3 mills
Bell	11,000	54.00	4 mills

(Record, p. 1561).

LOUISVILLE.

223,928 inhabitants.

Bell	9,000	$90.00	1 cent

A comparison of the prevailing rates in other cities with the ordinance rates proves not only that the ordinance rates are fair and reasonable, but that appellee can earn a fair profit under them, and that they are far more favorable to the appellee than are the rates in effect in other cities. This is especially true if we take into consideration the argument of counsel that as the number

of subscribers increase so does the cost per telephone increase.

As an illustration compare the rates in two or three of the above named cities with the Louisville rates—the rates given being the yearly rentals:

COLUMBUS, OHIO.

181,548 inhabitants.

		Business Rates.		Residence Rates.	
No.	Phones.	Single	Party	Single	Party
Home	12,600	$40.00	$34.00	$24.00	$18.00
Bell	14,000	54.00	36.00	27.00	18.00

TOLEDO, OHIO.

168,497 inhabitants.

		Business Rates.		Residence Rates.	
No.	Phones.	Single	Party	Single	Party
Home	14,500	$48.00	$44.00	$30.00	$26.00
Bell	11,000	54.00	36.00	27.00	18.00

KANSAS CITY, MO.

248,381 inhabitants.

		Business Rates.		Residence Rates.	
No.	Phones.	Single	Party	Single	Party
Home	25,000	$60.00		$36.00	
Bell	25,000	60.00 (Ordinance)		36.00 (Ordinance)	

LOUISVILLE, KY.

223,928 inhabitants.

Ordinance Rates

		Business Rates.		Residence Rates.	
No.	Phones.	Single	Party	Single	Party
Bell	9,000	$66.00	$48.00	$36.00	$24.00

It will be observed that in none of the above cities does an independent company charge as much as the appellee is entitled to charge under the rate ordinance, and in only three of them does a Bell Company charge more than the rate fixed in the rate ordinance, viz., Detroit, St. Louis and Cincinnati. The Detroit Bell Company has 47,200 subscribers; the St. Louis Bell Company has 49,000 subscribers; and the Cincinnati Bell Company has 50,000 subscribers. The Kansas City Home Company has 25,000 subscribers, and charges at the rate of $60.00 per year and pays 2 per cent of its gross receipts to the city. The Toledo Home Company with 14,500 subscribers charges $48.00 per year as against $66.00 here, pays 6 per cent dividend on its common stock and its common stock is quoted at 83. The St. Louis Home Company has 38,000 subscribers, charges $60.00 per year as against $66.00 here and pays a dividend on its common stock. The Columbus Home Company has 12,000 subscribers, charges $40.00 per year, pays 5 per cent dividend on its common stock, and its common stock is quoted at 97. The Cincinnati Bell Company has 50,000 subscribers charges $100.00 per year (only $4.00 more per year than the Cumberland Company), pays 8 per cent dividend on its stock, and the stock is quoted at $185.00.

I have not referred to the operations of the Louisville Home Telephone Company for the reason that the lower Court ruled out substantially all of the evidence bearing on the subject of the operations of that company. There is some evidence in the record however, and this I will proceed to call the Court's attention to.

The record shows that the Louisville Home Telephone Company in 1908 had 9938 telephones installed, (Record,

p. 1520); that all of them were direct lines (that is, no party lines); that the rates charged by the Home Telephone Company are $48.00 a year for a business telephone and $24.00 a year for a residence telephone. (Record, p. 1557); that on the foregoing rates it had paid 5 per cent interest on its bonded indebtedness and a dividend on its stock for the years 1905, 1906 and 1907 (Record, p. 1520); that for the year 1907 its income on its Louisville plant and three smaller plants surrounding Louisville was $382,000.00; that its operating expenses for that year were $204,000.00, giving a net income of $134,000.00. (Rec. p. 1489).

The record shows that when the plant had 9,395 subscribers it had cost $1,000,000.00. (Record, p. 1411)

The record shows that it has always paid the interest on its bonds and that its bonds represent the entire investment, its stock having been issued as a bonus with the bonds. (Record, p. 1013).

Mr. Wilhite, the Comptroller of the City, and Mr. Meriwhether, an expert accountant, examined the books of the Home Telephone Company and gave their depositions touching the earnings and operating expenses of that company. (Record, pp. 1458-1459). These depositions were quashed by the Master (Record, p. 103). The appellant filed exceptions to this action on the part of the Master and assigns the action on the part of the Master as error. (Record, p. 1653).

Appellant also sought to take the deposition of C. E. Archer, one of the officials of the Home Telephone Company, but on the objection of appellee's counsel, the lower Court refused to require Archer to give his deposition. (Record, p. 1458). This is also assigned as error. (Record, p. 1654).

If it be true that the comparison of rates is one of the means of determining whether or not ordinance rates are reasonable then it was certainly appropriate for the City to adduce evidence touching the operations of a plant of practically the same size and which was being conducted in the same City as that wherein the appellee was conducting its plant.

Additional Subscribers—Increased Cost.

It is contended by appellee that the cost of operating a telephone plant increases per subscriber in a geometrical ratio as the number of subscribers increase. These gentlemen all say that the general proposition applicable to all other classes of business, namely, that the larger the business the smaller amount it cost per unit to conduct the business does not apply to telephone exchanges. To a certain extent this is correct, but only in a limited sense. Mr. Polk and Mr. Crumb both discussed the logic of this proposition. They say (Polk, Record, 1439-1440 Crumb, pp. 908-909) that for a telephone company in a given community with an established business with 10,000 subscribers, the expense of conducting the business will probably be $20.00 per subscriber; that if 3,000 or 5,000 or 7,000 more subscribers be added the expense of operating the telephone plant with the 15,000 or 17,000 subscribers will decrease per subscriber; that when a company has from 20,000 to 25,000 subscribers it will be necessary for it to install more complicated switch boards; that a larger percentage of those subscribers will be large users of telephone service and, therefore the expense of constructing the exchange will increase; that when the exchange and the plant is constructed for 25,000 subscribers and has

only 17,000 subscribers that the expense of conducting the business will decrease per subscriber until the 25,000 is reached.

Of course, if a telephone company with 10,000 subscribers has a gain of 5,000 additional subscribers all having direct business telephones, then the cost might increase. But that is not the way in which subscribers increase as shown by both Mr. Polk and Mr. Crumb. They say that the first subscribers to a telephone service are the large subscribers—the large business users; that when rates are lowered new subscribers are added; that these new subscribers come from small users and those who are not compelled to have a telephone—those who do not make much use of a telephone—but who will take it as a convenience if it is cheap. These subscribers who are so induced to take the service on account of lower rates are small users of telephones and there is a large volume of profit on such users. (Record, pp. 908-909).

The facts in this case as brought out by the evidence show that as the number of subscribers has increased there has been a gradual decrease in the expenses per subscriber of operating the plant.

Mr. Webb, the treasurer, shows in his exhibit, that the expenses for the year 1900 were $173,000.00; (Record, p. 158) that the company had 4,888 telephones. The expense, therefore, on this basis was $35.00 per subscriber. However, over $40,000.00 of this $173,000.00 was not expended, but was merely said to have been set aside to take care of incomplete depreciation. It has never been used and will never be used, and the Master found that there was no occasion for so setting it aside. Therefore, deducting $40,000.00 from the $173,000.00 leaves $133,000.00

as the expenses for the year 1900. Based on 4,888 subscribers, the actual expense of the complainant for that year was $27.30 per subscriber. For the year 1901, based on Mr. Webb's exhibit, the expense was $25.00 per subscriber.

In 1905 there were 9,000 subscribers and the expense of operating the plant was $227,000.00 or $25.00 per subscriber.

In 1906 there were 10,000 subscribers and the expenses were $233,000.00 or $23.00 per subscriber.

In 1907 there were 10,400 subscribers and the expenses were $246,000.00 or $23.00 per subscriber.

In 1908 there were 10,000 subscribers and the expenses were $216,000.00 or $21.00 per subscriber.

The evidence, therefore shows overwhelmingly that the more subscribers the appellee has added to its telephone plant the less it has cost it per subscriber to pay the expenses of operating its telephone plant.

These calculations based on testimony given by appellee's officers, produce results—facts, that wholly refute the theoretical argument of counsel that the operating cost increases in a geometrical ratio as the list of subscribers grows.

These figures are actual—practical; not experimental or problematical. They show precisely what has taken place in Louisville from the operation of appellee's plant in this City.

It is said, however, that this Court, in the case of Louisiana Railroad Commission vs. Cumberland Telephone & Telegraph Company, 212 U. S. 414, held that the general proposition applicable to other classes of business, namely, that the larger the business the smaller

amount per unit it costs to conduct the business, does not apply to a telephone plant. The language used by this Court in that case was in substance that the evidence showed that the theory as promulgated by the appellee was correct. Now the evidence in that case consisted of the depositions of Mr. Caldwell, the President of the Cumberland Telephone Company, Mr. Smith, the Auditor of Company, and *Mr. Wilkinson*, a *certified accountant* for that company.

I have examined the record in that case and not one line of proof was taken by the Railroad Commission touching the operation of a telephone plant. The evidence of appellee's officers was accepted because uncontroverted.

The evidence in the case at bar—that is the general statements of Mr. Caldwell, Mr. Smith, *Mr. Wilkinson* and Mr. Hume also upholds the above theory, but the facts as brought out in the record absolutely refute those general statements.

GENERAL CONSIDERATIONS.

Capt. Gifford, the manager of The Ohio Valley Company, said that the stockholders of that company invested $255,000.00 in money in that plant. It charged lower rates than the complainant and yet with that capital it built 10 exchanges, expending over $500,000.00 thereon, and toll lines at a cost of over $125,000.00. It paid dividends on $550,000.00 of capital stock at the rate of 7 per cent per annum and had a surplus left over. (See Record, p. 959).

Mr. Wilkinson says the complainant got from the Ohio Valley Company a profitable dividend paying business. (Record, p. 754)

Mr. Caldwell said that the earnings were practically nothing on small exchanges (Record, p. 531). He said that the company only operated in four or five cities of any size (Record, p. 531). He conceded that the company earned as much as 11 per cent profit on its exchanges at Evansville, Nashville and the other large cities not including Louisville and New Orleans, the two cities where an attempt has been made to regulate rates. (Record, p. 532).

Mr. Smith said he made a report to the Board of Trade of New Orleans showing that the company was only earning 99-100 of 1 per cent in New Orleans. (Record, p. 428). He shows that in 1900 the company paid 11 per cent dividend. (Record, p. 440.)

Mr. Webb gave deposition in 1902 in the case of Weller vs. Cumberland Telephone & Telegraph Company in the Jefferson Circuit Court, in which he filed a statement showing the earnings and operations of the company for the years 1900 and 1901. I took Mr. Webb's deposition in this case and had him produce exhibits filed by him in that case. (Record, p. 1580). I also had him refer to certain parts of his deposition in that case in which he stated that appellee earned about 7 per cent here during the years 1900 and 1901. When those statements are examined it will be found that the company earned a great deal more than 7 per cent. For instance, the rentals for the year 1900 amounted to $244,000.00. The expenses for 1900 amounted to $173,000.00. These expenses, as shown by the exhibits, included $42,000.00 representing depreciation, which $42,000 was not expended during the year, but was supposed to be set aside to represent future depreciation. (See this Brief, pp. 177 to 179.)

This statement for 1900 also included $17,000.00 instrument rental, which is certainly $13,000.00 in excess of what should have been expended. If only $42,000.00 (the unexpended depreciation), be deducted from expenses it will leave a net revenue of $112,000.00. The exhibit shows the cost as of December 31, 1900, to be $1,000,000.00, whereas the record in this case shows that the cost on December 31, 1900, did not in reality exceed $600,000.00 (about $450,000.00 representing the purchase of the Ohio Valley Company and $150,000.00 having been expended on construction during the year 1900). $112,000.00 net profit is, therefore, about 19 per cent on $600,000.00 capitalization.

For the year 1901 the rental amounted to $287,000.00 and the expenses amounted to $212,000.00. In these expenses is included $39,000.00 representing the amount set aside for depreciation, but not expended during the year, and $21,000.00 rental of instruments, which is $17,000.00 in excess of what should have been allowed. Deducting only $39,000.00 (the unexpended depreciation), from the $212,000.00 expenses, leaves a balance of $173,000.00, which deducted from the rental, leaves a net revenue of $114,000.00. This statement for 1901 shows the capital was then $1,145,000.00, but in reality it was only about $745,000.00 ($145,000.00 having been added during the year 1901, according to Mr. Webb's exhibit). The net revenue, therefore, for the year 1901 according to this statement of Mr. Webb was over 15 per cent on the amount of the capital invested.

In view of the record in this case, it is idle for appellee's officials to claim that it has not made money in Louisville. Every fact brought out belies such contention.

There is absolutely nothing to support it except the general statement, that "unfortunately in Louisville we have not made any money."

The annual report of complainant for the year 1908 shows that the company paid $1,630,000.00 dividends and interest.

The surplus increased $518,000.00.

The amount invested in the plant increased $500,000.00 and there were no sales of stock that year.

The reserve increased $180,000.00.

The undivided profits increased $50,000.00.

All of the above increases were out of the earnings, and show that the company for the year 1908 paid 8 per cent dividend and set aside out of its earnings an additional sum of $1,250,000.00. (Record; p. 591.)

By referring again to the opinion of this Court in the case of the Railroad Commission vs. Cumberland Telephone & Telegraph Company, 212 U. S., 420, the following language will be found:

> "The president of the company testified that, unless things changed, and it was permitted to charge the rates which had been charged prior to the adoption of these rates which are now in question, it would be unable to continue to pay 7 per cent, and that the company would necessarily retrograde; and that, while the company had paid 7 per cent to its stockholders for the past few years, it could not continue so to do if the rates in question were adopted, that it did not, in fact, receive anything like 7 per cent upon its investment in Louisiana."

If the case at bar were to be decided on the deposition of Mr. Caldwell the same language could be used.

If the general statements of Mr. Caldwell's deposition are to be accepted then the same situation exists in Louisville.

The litigation in that case involved the earnings for the year 1906. In the year 1908 the rates were increased from 7 to 8 per cent (Record, p. 621) and in 1909 a 11 per cent dividend was paid. (Record, p. 440.)

These facts speaks for themselves.

Coming now to another subject:

Mr. Smith has most remarkable views concerning the rates which complainant should be allowed to fix in Louisville. In view of the fact that he stated and insisted that the company was losing money in Louisville, I took occasion to ask him some questions in order to bring out his views about how much the company should be permitted to charge for telephone service in Louisville. In this connection, Mr. Smith gave this remarkable testimony (see Record, pp. 468 to 470):

> "Q. How much do you say should be set aside for depreciation to take care of the necessary decay in the plant?
>
> "A. Our company has always adhered to the 7 1-2 per cent basis believing that that sum is required in reconstruction and depreciation.
>
> "Q. And on what figures should that 7 1-2 per cent be calculated?
>
> "A. It should be calculated on the book cost of the plant.
>
> "Q. Then 7 1-2 per cent on the $1,704,000 would amount to how much?
>
> "A. About $127,000.
>
> "Q. And what are the earnings for 1908 according to your figures?

"A. The net earnings, before this depreciation is deducted is $100,719.03 on the plant excluding real estate.

"Q. How much was spent for that year in the way of depreciation?

"A. My statement shows $19,535.72.

"Q. And that deducted from the amount which should have been set aside for that year amounted to how much?

"A. It leaves a balance unexpended of $108,269.97.

"Q. And the difference between the net earnings then and the amount which would have been set aside in addition to what was used for depreciation was how much?

"A. A deficit of $7,550.94.

"Q. And how much in your opinion should the company be allowed to earn as a return for the amount invested in its plant?

"A. About 10 per cent.

"Q. And ten per cent of that is how much?

"A. $190,000.

"Q. And adding the $7,000 figured which was the deficit in depreciation would make how much?

"A. Yes, sir; $197,000.

"Q. How much was the income from the real estate?

"A. $11,707.52.

"Q. And that deducted from the former figure leaves how much?

"A. About $186,000.00.

"Q. And that is the amount that you say the company should have earned in addition to what it already earns in Louisville?

"A. Yes, sir.

"Q. Now what were the total gross earnings for the year 1908 from revenue and miscellaneous items according to exchange earnings?

"A. $324,026.75 as shown by me.

"Q. What percentage of increase over that amount would the $186,000.00 make?

"A. About 57 per cent.

"Q. Then you say that your rates in Louisville should have been increased 57 per cent in order to earn what you were entitled to earn for the year 1908?

"A. I should say that the gross revenue should be greater.

"Q. They would have to be increased 57 per cent in order to earn that amount of money, would they not?

"A. It would not be my problem to consider just how to increase that revenue."

In view of Appellee's contention that the telephone business is exceedingly hazardous, I call attention to an exhibit filed with the deposition of Mr. Caldwell, President of the Company, which exhibit is a statement issued by one of appellee's sales agents. (Record page 621) Mr. Caldwell admitted that the statements contained in the exhibit were true. (Record page 547). Here is a part of the statement:

> "The fact that the earnings of the Company justified an increase in dividends from 7 per cent to 8 per cent per annum, beginning October 1, 1908, reflects great credit on the managers and officers of the Company, especially when it is remembered that just at this particular time most all other corporations were still suffering from the effects of the panic of 1907, quite a number having reduced their dividends, while many discontinued paying altogether. It was thoroughly demonstrated all through the panic year of 1907 that telephone properties (Bell Licensed) when properly managed suffer less during times of depression than most any other class of business. During the months of October and November, 1907, right at the worst time of the panic, the toll and rental re-

ceipts of the Cumberland Telephone Company were $1,019,000.00 as compared with $918,000.00 for the same period of time the previous year, showing a gain of $101,000.00, notwithstanding the hard times. The fact that the telephone business is done practically on a cash basis is another safeguard towards protecting its earnings during times of depression."

WHAT RETURN IS APPELLEE ENTITLED TO EARN ON THE VALUE OF ITS PLANT?

The Master found from the evidence that the appellee was entitled to a return of 6 per cent on the value of its plant. (Record, p. 94).

The Court found from the record that the appellee should be allowed to earn 7 per cent. (Record, p. 1640).

The net earnings of appellee for the year 1908 had the rate ordinance been in force, would have been so greatly in excess of 7 per cent that there is no occasion for the Court to discuss or determine this question.

Mr. Hilliard, a broker of the City of Louisville, gave the only deposition in the record bearing on this subject. (Record, p. 1009).

It is impossible to read Mr. Hilliard's deposition without being impressed with his intelligence and knowledge of the subject. He showed that there is an active demand in the City of Louisville for gas stock, electric light stock, heating stock and railway stock at prices which do not yield over 5 per cent on the investment.

The record discloses that there are no great hazards connected with the telephone business.

Six per cent is held by this Court to be a reasonable return in the late case of Wilcox vs. Consolidated Gas

Company, 212 U. S. 19, and also in the case of Stanislaus County vs. San Joaquin Canal Co., 192 U. S. 201.

In the case of City of Knoxville vs. Knoxville Water Co., 212 U. S. 29, the language used by this Court would imply that 4 per cent was a reasonable return.

In the case of Cedar Rapids Co. vs. Cedar Rapids, 118 Iowa, 234, the Court held that a 5 per cent return on a water company's plant was reasonable.

This is not a case such as the Knoxville Water case or the Consolidated Gas case wherein there was a doubt concerning the practical operation of the rates. It is therefore not a case in which the lower Court should be directed to require appellee to give the rates a fair trial, retaining the case on the docket until such fair trial was given.

All the witnesses, including the President of the company, concede that putting the rate ordinance into effect will result in increasing the number of subscribers. (Record, pp. 835-836). With its present subscribers only, the record shows that appellee will earn more than 11 per cent on the value of its plant.

CONCLUSION.

In conclusion, I call attention to the fact that practically every contention made by the City is based on undisputed facts, all but one being founded on evidence produced by the appellee's own officials.

Witness as follows:

A. That it is impossible to determine how much appellee's plant cost is conclusively shown by the auditor.

B. That the earnings under the rate ordinance for the year 1908 would have been $9,000.00 in excess of what they were under the old discriminatory rates is shown by the auditor, as supplemented by Mr. Warren, the City's accountant. The depositions of the auditor (re-called) and of Mr. Wilkinson, appellee's accountant, (rebuttal) were taken after Mr. Warren's deposition was concluded, and no attempt was made to refute any statement made by him in this respect.

C. That the cost of the toll equipment and toll construction has been charged to the Louisville exchange is shown by the deposition of the auditor.

D. That all expenses of conducting the toll department including maintaining the toll property have been paid by the Louisville exchange is shown by the deposition of the auditor. That those expenses were in excess of $30,000.00 per year for the years 1905, 1906, 1907 and 1908 is shown by the deposition of Mr. Warren, the City's accountant, and his statements in this respect are not refuted.

E. That for a period of twenty years 7 per cent on the value of the plant has been sufficient to maintain and reconstruct the plant, is shown by the auditor and Mr. Wilkinson.

F. That appellee charges as a part of the expenses of the exchange 8 per cent on the book value of the real estate and requires the exchange to pay in addition thereto all the taxes and insurance on the buildings, is shown by the auditor.

G. That the appellee pays to the American Telephone Company $13,700.00 a year for the use of instruments, which is $9,000.00 in excess of the reasonable rental, is shown by the auditor and by Mr. Polk, the last named witness placing a value on the instruments which is nowhere questioned.

H. That appellee has included in its expenses an item representing what it would have received for the use of free telephones had it charged the regular rates therefor, is shown by the deposition of Mr. Warren, and his statements in this respect are not refuted anywhere in the record.

The only contention made by the City which is not based on statements of appellee's officials or on undisputed evidence, concerns the value of the plant.

In view of the facts as shown in the foregoing pages it is respectfully submitted that the decree of the lower Court should be reversed.

First, Because appellee is a trespasser and wrong-doer in the streets of the City of Louisville and, therefore, not entitled to have a Court of Equity give it protection in order that it may prosper while continuing to violate the law.

Second, Because the appellee's officials have failed to frankly and fully disclose all facts pertinent to the issues between the parties.

Third, Because the plant on which appellee seeks to earn a return, was constructed partly out of the earnings of that plant, the extent of which earnings not being disclosed by the appellee, the judgment in its favor cannot be affirmed.

Fourth, And finally, because the rates as established by the ordinance in question are clearly reasonable.

Appellant, therefore, respectfully urges a reversal of the decree entered in the Circuit Court, with instructions to the lower Court to dismiss the bill.

Respectfully submitted,

CLAYTON B. BLAKEY,
City Attorney,
For Appellant.

HUSTON QUIN,
JOSEPH S. LAWTON,
Of Counsel.

February 20, 1912.

Office Supreme Court, U. S.
FILED.
MAR 2 1912
JAMES H. McKENNEY,
CLERK.

No. 761

Supreme Court of the United States

OCTOBER TERM, 1911

CITY OF LOUISVILLE, ... Appellant,

vs.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, ... Appellee.

SUPPLEMENT TO THE BRIEF AND ARGUMENT ON BEHALF OF APPELLEE.

ALEXANDER POPE HUMPHREY,
ALEXANDER POPE HUMPHREY, JR.,
WILLIAM L. GRANBERY,
Solicitors for Appellee.

BRANDON PRINTING CO

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vs.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, ... Appellee.

SUPPLEMENT TO THE BRIEF AND ARGUMENT ON BEHALF OF APPELLEE.

May it Please Your Honors:

This cause was referred to a Special Master to take proof and report to the Court on various issues raised in the pleadings. After the Master's report was filed, Appellee filed elaborate exceptions thereto, all of which are contained in the printed record; but it has been thought that it would aid the investigation of the cause by your Honors if the Master's report and exceptions should be printed in convenient form.

Therefore, the Master's report and Appellee's exceptions thereto have been reprinted, and citations to the evidence have been made to conform to the paging of the printed record, and the exceptions of Appellee to each particular heading of the Master's report are inserted for convenience immediately after the Master's report under that heading.

An examination of the Master's report and the exceptions filed by Appellee, is, we respectfully submit, a sufficient analysis of this

voluminous record to enable your Honors to understand the isssues and the facts involved without the labor of critically examining the two large volumes of the printed record.

This rearrangement of the Master's report and Appellee's exceptions is filed as a supplement to, and as a part of, our brief and argument in this Court.

Respectfully submitted,

ALEXANDER POPE HUMPHREY,

ALEXANDER POPE HUMPHREY, JR.,

WILLIAM L. GRANBERY,

Solicitors for Appellee.

February, 1912.

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The Material Evidence in Chronological Order

Deposition—	*Date taken.*
H. Blair Smith, Direct	April, 1909
H. Blair Smith, Cross	Aug.-Sept., 1909
James E. Caldwell	Sept., 1909
Wm. H. Crumb	Oct., 1909
Capt. H. N. Gifford	Oct., 1909
Hardy Burton	Oct., 1909
John H. Brand	Oct., 1909
J. E. Settle	Oct., 1909
Isaac Hilliard	Oct., 1909
H. B. Warren	Oct., 1909
S. D. Levings	Nov., 1909
T. D. Webb	Dec., 1909
W. H. Casler	Jan., 1910
Chas. E. Archer	Jan., 1910
Chas. Merriwether	Jan., 1910
S. M. Wilhite	Jan., 1910
Chas. Merriwether, Re.	Jan., 1910
Jas. F. Grinstead	Jan., 1910
W. G. Polk	Jan., 1910
J. E. Jagoe	March, 1910
Leland Hume	March, 1910
H. Blair Smith (Second)	March, 1910
E. M. Fisher	March, 1910
George Wilkinson	March, 1910
W. C. Polk (Second)	April, 1910
James E. Caldwell (Second)	April, 1910
O. D. Green	April, 1910

Reports—	
Accountant's Joint Report	July, 1909
Geo. Wilkinson	July, 1909
Mutual Audit Company	July, 1909
George Wilkinson, Reply	Aug., 1909

UNITED STATES CIRCUIT COURT

SIXTH CIRCUIT

WESTERN DISTRICT OF KENTUCKY

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY. . . . . Complainant.

vs.

CITY OF LOUISVILLE. . . . . Defendant.

REPORT AND FINDINGS OF THE SPECIAL MASTER.

As Special Master herein, I respectfully present this, my Report and Findings, as directed by the orders of this Honorable Court, made and entered on the second day of April, 1909, in the above styled case.

The evidence taken and produced before me on behalf of Complainant is contained in the depositions of the following witnesses: H. Blair Smith, James E. Caldwell, O. D. Green, George Wilkinson, J. E. Jagoe, Leland Hume, and E. M. Fisher. The Joint Report of Wilkinson and Farnham.

On behalf of Defendant, the evidence consisted of the depositions of the following: Wm. H. Crumb, H. N. Gifford, Hardy Burton, John H. Brand, J. E. Settle, Isaac Hilliard, H. B. Warren, S. D. Leyings, W. C. Polk, report of D. C. Jackson, Norton E. Westlake, Gainsey R. Johnston, James T. Daniels, J. W. Hart, Reuben G. Trail, Howard P. Yeager, Alice C. Everett, T. D. Webb, George M. Welsh, and Robert Frewin.

The depositions of William Kavanaugh, H. W. Ritterhoff, and Charles M. Peale were not considered by me. Exceptions were filed to these depositions by Complainant upon the ground that the witnesses refused to answer questions on cross-examination. I sustained the exceptions, and Defendant entered its exceptions to my ruling.

I considered the reports of the accountants, George Wilkinson and E. W. Farnham, rather as briefs on their respective sides, than as evidence.

I am directed to find:

I.

"The cost to Complainant of its plant and property in the City of Louisville, Kentucky, and in doing this, he will state generally the basis of his estimate thereof."

In 1899, the Ohio Valley Telegraph & Telephone Company owned and operated a telephone plant in the City of Louisville, New Albany and Jeffersonville, Indiana, and in seven small towns in Kentucky, and also a series of toll lines, all connected with the Louisville Exchange. Its capital stock was 5,494 shares of $100.00 each, amounting at par to $549,400.00.

Complainant acquired all of these exchanges and all the property of the Ohio Valley Company in the following manner:

In the month of June, 1899, it purchased 702 shares of the capital stock of the Ohio Valley Company, and paid therefor $140.00 per share	$ 98,280.00
Subsequently it purchased 2,855 shares at $141.00 per share	402,555.00
There were left, of the total issue of the capital stock of the Ohio Valley Company, 1,937 shares, and these were acquired by Complainant by exchanging an equal number of its own shares of stock for the 1,937 shares of the Ohio Valley Company.	

It is urged that these purchases of the Ohio Valley Company's stock fixed the market value thereof in June, 1899, at $141.00 per share. Based upon that assumption Complainant insists that the value of its 1,937 shares which it exchanged at par for the Ohio Valley Company's shares, should have the added value of $41.00 per share, to-wit ..... $ 79,979.91

That is to say, Complainant contends that it has actually paid out for 1,937 shares of the Ohio Valley Company's stock in exchange, the equivalent of $193,700.00, and in addition thereto, the approximate premium thereon, amounting to 79,979.91

I am unable to accept this specious reasoning. The evidence shows that prior to 1900, and during each of the years succeeding, up to 1908 inclusive, the Complainant Company sold its shares of capital stock in various large amounts, but the price at which such stock was sold was invariably at par.

I find, therefore, that the 1,937 shares of capital stock of Complainant Company were exchanged for an equal number of shares of the Ohio Valley Company, and that the amount expressed in dollars thus expended was 193,700.00

It thus appears that the total paid out by Complainant Company for all of the capital stock of the Ohio Valley Company was 694,535.00

The Ohio Valley Company, at the time of these purchases, owned and operated, besides the Louisville Exchange, and in connection therewith, nine smaller exchanges and a number of toll lines leading out of Louisville, all connected with the Louisville Exchange. The construction cost of these toll lines was ascertained by the Joint Report of Wilkinson & Farnham to have been 125,406.80

If we deduct this amount from the total cost of the entire capital stock of the Ohio Valley Company, we find that the actual cost of all the exchanges of the Ohio Valley Telephone Company was 569,128.20

In arriving at the cost of the Louisville Exchange, it appears that an arbitrary basis of 80.4 per cent of the total cost of all the exchanges was fixed by Complainant.

Without determining the absolute correctness of this calculation, I accept it, and I find that the cost of the Louisville plant on this basis, as of the first of January, 1900, was ..... $ 457,579.07

The cost of the real estate in Louisville, which was acquired from the Ohio Valley Company, and which was necessary for the proper conduct of its business, as of date January 1, 1900, was 108,034.50

Total ..... $ 565,613.57

It may elucidate and strengthen the correctness of the above findings, by calling attention to the fact that the books of the Ohio Valley Company show, as of December 31, 1899, that the total construction of all its exchanges cost that company ..... $ 638,196.74
Deducting the cost of toll lines 125,406.80

We have ..... $ 512,789.94
This being the book cost of the entire plant as of December 31, 1899, as shown by the books of the Ohio Valley Company.

These figures do not include the real estate, to-wit 108,034.50

Total ..... $ 620,824.44

If we were to apply the same process to the above figures as to those on the preceding page, we would find the total book cost of the plant or exchange in Louisville $ 412,283.11
This last amount being 80.4 per cent of $512,789.94.
Add cost of real estate 108,034.44

We have a total cost on this basis of ..... $ 520,317.55

It is insisted by Complainant that to the book cost of the Ohio Valley Company's plant, as it appears on Complainant's books, to-wit ..... $ 638,196.74

There should be added 135,505.70

The basis of this claim is that during the period of 1890 to 1899 inclusive, the Ohio Valley Company had, from its earnings, credited annually to its Construction Account, in the aggregate 135,505.70

It is urged that this aggregate amount was charged off from Construction ostensibly to cover depreciation of plant during the period named, but that depreciation had been completely guarded against annually by an expenditure of an average amount of nearly ten per cent of the book cost of the plant during the years from 1890 to 1899 inclusive, and that therefore it was unnecessary and improvident to credit the Construction Account with this sum of $135,505.70.

It is impossible at this time—at least from this record—to ascertain the reasons or motives of the Ohio Valley Company's management in making these entries of credits. It is not probable that the entries would have been made, unless the reasons therefor were of a compelling nature. No officer of the Ohio Valley Company has testified about the matter, except Capt. Gifford, Treasurer of the Company, and he says the credits were made to Construction to cover depreciation. If that be true, and there is no contradiction in the record, then I find that the credit must remain and should not be disturbed.

I find that the cost of the Ohio Valley's plant in Louisville, not including toll lines nor real estate, was 457,579.07

The Joint Report of the two experts shows that, according to the books of the Complainant Company, the additions to the Louisville plant or exchange from 1900 to 1908, both inclusive, amounted to 1,023,545.34

Which would make a total of $1,481,124.41

I have been embarrassed by the conflict in the evidence as to the correctness or propriety of charging items of cost to what the accountants call the Construction Account.

The principal witness of Complainant as to these questions was Mr. Blair Smith, the company's auditor. The witness did not, and of necessity could not, testify from personal knowledge as to a great many items of such cost as to which he was interrogated. His answers to very many of such inquiries were that bills or vouchers, showing certain cost of materials and labor, were sent to him at the Nashville office, accompanied by a memorandum or notation made by a clerk in the Louisville office, and that acting upon the verity of such notations, he entered the several amounts as a proper charge to the Construction Account.

It is not clear to my mind that this is the best evidence of the correctness of such charges. I have not felt justified in rejecting such evidence, but I have carefully considered all the evidence produced which tended to discredit any and all such entries.

The great mass of the evidence, and the hundreds of detailed matters touching the correctness of charges that constitute the Construction Account, forbid any attempt to treat them singly. In fairness to both parties to this litigation, I am forced to treat these matters in a general way, and to arrive at what I consider a fair and equitable estimate of what I believe to be erroneous charges to this account.

I have decided on this plan of estimating the amount of erroneous charges to the Construction Account for two reasons:

First: The evidence on the point fails in many instances to disclose the amount of what are alleged to be erroneous charges, but merely discloses what is said to be an incorrect theory.

Second: In the case of *City of Knoxville* vs. *Knoxville Water Company*, 212 U. S., 16, we find the following:

> "The jurisdiction which is invoked here ought, as has been said, to be exercised only in the clearest cases. If a company

of this kind chooses to decline to observe an ordinance of this nature and prefers rather to go into court with the claim that the ordinance is unconstitutional, it must be prepared to show to the satisfaction of the court that the ordinance would necessarily be so confiscatory in its effect as to violate the Constitution of the United States."

With the foregoing reasons as my guides, I have examined with great care certain phases of the evidence in respect of the cost of the Louisville Exchange.

Many vouchers were produced at the hearing, covering the wages of men employed in and near Louisville in connection with the aerial work, including toll lines. These vouchers show that certain wages and salaries had been expended on the aerial lines, and also on underground lines connected with the Louisville Exchange. A small proportion of these outlays was charged to Maintenance or Reconstruction, while the bulk of the outlays is charged to Construction.

The evidence offered by Complainant is that the wages and salaries were used in construction, because they are charged to that account. No witness was introduced who pretended to have personal knowledge as to any of these items.

It may be proper to mention in this connection that Complainant generally kept three accounts to take care of the above referred to three departments, to-wit: Maintenance, Reconstruction and Construction.

The evidence tends to show that in nearly every instance, the wages of the employes shown in the vouchers we are considering, were charged almost wholly to Construction, and no evidence of the correctness of such charges was offered, except that the vouchers bore a notation to that effect.

It is inconceivable that so little of these wages was properly chargeable to Maintenance or Reconstruction from 1900 to 1908. The aggregate amount of these vouchers was not shown in evidence.

The evidence shows that Complainant kept a Supply Department,

from which it issued, on requisition, all kinds of general supplies, other than switchboard sections and other large parts. Materials of all kinds are purchased by Complainant at wholesale (Trans., p. 326), and stored in a warehouse for use of the Louisville Exchange and adjacent exchanges. The Complainant uniformly charged on all supplies furnished to the Louisville Exchange a premium of ten per cent over and above original cost.

One witness, Mr. Warren, testifies that from 1900 to 1908, both inclusive, the supplies thus furnished, according to the books of Complainant, amounted to $518,000.00. I do not find this statement of Mr. Warren to be altogether accurate, but it is fair to assume that it is an approximation.

If, therefore, this ten per cent added charge on supplies be improper and unfair to the exchange, the amount of such an overcharge would be in the neighborhood of $50,000.00.

Vouchers from the Supply Department were called for but not produced by the company's auditor, the reason being given that he had no control over the Supply Department. (Trans., p. 357.)

The evidence shows that the vouchers for supplies were sent into the Nashville office from the Louisville office, accompanied by a notation as to how the amounts were to be charged—whether to Maintenance, Reconstruction or Construction. But the evidence is most unsatisfactory as to whether the supplies were accurately distributed in the books of account. Vouchers from the Supply Department showed totals only, and the amounts were entered on the books in accordance with the notations of the Supply Department clerks.

Mr. Smith (Trans., p. 326-7), says as to the added charge of ten per cent for supplies, that it was to cover freight, drayage, rentals, etc.

I find that this charge on all supplies furnished is at least a burden on the business in Louisville, and should not be allowed. The company in the first instance must have paid freight and drayage on all supplies furnished. The company doubtless received the usual trade discount for cash. As to how the freight and drayage were charged,

or the cash discount credited, the record is silent. I do not doubt that proper and correct entries were made on the company's books as to the rent of the supplies warehouse. This is doubtless charged to expense of supplies.

The amount of this ten per cent added charge, like the items of wages, is a matter of conjecture, but it is obviously a substantial amount, extending from 1900 to 1908, both inclusive. At the argument, counsel for Complainant admitted that the items of drayage, freight, rental, etc., are charged primarily to Supply Expense, but that ultimately they are charged to the operation of the exchange.

I find, therefore, that this added charge of ten per cent on the cost of supplies furnished to the Louisville Exchange, must be disallowed. The aggregate amount of such added charge is not, under the evidence, susceptible of definite ascertainment, and must necessarily be estimated.

Again, it appears from the evidence that for several years all the apparatus for installing a subscriber's station, including labor, were charged to construction, and that in addition thereto an arbitrary charge of $10.00 for each instrument installed was made to construction. (Trans., p. 351-2.)

Finally, say in 1907—the evidence is very indefinite—both plans were abandoned. The explanation given by Mr. Smith, the Auditor, and by Mr. Caldwell, President of the Complainant, as to the correctness of this ten dollar charge on each instrument gained, is unsatisfactory. They say that if the company installed one thousand instruments in a given month, and took out two hundred instruments, the company has obviously gained eight hundred instruments. On the number of instruments thus gained, the company entered a charge to Construction of $10.00 for each instrument, making a total of $8,000.00. I find that this method of charges ought not to be sanctioned.

There is a sharply defined difference in the evidence as to the cost of the conduit system in Louisville, somewhat due to the varying opinions as to the sizes of the wires used in the cables, and conse-

quently the amount of copper contained, as well as the mode of construction.

The witnesses who testified as to the conduit system seemed to be equally expert, but they differ so widely, and they appear to be so convinced of the correctness of their opinions, that I am unable to reconcile them.

There are many individual items charged to Construction which are challenged by the Defendant. The largest one is an item of $26,000.00 charged to Construction on account of five sections of switchboard, which Defendant says were shipped away from Louisville after having been installed in the main exchange. Mr. Smith says he has an impression that some parts of the main switchboard were removed from Louisville. At the argument, complainant contended that these five sections were removed to the West Exchange in Louisville. To rebut this, it is contended by Defendant that vouchers were exhibited by the company's Auditor, which show that the cost of the five sections of switchboard in the West Exchange was only $17,000, and that amount was paid by Complainant in addition to the disputed item of $26,000.00, and that both amounts appear as parts of Construction Account.

I have gone over this evidence carefully, and while the facts brought out in evidence are not satisfying, yet, as the expert accountants who examined the books make no mention of this alleged discrepancy, I am disposed not to disturb the account as to the two items last above mentioned.

Again, the evidence shows that there are many toll lines leading out of Louisville. These lines are devoted to what are commonly called "long distance messages." No separate account is kept showthe cost of operation of the toll lines. (Trans., p. 300.) The maintenance and reconstruction of the toll lines, and in some, if not in every instance, original cost of additions to the Toll Department, were charged to Construction, Louisville Exchange. (Trans., pp. 327-328.)

In January, 1900, and in December, 1901, toll switchboards and

keyboard equipment, etc., were purchased for the Toll Department, and the cost was all charged to Construction Account of the Exchange. (Trans., pp. 329, 331.)

Mr. Smith, Auditor, and Mr. Caldwell, President of Complainant, state that because of the toll lines and their easy accessibility to the Louisville subscribers, the value of the service to the subscribers is greatly enhanced.

I have considered the practice of the Complainant to charge to Construction Account additions to the toll equipment in the several exchanges in Louisville, and further, that the maintenance and reconstruction of toll lines were charged to the Louisville Exchange. The amounts of the erroneous charges to Construction Account from which we must find the cost of the Louisville Plant or Exchange, is necessarily problematical, and under the evidence in this record, it is not susceptible of definite ascertainment. I am compelled, therefore, to make an estimate of the proper amount to be deducted from Construction Account, having due regard to the interests of both parties to this controversy, and I am of the opinion that a fair and most conservative estimate of what has been charged to Construction Account under a mistaken theory is, at the very least, $100,000.00, which must be deducted from $1,481,124.41.

I find, therefore, that the cost of the Louisville Exchange, including toll lines, but excluding real estate, is $1,506,531.21

EXCEPTIONS OF APPELLEE.

The Master reported that the Complainant acquired the properties of the Ohio Valley Telephone Company in 1899, and that this acquisition was made in the following manner:

Complainant purchased in June, 1899, 702 shares of the capital stock of the Ohio Valley Company at $140.00 per share, and 2,855 shares at $141.00 per share, making a total paid for 3,557 shares of $500,855.00. This is correct, and not excepted to.

There were left outstanding 1,937 shares of the Ohio Valley Telephone Company's stock which was acquired by Complainant issuing

a like number of its own shares to the holders of the shares of the Ohio Valley Company. The Master reports that this additional 1,937 shares only cost Complainant the par value of its stock, to-wit: $193,700.00, whereas Complainant insists that this stock cost it $79,417.00 additional.

"A"

Complainant excepts to the disallowance of this item of $79,417.00, *premium on* 1,937 *shares of the Ohio Valley Telephone Company's stock, for the following reasons:*

Complainant's stock was selling in the open market at about $141.00 per share (a share in Complainant company and in the Ohio Valley Company each being $100.00 par value). Trans., p. 500.

It is insisted by Complainant that since its shares were selling for a premium of $41.00 in the open market, and it purchased a large number of shares of the Ohio Valley Company at a premium of $41.00 per share, that in determining the cost to Complainant of the shares acquired by exchanging a like number of its own shares, this premium of $41.00 per share must be allowed, since it is apparent that if Complainant had sold 1,937 shares of its own stock it would have received $79,417.00 *more* than its par value, and if it had purchased for cash the 1,937 shares of the Ohio Valley Company's stock it would have paid therefor $79,417.00 more than its par value.

Again, if Complainant acquired 1,937 shares of Ohio Valley Company's stock at par, it received property which was worth $79,417.00 *more* in the open markets of the country than was paid for it, and it gave for these 1,937 shares property that was worth $79,417.00 more than its par value.

The Master refers to the issuance by Complainant of its stock from a period back of 1900 to 1908 at par. In other words, his statement is that all the stock sold by Complainant from a period back of 1900 to 1908 was upon a par basis. In this matter the Master is only partially correct.

It is true that the *new issues* of stock during all that period have

been issued to existing stockholders pro rata at par (Trans., p. 384-5), but this was not in any sense determinative or indicative of the real value, or market value, of Complainant's stock. Under well settled principles of law, corporations, in all increases of capital stock, are required to issue such increases to its existing stockholders pro rata. This is a right existing shareholders have to acquire their proportion of each new increase of stock. It is a right attaching to the ownership of stock, and such stockholders have the right to take and pay for their pro rata shares of new issues of stock.

It thus appears that the Master, conceding that the Ohio Valley Company's stock was worth in the open markets of the country a premium of $41.00 per share, holds that because of the *manner* in which Complainant acquired 1,937 shares, its value decreased $41.00 per share, or a total of $79,417.00, when any other purchaser would have paid therefor a premium of $79,417.00; and Complainant itself could immediately, after acquiring these shares, have sold them for a premium of $79,417.00.

So that we insist that the Master was in error in not allowing this item of $79,417.00 as a part of the purchase price of the property of the Ohio Valley Telephone Company.

"B"

The Master assumes, and treats, the entire properties of the Ohio Valley Telephone Company as worth on January 1, 1900, the exact amount Complainant paid for its shares of stock in June preceding, less the premium of $79,417.00 *on the* 1,937 *shares as above stated. Complainant excepts to this finding of the Master for the following reasons:*

It is well settled that the market value of the share capital of a corporation does not necessarily represent the value of the corporate assets. The stock simply represents the equity of the shareholders in the corporate assets. Creditors have a first claim upon the assets, and it is only after paying creditors that the shareholders are entitled to any part of such assets. Therefore, where the shares have a market value, the value of the corporate assets is to be measured by the market value of the shares, *plus* the indebtedness of the company, and this

principle has been entirely overlooked by the Master in ascertaining the cost to Complainant of the property of the Ohio Valley Telephone Company.

As found by the Master, the shares of stock of the Ohio Valley Telephone Company were acquired by Complainant in June, 1899, and as soon as this stock was acquired new officers of the Ohio Valley Company were elected, and the property operated as an independent corporation until January 1, 1900, when it was consolidated with the Cumberland Telephone & Telegraph Company—both being Kentucky corporations—and the consolidating company, under the name of the Cumberland Telephone & Telegraph Company, took over the assets of the two consolidating companies, and assumed all their liabilities.

From June, 1899, when the new management of the Ohio Valley Company took charge, until January 1, 1900, when the consolidation took place, all of the earnings of the Ohio Valley Company, and a large amount of borrowed money, was used in building up the properties of the Ohio Valley Telephone Company, so that on January 1, 1900, the situation was wholly different from that of June preceding, and the value of the assets of the Ohio Valley Company on January 1, 1900, was greater than in June preceding.

Eliminating every disputed item in the accounts, the following were the liabilities of the Ohio Valley Telephone Company in June, 1899, when the new management took charge, and those subsequently incurred prior to January 1, 1900:

Liabilities.

In June, 1899, the Ohio Valley Company had outstanding bonds (Trans., p. 246.)	$ 16,000.00
Taxes accrued and unpaid (Trans., p. 254.)	4,000.00
Interest accrued and unpaid (Trans., p. 254.)	7,770.00
Switchboard royalty accrued and unpaid (Trans., p. 254.)	2,404.59

Bills payable, January 1, 1900 (Trans., p. 255.)	$ 221,005.90
Miscellaneous accounts payable (Trans., p. 267.)	63,755.16
Special account December 31, 1899 (Trans., p. 254.)	38,875.16
Or a total liability of	$ 353,810.00

As against these liabilities the Ohio Valley Telephone Company had acquired real estate and current assets, as follows:

Assets.

Real estate (Trans., p. 274.)	$ 115,765.46
Accounts receivable (Trans., p. 275.)	9,198.01
Supplies on hand (Trans., p. 275.)	37,299.59
L. K. Webb, Auditor (Trans., p. 275.)	30,215.18
Cash on hand (Trans., p. 275.)	288.81
Or a total of	$ 192,767.05
Excess of liabilities	161,042.95

This excess of liabilities, of course, was money expended in developing the properties of the Ohio Valley Telephone Company, and was the added cost above the market value of its shares of stock.

If, therefore, we add the amount paid for the shares of stock, including the premium of $41.00 on the 1,937 shares, we have a total cost of the property of the Ohio Valley Telephone Company, on January 1, 1900, of $935,014.95, exclusive of real estate.

These assets and liabilities are not only given by the company's Auditor, Mr. H. Blair Smith, but are set forth in the report of the Mutual Audit Company, on behalf of the City of Louisville, in exhibit one.

This, it will be recalled, is the total cost of the plants, exchanges and toll lines, excluding real estate, of the Ohio Valley Telephone Company as of January 1, 1900, when this property was taken over by the Complainant. It only remains to determine how this cost should be separated so as to ascertain the cost of the exchange in the City of Louisville.

The Ohio Valley Company owned and operated nine exchanges, including the one in the City of Louisville, and also had toll lines connecting these exchanges.

The Master has ascertained (which we accept) that the toll lines cost Complainant..... $ 125,406.80

This item deducted from the entire cost of the exchange and toll lines of the Ohio Valley Company, as of that date, leaves the cost of exchange properties..... 809,608.15

It is conceded by the Master that 80.4 per cent of the exchange properties of the Ohio Valley Telephone Company was in the Louisville Exchange, and there is no dispute anywhere in the record as to this fact. Therefore, in order to ascertain the cost to Complainant of the Ohio Valley exchange in the City of Louisville on January 1, 1900, excluding the real estate and toll lines, we have 80.4 per cent of $809,608.15, or..... 650,924.95

The cost of real estate in Louisville as found by the Master (and everyone agrees that it is correct) is..... 108,034.50

Making a total cost of the Louisville Exchange and real estate of..... $ 758,959.45

(a) *Complainant, on January 1, 1900, took over the Louisville Exchange, exclusive of real estate and toll lines, at a cost value of*..... $ 678,354.69

Trans., p. 245.

Mr. Smith testifies that this was, in his opinion, the actual cost to the Complainant company of the Louisville Exchange, as of January 1, 1900.

Trans., p. 218.

Mr. Caldwell, the President of the company, also testifies that the purpose of the company was to take over the Louisville Exchange and put it on the books at exactly what it had cost, and was worth, and this was done.....$ 678,354.69

Trans., p. 500.

(b) Wilkinson, Complainant's expert accountant, examined the books of the Ohio Valley Company, and states the cost to the Complainant of the Louisville Exchange, exclusive of real estate, on January 1, 1900, to be..$ 678,354.69

Trans., pp. 754 to 759.

In other words, Mr. Wilkinson sustains the company's books, and testimony of Mr. Smith, the company's Auditor, and Mr. Caldwell, the company's President.

The Mutual Audit Company experts made no examination of the books of the Ohio Valley Company.

Trans., p. 1030.

(c) The Mutual Audit Company, the expert for the city, reaches the conclusion that the exchange cost the company, on January 1, 1900, exclusive of real estate and toll lines..... 487,900.86

Trans., p. 1340.

This conclusion can not be accepted, since it is manifestly erroneous and full of the most glaring errors:

They disallow the premium on the 1,937 shares of stock purchased by an exchange of a like number of Complainant's shares, $79,417.00. They prorate a part of the premium paid for the remainder of the stock of the Ohio Valley Company on the real estate in Louisville, amounting to $21,233.25, when it clearly appears that the main exchange building was purchased by the Ohio Valley Telephone Company on June 3, 1899, for $100,000.00, and this purchase was a *separate* transaction, and *after* the sale of stock.

Trans., pp. 501 and 522.

When the sale and purchase of the Ohio Valley Company's stock took place, the only real estate owned by the company was $15,765.46. Of this, $8,034.50 was located in Louisville. The remainder, $7,730.96, in New Albany. (Trans., p. 755.) The Master had found the total real estate in Louisville to have been on that date $108,034.50. Thus verifying the statement that the only real estate owned by the Ohio Valley Company in Louisville, at the time the stock was sold, was $8,034.50. Supplies on hand are allowed a bonus on the stock value of $6,850.37. Of course supplies were not entitled to any part of the premium paid for stock, since they are staple articles that carry their own cost value. This makes manifest errors in the figures of the Mutual Audit Company of more than $100,000.00.

Trans., p. 1338.

It therefore appears that the Master fixes the cost of the Louisville Exchange, exclusive of real estate and toll lines, as of January 1, 1900, at..... $ 457,579.07

Supra p. 8.

This is less than *any* witness places the cost, and it can not be ascertained from the record how such a conclusion was arrived at.

a. The President of the Complainant says that it cost, and was worth..... 678,354.69

b. The Auditor of Complainant says it cost the sum of 678,354.69

c. Wilkinson, the expert accountant, says it cost Complainant..... 678,354.69

d. The Mutual Audit Company's report of cost is not to be accepted.

An analysis of the evidence shows, as above set out on pp. 16 to 20, that the exchange cost on January 1, 1900, was at least the sum of..... 650,924.95

Complainant, therefore, insists that the Master is in error in fixing the cost of the Louisville Exchange, exclu-

sive of real estate and toll lines, at only $457,579.07, and insists that the cost is shown to be $678,354.69, and certainly not less than the sum of ..... $ 650,924.95

"C"

Whatever may be found to have been the cost of the Louisville Exchange as of January 1, 1900, exclusive of real estate and toll lines, there is no dispute but that there was added as additional construction to December 31, 1908, the sum of $1,023,545.34. *From this amount the Master deducts* $100,000.00, *and to this part of the report Complainant excepts.*

There should have been no deduction by the Master, because there is no evidence showing that any amount was erroneously charged to construction.

Notwithstanding the many criticisms of the Master as to this added construction, his disallowance of $100,000.00 is based upon the following, as far as can be ascertained from his report:

1st. The "wages of men employed in and near Louisville in connection with aerial work, *including toll lines.*"

2nd. The small amount of wages charged to maintenance or reconstruction.

3rd. The addition of 10% to invoice price of materials, to cover freight, drayage, rentals, etc. This the Master estimates to be *at least* $50,000.00.

4th. The charge of $10.00 per station on each station gained to cover the cost of labor and material in making such installation.

5th. The cost of toll line equipment, and maintenance and reconstruction of toll lines.

After discussing each of these five objections to the added construction since January 1, 1900, the Master deducts the sum of $100,000.00 (supra p. 15).

An examination of the record will show that as to each of these five subjects the Master was in error in deducting anything from this added construction account.

Under this heading of the Court's instructions, the Master is only undertaking to report the cost of the exchange to December 31, 1908.

In doing this he confuses construction with maintenance and reconstruction. Whether maintenance and reconstruction of toll lines was charged to maintenance and reconstruction of exchange, or vice versa, is wholly immaterial under this heading, when the sole inquiry is the cost to Complainant of its exchange property in Louisville.

The first criticism of the Master, as above stated, relates to wages of men employed in connection with aerial work, including toll lines. On page 11 of his report, he states:

> "Many vouchers were produced at the hearing, covering the wages of men employed in and near Louisville in connection with the aerial work, including toll lines. These vouchers show that certain wages and salaries had been expended on the aerial lines, and also on the underground lines connected with the Louisville Exchange. A small proportion of these outlays was charged to maintenance or reconstruction, while the bulk of the outlays is charged to construction."

And on page 11 of his report, he says:

> "The evidence tends to show that in nearly every instance the wages of employes shown in the vouchers we are considering were charged almost wholly to construction, and no evidence of the correctness of such charges was offered except that the vouchers bore a notation to that effect.
>
> "It is inconceivable that so little of these wages was properly chargeable to maintenance or reconstruction from 1900 to 1908. The aggregate amount of these vouchers was not shown in evidence."

It is confidently asserted that in these statements the Master is clearly in error, and for the following reasons:

The only pay-roll vouchers to which the slightest criticism has been offered (except those where errors were found and eliminated by the accountants for both parties) were for the years 1900 and 1901.

These pay-rolls were investigated in the cross-examination of Complainant's Auditor.

Trans., pp. 297 to 326.

While the examination showed that no just or fair exception could be taken to them, other facts in the record show conclusively that they were reasonable, fair and just.

It will be recalled that in 1900 the company gained 1,352 new subscribers, and in 1901 gained 2,007 new subscribers.

Trans., p. 476.

During the same years there was added to construction in 1900, $166,775.23, and in 1901, $178,549.14.

Trans., p. 742.

During the year 1900, Complainant expended on maintenance and reconstruction, $50,180.03, and during 1901, $68,417.50.

Trans., pp. 393, 394, 395 and 1048.

It is also shown in the proof that, for the year 1901, there was expended on wages for maintenance, $31,230.94.

Trans., pp. 325 and 319.

The joint accountants report the amount added to construction for each of the years 1900 to 1908, inclusive.

The Mutual Audit Company reports the amount expended on construction for each of these years, and also reports the amount expended on maintenance and reconstruction, and nowhere is there any criticism of any of these pay-rolls.

The expert accountants, on examining these construction vouchers from January 1, 1900, to December 31, 1908, found items aggregating $2,852.39, which had been charged to construction improperly, and these were eliminated.

Trans., p. 742.

Aside from these items aggregating $2,852.39, the accountants for both parties reported that the construction added for these years

was $1,023,545.34, and it is entirely reasonable to assume that if these pay-rolls had been improper in any respect these accountants, or some of them, would certainly have called attention to the fact. The gain in subscribers, and the amounts expended in maintenance and reconstruction, precludes any just criticism of the amounts added to construction for those two years.

"D"

The Master criticises the evidence of Complainant in undertaking to sustain this construction account. He states that no witness was introduced who pretended to have personal knowledge as to any of these items. This statement of the Master is excepted to by the Complainant for the following reasons:

It appears that Complainant has, since before 1900 to the present time, operated a system of telephone exchanges and telephone toll lines; that its auditing department is located in Nashville, Tennessee; that it has local managers at its various exchanges, and other employes necessary to conduct the business of each exchange; that it has record showing the cost and operation of each exchange; and, also, separate accounts of the cost of toll lines.

Trans., pp. 442 and 509.

Whenever construction work is done at an exchange, or whenever any expense is incurred at an exchange, a voucher is made showing what account it properly belongs to—whether to construction, operating or maintenance. These vouchers are then approved by the manager and sent to the Auditor at Nashville. After he has audited them they go to the Assistant General Manager for his examination and approval. When they get back to the Auditor, with the approval of the Assistant General Manager, they are then distributed in the books of the Complainant, showing to what account they are chargeable.

Trans., p. 278.
Trans., p. 669.

It has never been contended, or assumed, that the Auditor has personal knowledge of whether the work has been done, or whether

the expense has been incurred, other than what he sees from the vouchers themselves. The local manager, or foreman, or other employe, who incurs the expense in the first instance, vouches for it. The Assistant General Manager, while the matter is fresh and the facts easily ascertainable, examines, and if found correct, approves the expenditure. It then goes to the Auditor, not to be approved by him, but to be entered on his books and preserved for safe keeping.

It would be impossible for Complainant to go back ten years and find the employes who incurred the expenditures and who vouched for their accuracy at the time, and it would be equally impossible for the Assistant General Manager to carry in his mind records showing expenditures at even the Louisville Exchange for a period of ten years, not considering the more than 500 other exchanges, and a system of toll lines radiating in every direction from Louisville, Ky., to New Orleans, La.

The only possible means that Plaintiff had to show the amount expended on construction, and the expense incurred at the Louisville Exchange for the years 1900 to 1908, inclusive, was to exhibit its books and sustain its books by exhibiting the original vouchers covering the entire period of time. If there is any other known way of showing the cost of construction of a property, or showing the expenses of operation, it has not been suggested by any one in this record.

The Master criticises what he calls the small amount of wages charged to maintenance or reconstruction of the Louisville Exchange during the nine years under consideration. The experts for the city have shown the amount expended by Complainant on maintenance and reconstruction of the Louisville Exchange for each of the years involved, excepting 1902, as follows:

1900	$ 50,180.03
1901	68,417.50
1903	51,630.75
1904	66,456.72

Trans., p. 1048.
Trans., pp. 393, 394 and 395.

The accountants' joint report shows that for the years 1905 to 1908, inclusive, Complainant expended on maintenance and reconstruction of the Louisville Exchange, the following:

1905	$ 90,870.36
1906	93,423.00
1907	107,511.41
1908	86,155.98

Trans., p. 745.
Trans., p. 85.

Thus, in the eight years involved there has been expended in maintenance and reconstruction of the Louisville Exchange the sum of $614,645.75, or an average of $76,830.72 per year.

It must be remembered that the amount expended in the latter years was necessarily larger for the reason that there was very much more construction which was required to be kept up. In other words, taking 1900, there was only added to construction that year the sum of $166,755.23, which, on the Master's basis, made the entire cost of the exchange at the end of 1900, only $624,354.30. (The Master found the cost of the exchange on January 1 to have been $457,579.07, and adding the construction for that year, gives $624,354.30 as the cost to the end of 1900.) And in like manner, the cost of the exchange to the end of 1901, was $624,354.30, plus the construction added in 1901 ($178,549.14), or $802,903.44. On our basis the result is: Cost of exchange January 1, 1900, $678,354.69, plus construction added during 1900, $166,775.23, gives $845,129.92; and in like manner for 1901, $1,023,679.06. Thus showing that the amount expended on maintenance and reconstruction for those two years was in proportion to all subsequent years.

There is no criticism in the record that a sufficient amount has not been expended to maintain the plant. Therefore, it is unjust to the Complainant for the Master to criticise the amount of wages paid out for construction, or to intimate that part of the wages paid for maintenance has been charged to construction.

There is no doubt, and no question, but what Complainant has paid out for the years involved, $1,023,545.34, and in addition to that, it has expended for maintenance of the Louisville plant the sum of

$614,645.75, exclusive of 1902 (the amount for that year not appearing in the record.) So that if any part of this $1,023,545.34 is improperly charged to construction, the amount expended by Complainant in maintaining the property would have to be increased by just that amount. In other words, there is no question but that this money has been expended by Complainant, and if it has not been expended on construction, it has been expended on maintenance.

But we submit that the Master has no right to criticise, or throw suspicion or doubt upon the construction account when it appears that these vouchers were regularly made up, regularly approved, and regularly entered upon the books of the company from time to time during that period of nine years, and when the Auditor testifies that they are properly distributed and properly credited, and the Assistant General Manager testifies that he approved them as the expense was incurred, and there is, on the contrary, nothing except that for some months, in the particular vouchers examined, it did not appear that much of the wages was charged to construction, and in other months large amounts of wages were charged to construction. It is submitted that the Master does not point out any evidence upon which he bases his criticism.

There is another, and conclusive, reason why this construction account must be allowed to stand as reported. The order of the Court, in referring this case to the Master, states that "he will, under and pursuant to the equity rules and under agreements that the parties may make, proceed to take testimony, etc." The supplemental report of the Master shows that it was agreed by Complainant and Defendant, that whatever the accountants reported jointly, should be accepted as true, and no other evidence permitted to vary or contradict the same. The accountants reported jointly that $1,023,545.34, after correcting all mistakes, *had been added* to construction from January 1, 1900, to December 31, 1908. The Master should accept this finding as well as the litigants.

"E"

Complainant excepts to the report of the Master in disallowing 10 *per cent to be added to the invoice price of materials to cover freight, drayage, rentals, etc.*

The proof in the case with respect to this item is as follows:

The company maintains at Louisville, Ky., a warehouse in which it stores material purchased in large quantities, and when material is drawn from this warehouse for the use of any of the exchanges or toll lines in that territory, the actual cost of the material, plus *not exceeding* ten per cent, is charged to the exchange, or toll line, to which the material goes, and "supplies" and "supply expense account" are credited with a like amount. This amount (not exceeding 10 per cent at any time) is for the purpose of paying rent, insurance, clerk hire, drayage, freight and other items of expense incurred by Complainant in purchasing, storing and distributing materials to the various exchanges and toll lines as needed. This is not a profit in any sense to Complainant. It is the actual cost to Complainant of handling the supplies from the person from whom they are bought to the time they are delivered to the exchange or toll line employes.

It is true that in the first instance the expense of handling these materials is charged in the general accounts to "supply expense," and then, when the material is issued, "supply expense account" is credited with this, not exceeding 10 per cent for handling, etc., and the exchange or toll line to which the supplies are issued is charged with a like amount.

The Master refers to the fact that he presumes that the company gets the usual trade discount for cash. Whatever trade discount the company gets reduces the invoice price of the supplies, and the records show that the *actual cost* to the company of the supplies, plus not exceeding 10 per cent, is all that is charged against the exchange or toll line receiving these supplies.

Trans., pp. 326 and 327.

There is no difference in the method Complainant pursues in handling supplies and in the method pursued by merchants. When a merchant buys goods, he must, in addition, pay the freight to get his goods to his store; he must pay his insurance, his house rent, his clerk hire, and other incidental expenses preparatory to offering his goods for sale. He, of necessity, must add this additional expense to the cost of the goods before he begins to talk about profits, and

it is only when he has added this additional expense to the invoice price of his goods that he can ascertain the real cost to him; and then on top of this must be added whatever profit he expects to make on the goods, and until he adds this he is not making any profit and could not afford to sell the goods at these prices, because it would result in his selling the goods at actual cost to himself.

This is precisely what this record shows the Complainant does. It adds not one cent of profit to the supplies.

Complainant therefore submits that the Master is in error in finding that a profit of at least $50,000.00 has been made on the supplies furnished to the Louisville Exchange from 1900 to 1908, inclusive.

"F"

Complainant excepts to the action of the Master in discrediting and declining to accept the statement of Complainant that it has charged to construction $10.00 per station on each station gained in the Louisville Exchange to cover the cost of labor and material in making such installation.

The evidence upon this point is as follows:

It requires material, apparatus and labor to equip each subscriber so that he may connect with the general exchange and be connected with other patrons of the exchange. It has been ascertained by experience that it cost Complainant, on the average, at least $10.00 to install a subscriber's instrument, counting the material used from the pole in the street to the telephone instrument, thence to the ground, which covers everything in the subscriber's place of business or residence except the telephone instrument itself.

That this charge is reasonable and proper is shown from the following testimony:

Complainant's valuation of the telephone instrument is $6.80. Trans., p. 651.

Mr. Polk in his deposition says that the instrument is worth:

Wall set	$	6.50
Desk set		7.50

Trans., p. 1505.

It must be remembered that the Company only charges $10.00 for installation, which covers everything except the instrument. Mr. Polk, in his second deposition (Trans., p. 1451), states that it will cost about $25.00 to equip and install an instrument in a subscriber's residence or place of business. In this is included the wall set at $6.50, or the desk set at $7.50. Deducting the larger amount, $7.50, leaves a charge of $17.50, which Mr. Polk says is necessary in order to install the subscriber's instrument. As above shown, the Company only adds $10.00 instead of $17.50 as testified to by the expert telephone engineer for the city.

When a subscriber discontinues his service, and the telephone instrument is taken out of his house, that is all that can be recovered or saved from the expense of installation. The wire and labor of installing the instrument is lost; and in the first instance this entire expense of installing the instrument is necessarily chargeable to construction because it is part of the exchange plant and epuipment, but when the telephone is removed the whole amount must be deducted from construction because that much of the construction has been lost and is no longer in existence. In order to facilitate the bookkeeping of the Company, for some period of time in the nine years under consideration, the practice of Complainant was to, in the first instance, charge all the expense and material and labor of installing a subscriber's instrument to expense of conducting the business of that exchange, and in like manner to charge to the expense of conducting that exchange the expense of removing the telephone instrument when it was given up by the subscriber. At the end of the month the net amount of increase in subscribers was charged to construction account at $10.00 per subscriber, and a like amount credited to the expense of conducting the business of that exchange. In other words, in the first instance each new subscriber had his instrument installed and the expense of doing it was charged, not to construction, but to expense of the exchange, and at the end of the month, assuming that he still had his instrument, the expense of conducting the business was credited with $10.00—in other words,

reduced by $10.00—and construction charged with $10.00, or, in other words, increasing construction $10.00.

Trans., p. 352.

There is no difference whatever in this method of keeping the accounts and in charging to construction the expense of labor and material of installing each new subscriber, and deducting from construction the amount so charged when such subscriber discontinues his service. This $10.00 charge did not inflate the construction account. It was simply one method, and a convenient method, of keeping the records of the Complainant so as to show the real facts, and was not intended, and did not in any degree, inflate the construction account.

"G"

The Master, on pages 13 and 14 of his report, speaks of the difference between the witnesses as to the cost of the conduit system in Louisville.

We except to the language of the Master for the reason that these witnesses he refers to are speaking of the *cost of reproduction*, and are not speaking in any respect of the *cost to Complainant* of its underground system. The Master is merely undertaking to ascertain the *cost to Complainant* of its Louisville Exchange, and not what it would cost some one else to build the plant, or what it is worth. On this branch of the case the Master is reporting solely on the cost to Complainant of its plant in Louisville.

"H"

The Master speaks (on p. 14), of the method pursued in operating, maintaining and reconstructing toll lines. Complainant excepts to this part of the report for the reason that the Master has confused the expense of conducting the business with the question he is then discussing, namely, the cost to Complainant of its plant.

This discussion, with respect to the maintenance, reconstruction and operation of toll lines properly belongs under another heading, namely, profits, or receipts and disbursements, and has nothing whatever to do with the cost of the property.

"I"

Complainant excepts to the language of the Master, on page 15, in which he undertakes to deduct from the book cost of Complainant's exchange a part of $100,000.00 *because of amounts expended on maintenance and reconstruction of toll lines.*

It is immaterial how much Complainant expended in maintenance or reconstruction of toll lines and charged to the maintenance or reconstruction of the Louisville Exchange. It would not have any effect whatever upon the cost to the Complainant of the Louisville Exchange, and this is the enquiry in this part of the report.

"J"

Complainant excepts to all the language of the Master under this head of book value which relates to the cost of toll lines and toll line equipment and submits that the Master is in error for the following reasons:

It is *not* a fact that Complainant charges the cost of construction of any part of the toll lines to the Louisville Exchange. It is testified to by the Auditor of the Company, *and not disputed by any one*, that the cost of toll lines is charged to the construction of toll lines and not to exchanges.

Trans., pp. 285 and 442.

The President says that toll line and exchange construction are kept separate.

Trans., p. 509.

Again, it is shown that there are only 80 circuits, or 160 wires, used for all toll purposes coming into or going out of the City of Louisville, and a part of these are used for the purpose of giving Louisville subscribers free service to the adjoining little exchanges in different parts of Jefferson County, Kentucky.

Trans., p. 457.

"K"

It is true that the toll equipment in the Louisville Exchange Main Building is charged against the Louisville Exchange Construction

Account, and it should properly be so, and Complainant excepts to the report of the Master in declining to allow this.

It is shown in the record that this toll equipment is installed for the purpose of affording facilities to each subscriber to have connection with and use the toll lines from their individual stations. That is to say, the equipment is so arranged that the subscriber may, from his office or his residence, both send and receive toll line messages at exactly the same rate he would pay for his long distance message if he went to the central office of the Complainant, and there received or sent his toll message. In order to enable subscribers to do this it was necessary to install this toll equipment in the central exchange at Louisville, but it was a part of the Louisville Exchange equipment and put there for the purpose of serving the Louisville subscribers; and in fixing the Louisville subscribers' rates for exchange service, this was taken into consideration, and a price placed upon the use of the exchange service which would pay for a proper part of this added expense of equipping and operating the toll department in such manner as to afford this easy access of the subscriber to the toll line from his office or place of business.

Trans., p. 509.

The Master, in his report (Post. 178), says:

> "The company's plant is well located, it is in excellent physical condition, and it is a remunerative business. If we compare it with the Home Telephone Company as to its earning power, it is obvious that it occupies much the superior position in this: It has extensive toll lines that connect with similar lines extending over the entire United States. Connection with these long distance lines may be had promptly by the subscribers, and this I consider a most valuable asset, and in my opinion, it will in the future, as in the past, materially aid the Complainant in its efforts to obtain new subscribers."

This finding of the Master with respect to the added value to exchange subscribers by reason of the fact that they have immediate connection with, and access to, the toll line system is in thorough accord with the testimony of the witnesses for Complainant in this record, and it fully and thoroughly sustains the testimony of the

President of the Company, who says that this was an added value to the exchange subscribers, and it can only be given to them by means of this toll line equipment in the main exchange which was put there solely for the purpose of affording the exchange subscribers easy access to the toll lines from their individual stations.

"L"

Complainant excepts to the report of the Master in adding toll line construction to the Louisville Exchange construction, of $125,406.80.

This toll line construction is what the experts report was the cost of the entire toll line system of the Ohio Valley Telephone Company on January 1st, 1900.

Trans., pp. 756 and 1326.

This, then, was the cost of the toll line construction on January 1st, 1900, but the Master is dealing in his report with the situation in March, 1909. In the Master's report (p. 46), he states that there is some evidence, though vague and unsatisfactory, that some additions to construction of toll lines have been made since 1900.

The President of the Company testifies that whenever any one in the City of Louisville uses toll lines to any other point in Complainant's system, it uses Complainant's toll lines, and he states that the entire system of Complainant is saturated with its own toll lines.

Trans., p. 504.

The annual reports of the Company on file in the case show that for the year 1908 the gross toll line receipts of the Company were more than $1,500,000.00. With the annual report for 1908 is filed a map showing the toll lines radiating in every direction from every important commercial center in the entire system of Complainant —from the Ohio River straight through to the Gulf of Mexico.

It is inconceivable that the Master should assume that the entire toll structure was in existence on January 1, 1900, and was only worth $125,000.00.

Again, if the Master assumes that the entire value of the toll lines is to be added as a part of the Louisville Exchange, then what would become of more than 500 exchanges if it should be attempted to get the value of these exchanges separately or together. If the entire $125,000.00 of toll line value is placed in the Louisville Exchange, then no other exchange of the Complainant would be chargeable with any part of the toll line construction. If the entire toll line construction should be prorated with the Louisville and the other exchanges in Complainant's system it might be argued that this would be proper treatment, but certainly the toll line value in 1900 should not be used for 1908.

The evidence is clear that the toll line construction is kept separate and distinct from exchange construction, and its cost or value does not appear in this record for the reason that Your Honor directed the Master to ascertain the cost and value of the Louisville *Exchange*, and *not* the cost and value of the Louisville Exchange, *plus* the toll line system of Complainant.

"M"

Complainant excepts to the criticism of the Master as to the refusal of the Auditor of the Company to produce the supply vouchers from the Supply Department.

Mr. Smith was asked, in his cross-examination, by the attorney for the City, to produce the vouchers from the Supply Department. He stated in reply that he had no control whatever of the Supply Department, and that he would have to refer the matter to the counsel for the Company, who was not then present at the taking of the deposition. The matter seems to have been overlooked, and nothing further said about it.

Trans., p. 362.

If the matter had been called to the attention of counsel for the Complainant, it, no doubt, would have received proper consideration; but it was open to the counsel for the Defendant to have summoned any one connected with the Supply Department and to have interrogated them with respect to any matters desired.

At any rate, it is respectfully submitted that it is hardly fair to Complainant to be criticised on what was apparently an oversight or a failure on the part of counsel for Defendant to pursue the enquiry further.

It also appears that the Mutual Audit Company's experts visited the Supply Department and had full opportunity to investigate the vouchers as much as was desired, and stated that they were not investigated for the reason that it would have taken several months to have done so.

Trans., pp. 1037 to 1038.

It also appears that the Auditor of the Company took the accountants for the Mutual Audit Company to the Supply Department and had explained to them the working of that department.

Trans., p. 1114.

"N"

The Master was directed to report the cost to Complainant of its plant and property in Louisville. The Master, no doubt by oversight, failed to report the real estate and improvements of Complainant used in its Louisville Exchange, and to this failure on the part of the Master, Complainant excepts.

The real estate owned and used by Complainant is stated in the deposition of the Auditor of Complainant to have cost to December 31, 1908	$ 160,841.42

Trans., p. 497 (Exhibit 21).

The Mutual Audit Company reports the cost of the real estate to December 31, 1908	160,841.42

Trans., pp. 1084 and 1358 (Exhibit 11-A).

Wilkinson states the cost of real estate to December 31, 1908, to be	160,841.42
Added in 1909	1,350.00
Total March 6, 1909	$ 162,191.42

Trans., p. 763.

As has heretofore been stated, it was agreed between the counsel representing Complainant and Defendant, and approved by the Master, that whatever the accountants jointly agreed to and reported should be accepted by all parties, and no evidence permitted to vary or contradict it.

The examination of the accountants "involved a close inquiry in all matters relating to the business of the Complainant in the City of Louisville, including the books, accounts, vouchers, pay-rolls, agents' reports and other original sources of information, kept at the principal office of the Complainant in the City of Nashville, Tennessee," and they reported that the plant had cost Complainant to March 9, 1909 ..... $1,702,391.68

This was not what the books of the Complainant showed the plant to have cost, but was what these accountants agreed the books *should have shown after errors had been eliminated.*

The books of the company showed the cost of the plant to have been 1,700,045.26

Trans., p. 475.

These accountants, having agreed upon the records of Complainant, showing the cost of the Louisville plant, excluding toll lines and real estate, should, under the agreement, be accepted, and that the cost was, as stated 1,702,391.68

SUMMARY.

Complainant, for the foregoing reasons, insists that the Master was in error in reporting the cost to Complainant of its plant and property in the City of Louisville, as of January 1, 1900, as on'y 457,759.07

And on December 31, 1908 ..... 1,381,124.41

And real estate of only 108,034.50

The Master should have found and reported that Complainant's plant cost it, as of January 1, 1900	$ 678,354.69
And added construction to January 1, 1909	1,023,545.34
Making the total cost to Complainant of its plant in Louisville, Kentucky, as of January 1, 1909	$1,701,900.03
And construction added from January 1, 1909, to March 9, 1909	491.65

Trans., pp. 762–1051 and 1340.

Making the total cost of plant to March 9, 1909	$1,702,391.68
And the total cost of real estate	162,191.42
Total "cost of plant and property," March 9, 1909	$1,864,583.10

THE MASTER'S REPORT.

II.

"The fair valuation of the plant and property of the Complainant employed in its business in said city as of March 6, 1909, and also its value at the date upon which he may file his report herein. In doing this he will state generally the basis of his estimates."

Witnesses who testified as to the value of Complainant's plant were H. Blair Smith, Auditor of the company; J. E. Jagoe, Assistant Superintendent of Complainant's plant, and the witnesses who testified on this subject on behalf of the Defendant were W. C. Polk, Wm. H. Crumb, S. D. Levings, and in addition to these, Complainant and Defendant referred frequently to the units of valuation of such properties as adopted by Prof. Jackson.

The disagreements between these various witnesses are startling. The valuations of the plant by these witnesses are as follows:

Smith's total	$1,688,511.94
Jagoe's total	1,793,540.30
Polk's total	1,085,637.00
Crumb's total	975,000.00
Levings' total	1,000,000.00
Prof Jackson's total, estimated according to the units adopted by him	1,779,413.18

Messrs. Polk, Crumb and Levings are experts introduced by the Defendant. Messrs. Smith and Jagoe are officials of the Complainant Company.

However truthful these witnesses may be (and I do not question their honesty of purpose), they are all more or less biased consciously or unconsciously. It is impossible for me to reconcile these totals one with the other. It may be true that Crumb's information as to the physical plant in Louisville was, on cross-examination, shown to be defective. This may be true as to the testimony of Levings. Mr. Polk shows in his deposition that while he may have fallen into some

errors as to the quantities that constitute the Louisville Exchange, yet his experience in building plants in different parts of the country, and particularly his experience in building the Home Telephone Company's plant in the City of Louisville, entitles his testimony to consideration.

Mr. Smith speaks of and argues from the book cost of the plant, and his totals closely approximate the book cost as testified to by him.

Mr. Jagoe has gone into great detail and gives items, quantities and costs, and it is obvious that he is also largely influenced by the book cost of the Louisville Exchange. In addition to that he has added very frankly large amounts which he describes as "cost of supervision" and "overhead charges." For instance, in speaking of the value of the underground cable, he adds as "overhead charges" and "supervision," $57,505.27. In speaking of the value of the aerial cable system, he adds as "supervision" and "overhead charges," $89,563.98. In speaking of the value of 4,960 miles of wire and the stringing of said wire, being No. 10 and No. 14, he adds for "overhead charges" and "supervision," about $10,000.00. And in speaking of the switchboards, he values same at $309,000.00, but says that of this amount there are due to "supervision" and "overhead charges" $21,462.39, or in other words, seven per cent. On page 64 of Mr. Jagoe's deposition (Trans., pp. 649-650), he is asked what supervision is necessary. Answer: "General expenses and engineering and supervision of the officers of the company." He further admits that these general expenses are every year charged to the expense of the company.

On pages 64 and 65 (Trans., pp. 649-650), he says in substance, that the salaries of said officers, which is to say, totals of General Expenses, are prorated each year among the different accounts, to-wit, Maintenance, Reconstruction and Construction, in certain proportions named by him.

In order to show further the differences in opinion of the expert witnesses, it appears that Mr. Jagoe values

the aerial cables at	$ 431,953.35
Underground cables at	288,942.50
Making a total of	$ 720,895.85
Polk values these two items at	384,440.00
Showing a difference of	$ 336,455.85

Each witness undertakes to sustain his totals by elaborate details.

As stated above, the value of the plant as found by Mr. Jagoe, when reduced by the items of "overhead charges" and "supervision," amounts to just a little less than the figures given by Mr. Smith. Mr. Jagoe's figures reduced as above indicated would be $1,625,008.66
Which is about 63,000.00
less than Mr. Smith's.

Again, Mr. Jagoe and Mr. Polk approximately agree in their estimate of the number of duct feet in the conduit system. Mr. Jagoe says there are in conduit feet 438,803
Mr. Polk says there are in conduit feet 436,890

The difference between the witnesses as to the cost of reproduction is so large, that I find myself unwilling to adopt the figures of either. Both of these witnesses are in the highest degree competent to pass upon this question, and my endeavor has been to reconcile their statements, if possible. Being unable to do so, I have concluded, so far as the value of the conduit system is concerned, to fix the cost of reproducing the conduit system at $.294 per duct foot, this being an average cost fixed by Messrs. Jagoe and Polk.

I have adopted Mr. Jagoe's estimate of the number of duct feet, and upon that basis, the cost of reproducing the 438,803 duct feet, at $.294 per duct foot, with $7,500.00 added as the cost of iron pipe found by Mr. Polk,

would be	$ 132,821.70
Instead of the amount as fixed by Mr. Jagoe	170,382,81
Making a difference of	$ 37,561.11
Which amount should be taken from Mr. Jagoe's total, leaving as his estimate of the value of the plant	1,587,447.55

These figures include a large amount of what the witnesses denominate "surplus equipment." This surplus is found in the aerial system, in the conduit system and in the exchange switchboards.

The evidence shows, and I so find, that it is not prudent or wise for a telephone plant like the one in Louisville, to be constructed merely to meet the immediate demands of the public; that such a plant should be built with an eye to the future, and that there should be a surplus equipment in every department sufficient to meet the demands of a period of several years, so that the wants of the new subscribers may be supplied on short notice. The evidence shows that there are more poles in the county outside of Louisville connected with the exchange or intended for the Louisville Exchange, than the present business of Complainant demands, but, as stated above, I am unwilling to condemn or to eliminate from the company's plant this surplus equipment.

Another matter was insisted upon at the argument and is referred to in the testimony that requires mention: It is stated that the blue prints of the Complainant show one or more "proposed" aerial lines, and that such lines have not been constructed, but are embraced in the estimate of the value of plant as if they actually existed. The evidence on this point is conflicting, and I have concluded not to disturb this item, although I am constrained to say that the evidence for Complainant on the question is not as clear and convincing as it might have been.

It is frankly stated by Mr. Jagoe that in all the construction, maintenance and reconstruction of the plant, "overhead charges" and "supervision" have played a part in swelling the totals. To what extent this bookkeeping device has been resorted to the evidence fails to show, except in the few concrete instances by this witness, as stated above.

I have discussed the above details of Mr. Jagoe's estimates of the value of the plant in order to show that even his figures are not convincing.

I have found that the cost of the plant was, excluding toll lines and real estate..... $1,381,124.41

It does not appear in evidence that in this total there is included "overhead charges" or "supervision" to any great extent.

If I am correct as to the original cost, then it is not possible that the value of the plant at this date is in excess of the cost.

The witnesses are asked "what kind of depreciation has occurred in the plant," and in this way it was sought to obtain its true value. The witnesses for Complainant all agree that the plant has been kept up in excellent condition, and on account of the care that has been exercised in respect of the maintenance and reconstruction, the value of the plant is approximately equal to its cost price. Witnesses for the Defendant, however, state that the depreciation from the cost price has been about twenty or twenty-five per cent.

The plant in Louisville was begun and finished about the year 1890, and has therefore been in operation for about twenty years. The evidence shows that a great many of the parts of the exchange or plant will become useless in one year, and as to these parts, the testimony is that they have been maintained or reconstructed. Other parts of the plant will last a number of years, varying according to the character of material. All these parts, however, have been well cared for, and for all practical purposes, the Louisville Exchange in all its parts, performs well the functions of a new plant, and is nearly equal physically to a new plant.

But in spite of all this, it is a matter of common knowledge that poles and wires and instruments and switchboards and all the apparatus connected with a telephone system, under the incorrigible law of nature, begin to depreciate the very day they are installed; and this depreciation continues from day to day and from month to month until the parts require replacement. Under the evidence poles will become worn out on an average in about ten years, and it is reasonable to suppose at this date there are not many poles in the system that were in use in 1890—new poles having taken their place from time to time as the exigencies of the service demanded.

The evidence shows that the underground or conduit system will last unimpaired indefinitely, as some of the witnesses put it, more than fifty years. The conduit system was installed by the Ohio Valley Company some years before 1900, and it has required very little expense for maintenance or reconstruction since it was acquired by Complainant. About fifteen per cent has been added since 1899.

The estimates of the witnesses as to present value are irreconcilable. It may be conceded that the opportunities of some of the witnesses for accurate knowledge on the subject are superior to those of others. This assumption is undoubtedly true. I would not be fair in assuming that either of the witnesses is guilty of knowingly making misleading statements.

Convinced as I am that my finding as to the cost of the plant is correct, I am, for the reasons stated, persuaded that the value of the plant as of March 6, 1909, all features of depreciation considered, ought to be and is	$1,381,124.41
Less depreciation of ten per cent	138,112.44
Leaves	$1,243,011.97

This does not embrace real estate nor toll lines nor working capital, if any should be allowed.

The value of plant, after considering depreciation, I find to be	$1,243,011.97
Value of toll lines and equipment	125,406.80
Less depreciation of ten per cent	12,540.68
Net value	$ 112,866.12

I find therefore that the total value of the exchange, including the toll lines, but excluding real estate, as of March 6, 1909	$1,355,878.09

There is some evidence—though vague and unsatisfactory—(See Smith's Deposition, p. —) that some additions to construction of toll lines have been made since 1900, but the only special line mentioned is one from Louisville to Nashville. This entire line can not be considered as a part of the Louisville Exchange construction. Its cost is said to have been $40,000,00, but all of this can not be charged to Louisville toll lines. Half of it at least must belong

to Nashville, and there are other exchanges tapped by it between the termini, such as Bowling Green, Elizabethtown, Franklin and Edgefield.

I see no reason to doubt that the value of the plant as of the first of November, 1910, is not of much less value than I have found it to be as of date March 6, 1909.

If Complainant in the past twenty months has maintained and reconstructed its plant as carefully and as elaborately as it did during 1905, 1906, 1907 and 1908, the plant ought to be worth approximately as much now as it was on March 6, 1909.

EXCEPTIONS OF APPELLEE.

The Master reports that on March 6, 1909, the *plant* was worth.....$1,243,011.97

That the toll lines and (toll) equipment was worth.... 112,866.12

Supra p. 46.

The Master made no report with respect to the value of the real estate.

Complainant excepts to this report of the Master in reporting the value of the plant March 6, 1909, to have been only $1,243,011.97. He should have reported the value, exclusive of real estate and toll lines, to have been at least $1,702,391.68

Complainant's evidence on this branch of the case is the depositions of:

James E. Caldwell, President of the Complainant.
H. Blair Smith, Auditor of the Complainant.
Leland Hume, General Manager of the Complainant.
J. E. Jagoe, Assistant Superintendent of Plant of Complainant, and
Stipulation with respect to units of value used by Prof. D. C. Jackson.

Defendant's evidence is the depositions of:

W. C. Polk, a telephone engineer.
Wm. H. Crumb, a telephone engineer, and
S. D. Levings, editor of a telephone journal.

"A"

EVIDENCE FOR COMPLAINANT.

All of these witnesses exclude real estate and toll lines, in fixing the value of the exchange plant.

James E. Caldwell.

This witness is the President of Complainant, and has been actively engaged in the telephone business with Complainant since 1885. Until about four years ago he was both President and General Manager, and since that time its President.

Trans., p. 498.

Its properties, except such as have been acquired by purchase or consolidation, have been built under his direction and supervision.

Trans., p. 498.

He states that the Louisville plant has been built with a view of being "permanent and of the very best character;" also "with reference to the growth of a city the size of Louisville, and importance of Louisville, giving evidence of its future."

Trans., p. 504.

He states that the plant in Louisville is worth, excluding real estate $1,702,391.68

Trans., p. 507.

Leland Hume.

This witness has been engaged in the telephone business with Complainant for twenty-five years. He has been its Treasurer, Secretary, Local Manager at Memphis Exchange, for ten years Assistant General Manager, and for the past four years General Manager.

Trans., pp. 667-668.

Most of Complainant's properties have been built under his direction and supervision.

The annual report of Complainant for 1909, filed in this record, shows that Complainant had on December 31, 1908, five hundred and twenty-seven exchanges, and a comprehensive system of toll lines throughout its territory, from the Ohio River to the Gulf of Mexico.

This witness has been familiar with the Louisville plant since June, 1899. It has been extended and developed with the greatest care and economy.

Trans., pp. 668-669.

He has supervised and approved all vouchers for constructing and operating this plant since before January 1, 1900.

Trans., p. 669.

He examined the figures presented by Mr. Jagoe, Assistant Superintendent of Plant, as they were made up from time to time, and which will hereinafter be referred to more particularly, and he states that these figures are very conservative, and that it would be difficult for practical men to reproduce the plant at the figures given.

Trans., pp. 669-670.

He, of all men, has the best right to state its present value, and he does so, and says it is worth, excluding real estate $1,793,540.30

H. Blair Smith.

This witness is now, and has been for more than ten years, the Auditor of the Complainant. He has devoted his time to auditing the cost of constructing toll lines and exchanges. During all that time he has been engaged in examining vouchers for operating, maintaining and reconstructing toll lines and exchanges; during that long period of time he, of necessity, has acquired very large experience and knowledge of Complainant's properties, their cost and value; and while he is only an Auditor, and not engaged in the actual construction or operation of telephone plants, yet his large experience in handling telephone accounts, and especially of the Complainant company, entitles him to have an opinion of the value of this plant, and that opinion is entitled to weight.

He states that the Complainant's plant in Louisville is worth, and cannot be reproduced for less than..... $1,700,045.36

Trans., p. 221.

J. E. Jagoe.

This witness states that he is Assistant Superintendent of Plant of Complainant, and reports directly to the General Manager, who is the acting Superintendent of Plant.

Trans., pp. 621-622.

He made a study of the Louisville plant from the middle of January to a few days before his deposition was given on March 18, 1910.

Trans., p. 622.

He gives in great detail the exact quantities of material in the plant, and gives the value of each item in like detail.

His valuation of the plant, excluding real estate, office furniture and fixtures, working capital, supplies on hand, teams and tools, was $1,793,540.30

Trans., p. 635.

This is the only witness in the record who undertakes to give *exact quantities of material in the plant* and does not rely upon *estimates*, as do all the witnesses for the Defendant.

His deposition shows that he has made a careful and accurate inventory of the plant in Louisville. He states certain things which ought to be recognized without any evidence. Among other things, he says that the number and size of the poles actually in use in an exchange must be known before a proper valuation can be placed thereon.

Trans., pp. 625-626.

The cable used must be ascertained before valuation can be had, because different sizes of cable vary very greatly in price, and until the exact lengths and sizes of cable are ascertained it is impossible to place a valuation thereon.

Trans., p. 629.

And finally this witness says: "There is an individuality about every plant that you cannot separate from it. There are conditions in every city that are different from the conditions in every other city, and one of the biggest features that often escapes attention is the class of service given. We can serve ten thousand subscribers of one class for one-third of the construction expense that we can serve ten thousand subscribers of another class; and then it is possible to give connection to subscribers at one price and then, by increasing the efficiency of the service, or the reliability of the service, to add fifty per cent to the construction value."

Trans., p. 631.

He says that there is a difference in the cost of telephone plants in the same city; that it does not convey any intelligent idea of the value of one plant to talk about the value of the other plant; that the cost of one has no bearing upon the cost of the other, no more so than it would be proper to say that the ability of every lawyer is the same; that no man, expert or otherwise, has a right to undertake to value a telephone plant as large as Complainant's plant in Louisville without accurate knowledge and a thorough investigation of it.

Trans., pp. 632-633.

He says "that a plant can be built in Louisville to serve ten thousand subscribers for $1,100,000.00, but that it would depend upon the character of material used and the work done—the character of the material and stability of the plant and the class of service that the plant would be equipped to give."

Trans., p. 632.

The plant was valued by him as of March 18, 1910.

Trans., p. 631.

There has been no addition to the plant since March 9, 1909, and that it is worth slightly less in March, 1910, than it was in March, 1909.

Trans., p. 626-627.

In arriving at a classification of the materials used in this property, he used the classification adopted and in use in all of the large telephone companies in America.

Trans., p. 627.

The value or cost of erecting different kinds of material in this plant was arrived at by actual experience. In speaking of the method pursued in getting the value of the cable in the plant, he says that a part of the cable work has been done in Louisville since he has been with Complainant, and that certain parts of those cables have been replaced and that "the cost of doing all work in Louisville during the past two years that I have had supervision of, has been used in assembling the units which we are using in this estimate."

Trans., p. 644.

With respect to fixing the value on the poles, he says:

> "I know what it cost our company during the past four years to purchase and erect similar poles, and that is the amount I have given, and besides that, it seems to be the concensus of opinion among all companies, for when we buy or sell a half interest in poles to friendly companies, where we go into a joint pole agreement, the average price paid for the past two years on forty-foot poles has been $22.50 per pole, and that does not include the cross arms, simply the bare pole with the guys."
>
> Trans., p. 646.

The valuation placed by Mr. Jagoe on forty-foot poles in Louisville, including the cross-arms, etc., is $23.92 each.

Trans., p. 635.

The inventory value of the plant by the witness is full, complete and is in the greatest detail, both as to quantities and the units of value used in arriving at a total valuation.

The Master seems to have been impressed with this witness, and would no doubt have accepted his valuation, but that this witness includes as a part of his total valuation the expenses of organization, cost of engineering, supervision, freight and other expenses necessary to be incurred by any one in building so large a property. The Master does not think any such item of expense should be allowed in valuing the property. It is sufficient for the present to state that all these items of expense are universally recognized as proper; no plant can build itself; there must be an organization; there must

be engineering plans, foremen, interest on capital while the plant is building; expense of tools and teams which wear out during the time of construction, claims for damages, legal expenses, securing rights-of-way, tree trimming privileges and numerous other known items of expense, as well as certain, but unknown, contingencies.

On page 44 of the Report the Master says:

> "It is frankly stated by Mr. Jagoe that in all the construction, maintenance and reconstruction of the plant 'overhead charges' and 'supervision' have played a part in swelling the totals. To what extent this bookkeeping device has been resorted to, the evidence fails to show, except in the few concrete instances mentioned by this witness as above stated."

The Master is here confused again.

There is no question of maintenance or reconstruction involved in this inquiry. The only question the Master is undertaking in this branch of his report to deal with is "the present value of the plant."

The cost of the plant is placed on its books without any allowance for supervision, engineering services, rights-of-way, interest on money, or overhead charges. There is no proof to the contrary.

Trans., p. 679 770.

The Master has, in the former part of his report, dealt with the question of cost to Complainant of its plant, and is now dealing with the question of what the plant is worth, or, as is sometimes stated, the cost of reproduction.

For the present, it is sufficient to state that the Master is in error in declining to allow, under this inquiry, any overhead charges to be added to the actual cost of the material and the labor of placing it in position. This question will, however, receive consideration in another part of these exceptions.

An examination of the deposition of Leland Hume, General Manager, fully sustains all that Mr. Jagoe says with respect to the

necessity of knowledge of the particular plant, its individuality and other matters relating to the ascertainment of value. No witness in this record testifies to the *contrary*.

PROF. D. C. JACKSON.

Prof. Jackson is a member of the Society of American Institute of Electrical Engineers, the American Society of Mechanical Engineers, and the American Society of Civil Engineers, formerly professor of Electrical Engineering of the University of Wisconsin, and later professor of Electrical Engineering in the Massachusetts Institute of Technology of Boston; he was the Chairman of the Telephone Commission appointed by the City of Chicago in 1907 to investigate the telephone conditions in that city, to prepare an estimate of the value of the telephone plant, to determine what it would cost to build an adequate plant, what the expense of conducting such a plant would be, and what rates would be reasonable and fair for the city to impose upon the operating company.

Report of City Council Committee, Trans., p. 824 *et seq.*

During 1908 and 1909 he was engaged under the employment and direction of the Massachusetts Highway Commission in preparing an inventory and valuation of the entire properties of the New England Telephone Company in the State of Massachusetts.

In order to value the plant of the New England Company in Massachusetts, after having ascertained quantities of material throughout the State, embraced in the various plants, it became necessary for him to ascertain units of cost for the various kinds and classes of material in the plants. And if his units of value are applied to the classes and quantities of material actually ascertained to exist in the Louisville plant by Mr. Jagoe, and excluding everything that Mr. Jagoe excludes, and only including what Mr. Jagoe includes, the valuation of the Louisville plant will be found to be, as stated by the Master on p. 41 of his report, $1,779,413.18.

A careful comparison of the value of the Louisville plant between Mr. Jagoe and Prof. Jackson is developed in the deposition of Mr.

Jagoe. Therein Mr. Jagoe points out that in some instances his units of value are higher than Prof. Jackson's and in other instances Prof. Jackson's units of value are higher than Mr. Jagoe's. This comes about because of the dissimilar conditions under which the Louisville and Massachusetts plants are erected. As illustrative of this point, Mr. Jagoe gives the total value of the poles in the Louisville plant at $331,769.40, or $23.92 each.

Trans., p. 635.

Applying Prof. Jackson's unit of value, he has a valuation of only $190,379.62.

Trans., p. 630.

This is accounted for by Mr. Jagoe as follows:

> "Prof. Jackson's unit of cost includes every pole in Massachusetts, including the twenty-five-foot pole out in the country routes. After we leave the city, the average pole is possibly about 25 or 26 feet, and the cost of them is about $6.50 each. Mr. Jackson used, of course, these poles, as well as the city poles, in his estimates."
>
> Trans., p. 630.

The poles in the City of Louisville are forty-foot poles, and this makes a great deal of difference in the cost. The cost of the pole itself and the cost of erecting the pole is always in a much larger proportion than the lengths. A fifty-foot pole would possibly cost five times as much as a twenty-five-foot pole.

Trans., p. 626.

The valuation of the Louisville plant, using Prof. Jackson's units of value, is not a mere estimate, but is the application of actual units of cost to actual known quantities of material; and this valuation, using Prof. Jackson's units, is entitled to great respect.

His valuation of the plant is $1,779,413.18

No one of Complainant's witnesses includes real estate, or working capital.

"B"

EVIDENCE OF THE DEFENDANT.

All the Defendant's witnesses exclude toll lines and real estate, in fixing the value of the exchange plant.

W. H. Crumb.

Mr. Crumb is a telephone engineer and a contractor for erecting telephone properties.

In direct examination he states that he had made a "very careful inspection of the plant," but on cross-examination shows that he had not even made a superficial examination of the plant in Louisville.

Trans., p. 876.

He attaches an affidavit as an exhibit to his deposition in which he states that the Louisville plant could be duplicated for one million dollars new, and in his cross-examination shows that he made this affidavit without the slightest knowledge of the plant.

Trans., pp. 952 to 957.

After giving this affidavit, he made two additional visits to the City of Louisville, but they were shown to have been so limited in time, and his investigation and examination of the plant so meager, that his testimony is an insult to the intelligence of the Court. It was discredited by the Master.

W. C. Polk.

Mr. Polk gave two depositions. His first one was given in January, 1910, following the deposition of Mr. Crumb given in October, 1909. Mr. Polk has been a telephone engineer for fifteen years.

Trans., p. 1492.

He was chief engineer of the construction company that built the Louisville Home Telephone Company's plant in Louisville in 1901 and 1902.

Trans., p. 1493.

The knowledge acquired by him in 1901 and 1902 does not entitle him to speak as of March 6, 1909, when plant was changed and added to. He states:

> "In the first place government statistics are four or five years behind, and the telephone business is developing so rapidly that statistics four or five years old do not apply."
>
> Trans., p. 1415.

The only inspection of Complainant's plant made by Mr. Polk was "a casual examination the last couple of days, in a general way."

Trans., p. 1495.

This is his entire knowledge of the plant except what he saw while building the Home Company's plant in 1901–02, with the exception of an examination of some blue prints attached to the deposition of Mr. Crumb, showing existing and proposed cable routes in Complainant's Louisville plant, which were incomplete, and delivered to Mr. Crumb with the statement that they were incomplete.

Trans., p. 883.

He also stated that he made no physical examination of the property, but did examine these incomplete blue prints of the cable system and obtained his quantities of cable therefrom.

Trans., p. 1512.

He says:

> "As I understood my employment, all I prepared for was to place a valuation on the plant, and not to make a report on its physical condition."
>
> Trans., p. 1513.

And again:

> "I stated that I had made no specific examination so far as to determine the present value from a depreciated standpoint, but taking what I know of a going concern, *as a general proposition*, and the way they are kept up, and knowing the general character of the Cumberland, and the way they

are doing work, I consider 20% as a reasonable amount, exclusive of real estate."

Trans., p. 1410.

From this meager data and information, he gives a total valuation of the Louisville plant of $1,052,800.00

This, however, does not include real estate, or any overhead charges of any kind, such as supervision, interest and other items.

Trans., pp. 1516–1517.

After the deposition of Mr. Jagoe had been taken and filed, and after Mr. Polk had examined it, he gave another deposition, in which he begins with an admission of errors in his calculations given in his first deposition, and undertakes to explain how these errors were made. They were all, however, against Complainant.

He next attributes an improper motive to Mr. Jagoe in classifying the materials in the Louisville plant.

Trans., pp. 1388-1394.

On cross-examination he is forced to withdraw his statements when it is shown that his criticisms of Mr. Jagoe are unjust and unfair, and that he was acting upon misinformation.

Trans., 1422–1423 and 1426.

Mr. Polk, after correcting *admitted* errors, increases his former estimate of value from $1,052,800.00 to $1,195,737.00

Trans., p. 1411.

This change in valuation seems to have escaped the attention of the Master.

When it is pointed out in the deposition of Mr. Jagoe that by actual count the number of poles in the Louisville Exchange is 13,870 (Trans., pp. 625–635), Mr. Polk still insists upon estimating only 11,000 poles to be in the Louisville plant, although he has not under-

taken to count them, but says that this ought to be a sufficient number of poles to take care of the subscribers in the Louisville plant.

Trans., p. 1401.

He admits that he is using the price of cable at the date of his deposition under instructions of the City Attorney, although cable as late as 1907 was twenty per cent higher than at the present time, and does not use the average price over a period of years because he says he was instructed by the City Attorney to use present prices.

Trans., p. 1424 and 1425.

He says (see Trans., p. 1394) that Mr. Jagoe had overstated the price of the large items of cable, and had understated the price of the small items of cable, but had to admit (see Trans., p. 1427) that the facts were just the reverse, and that in the smallest quantities of cable the price fixed by Mr. Jagoe was higher than his prices, and on the largest quantities of cable Mr. Jagoe had fixed a price less than he had fixed.

It appears in the record that a telephone property is never a finished or completed plant. That as the city grows and subscribers increase, additional and new construction must be added year by year, and that of necessity a telephone plant must, after the initial installation, be added to by "piece-meal" construction. In speaking of this "piece-meal" construction, which he admits is necessary, he is asked this question:

"Q. Is it fair to a company that has invested its money in a plant, kept up with the growth of the city, and taken care of the business by piece-meal construction, to say that it can only have a return on what it would cost to build the plant over new again?

A. No, sir; I don't think that is fair.

Q. That is an unjust and unfair thing?

A. Yes, sir."

Trans., p. 1436.

Both Mr. Polk and Mr. Crumb place a much smaller valuation upon the various switchboards used by Complainant in its Louisville plant than do the witnesses for Complainant. Their

idea is that other switchboards built by other manufacturers are intended to serve the same purpose, and that, in their opinion, these switchboards built by other concerns named by them should be used.

It also appears in the record that Complainant purchases its switchboards from the Western Electric Company, because it believes that they are the best, have the longest life, and are more satisfactory in a telephone plant.

Trans., p. 633-4.

There is no controversy in this case as to what the cost of the Western Electric Company's switchboards are, and Complainant's witnesses base their value upon the Western Electric Company's switchboards, which accounts for a considerable item of difference between their values and those of the city's witnesses, Messrs. Crumb and Polk.

Complainant's officers have been engaged in the business for a quarter of a century; they have had largely more experience than either Mr. Crumb or Mr. Polk, exercising their own good judgment and spending the money of their stockholders, they have thought it best to purchase the Western Electric Company's switchboards. It cannot be possible that this valuation is to be reduced because some person has the opinion and idea that another switchboard costing less money is just as good.

Mr. Jagoe states that a telephone plant serving ten thousand subscribers in the City of Louisville can be built for $1,100,000, but it would not be the plant that Complainant has in that city.

Trans., p. 633.

In this connection he states: "A telephone plant is not different from any other property, real estate, or any other kind of property. You can build a four-room house for a couple of hundred dollars, or you can build it for a couple of thousand dollars. The telephone plant is similar to any other property in that way. The better you make the plant the more expensive it is, and one peculiar condition is that you can get service up to a certain point very cheaply

to everybody, *but* you add to the efficiency; if you add 5 per cent to the efficiency, you will add more than 5 per cent to the cost, for the last 10 per cent of efficiency of your service will amount to 50 per cent of the cost of your plant."

Trans., p. 661.

Nowhere in the record does any witness undertake to contradict or explain away this statement. Mr. Polk admits that he has not sufficient knowledge of Complainant's plant in the City of Louisville to be able to determine or express an opinion upon its condition.

He is asked the following question:

"Q. Did you intend to say, or do you now say anything about its present value?

A. I do not, only in an offhand way; I made a statement this morning that as a general average a concern going for several years, moderately maintained, will run down 20%.

Q. Don't you think it will be better to say that you have no knowledge of the present condition of the plant and of the relative value compared with the replacement value?

A. I didn't say I had any knowledge. I had not made investigation.

Q. Then you don't wish to have any opinion stated in your deposition as to the present actual value of the Complainant company's plant in this suit?

A. No, sir; not as a specific proposition."

Trans., p. 1418.

Mr. Polk, having it pointed out by the witness that Complainant did use No. 10 iron wire in its Louisville plant, declined to allow any in his estimate, and insisted upon using the cheaper wire, No. 14.

Trans., p. 1415.

Trans., p. 634.

Trans., p. 845.

Mr. Polk, in his second deposition (see Trans., p. 1408), says that he estimates the value of private branch exchanges and sub-station equipment, etc., at $128,775.00, or an average of $13.70 per station,

and later (see Trans., p. 1449) states that the cost per station is about $25.00, thus making a clear error against the Complainant of more than $106,000.00.

An examination of the deposition of Mr. Jagoe, in which he points out the exact quantities and qualities of cable, and points out the specific and direct errors made by Mr. Polk in his first deposition, in estimating quality and quantity of cable in Complainant's plant, was submitted to Mr. Polk, and, in his second deposition, while admitting errors on his part, and admittting the correctness of what Mr. Jagoe had stated, yet declined to change his valuation based upon an incomplete knowledge of what quantity and quality of cable was actually in the plant. This is not a minor difference between them.

Mr. Jagoe shows that the company actually had in use in the Louisville plant one hundred and twelve private branch exchanges.

Trans., p. 650.

Mr. Polk admits that he only estimated seventy-five, and declines to correct his statement, although he admits that he has no knowledge of the actual number in the plant.

Trans., pp. 1408 and 1409.

The Master, in comparing the difference in value of cable between Mr. Jagoe and Mr. Polk (supra pp. 42-3), uses the values given by Mr. Polk in his first deposition, which in his second deposition Mr. Polk admits to be erroneous and undertakes to partially correct.

Trans., p. 1411.

In this way, the Master has inadvertently made an error of more than $46,000 against Complainant.

S. D. Levings.

This witness was a clerk in an engineer's office in the City of Chicago until shortly before his deposition was given in New York, at which time he was the editor of a telephone journal. He shows very clearly that he has no knowledge of Complainant's plant in Louisville, and his attempted estimate of valuation of Complainant's plant is not worthy of serious consideration.

It thus appears that the only two witnesses introduced by defendant to testify as to the value of Complainant's plant in Louisville were not familiar with the property, made no examination of it with a view of ascertaining its value, and are testifying from their general knowledge of telephone conditions throughout the country, and are paid expert witnesses.

Their interest on behalf of their clients was certainly as great as the interest of Complainant's officers and employes on its side.

The general experience in the telephone business of Messrs. Polk and Crumb is far less than that of Complainant's officers. If Messrs. Polk and Crumb may testify as to the value of the plant because of their experience in the telephone business generally, and if their opinion of value is to be treated seriously, what is to be said of the opinion of Complainant's President, General Manager, Auditor and Superintendent of Plant.

It must also be remembered that the testimony of Messrs. Polk and Crumb shows that their experience generally has been with companies building exchanges *for sale*, and the experience of Complainant's officers has been with building exchanges to operate.

The standing of Messrs. Polk and Crumb, however high it may be for ability or integrity, is not superior to that of the Complainant's officers, who have for twenty-five years received the confidence and trust of a board of directors; men who have successfully managed a great property for more than a quarter of a century; surely their opinion and their judgment and their testimony is of as great weight as that of Messrs. Polk and Crumb, assuming that they all had *equal means of knowledge*. But when it is remembered that Messrs. Polk and Crumb do not pretend, or assume to have the knowledge that Complainant's officers and witnesses have, it is readily seen that any discrepancy in the testimony is easily reconcilable upon the theory that Complainant's witnesses testify from *actual knowledge and facts*, while Messrs. Crumb and Polk testify from theories and general conditions, as they understand them, throughout the country, without

reference to any knowledge of the particular plant about which they are undertaking to testify.

It thus appears that Complainant's witnesses have superior knowledge and experience, and no greater interest as witnesses.

Mr. Hume, in his deposition (Trans., p. 678), quotes with approval the following extract from a pamphlet which is entitled "Valuation of Public Service Corporations," by W. H. Williams, and appears to have been a paper read by him for discussion by joint session of American Economic Association and American Political Science Association, Chamber of Commerce, New York, December 30, 1909, where it is said:

> "The cost of reproduction is a matter of individual opinion; no engineer in estimating on the several important items of construction work for the year will come within ten per cent of the total aggregate cost. Many of the more important items are frequently underestimated from twenty-five to fifty per cent. If experienced engineers, knowing the local conditions, cannot estimate the exact cost, how can those without special knowledge be expected to do so? A very good illustration of this may be had by contrasting the original estimates with the ultimate cost of postoffices and other public buildings. An especially good illustration, and one known to all readers of the daily press, is that of the Panama Canal. The original estimate of the cost of engineering and construction work was $139,705,200, but the present estimate is $297,766,000, and it is probable this cost will be greatly exceeded."

It, therefore, appears that according to the Complainant's Presidents, General Manager, Auditor, Assistant Superintendent of Plant, and Prof. Jackson, *this plant was worth on March 6, 1909, more than* $1,700,000, and that the evidence introduced by the Defendant consists of depositions from two telephone engineers, who have no superior experience in the telephone business, nor the necessary knowledge of Complainant's plant in Louisville to entitle their opinion to serious consideration. They only purport to speak as expert witnesses without a knowledge of the actual facts and conditions.

Therefore, it is insisted that the Master was in error in placing a valuation on Complainant's plant as of March 6, 1909, of $1,243,011.97

He should have found and reported that Complainant's plant was, on March 6, 1909, exclusive of real estate and toll lines, worth at least the sum of $1,702,391.68

"C"

Complainant excepts to the statement of the Master in which he declines to allow any "overhead charges" in estimating the present value of Complainant's plant.

The Master says, p. 44.:

> "It is frankly stated by Mr. Jagoe that in all the construction, maintenance and reconstruction of plant, overhead charges and supervision have played a part in swelling the totals. To what extent this bookkeeping device has been resorted to the evidence fails to show except in the few concrete instances mentioned by this witness as above stated."

It has heretofore been shown that there are no overhead charges of any kind upon the books of Complainant.

Trans., pp. 679 and 770.

However, in this connection, the Master is considering only *value*, not *cost*. Therefore if any such charges *had* been entered upon its books, it would not be pertinent to the present inquiry, viz.: The present *value* of the plant.

Under this head, the Master is considering a property that has been erected under a proper organization, after proper engineering plans had been prepared, after a franchise, or permission of the city authorities had been obtained, after a legal organization had been perfected, after sufficient securities had been sold to provide funds with which to erect the plant, its supervision during the progress of its construction, the tools and teams necessary to use in its

construction, but which really wear out by the time the plant is constructed; attorneys' fees, claims for damages, tree trimming privileges, insurance, interest on money, and various other items of expense which are necessarily incurred in the building of the plant, and over and beyond all this, the advertising, canvassing and other means adopted to secure patronage so as to have an established going buisness.

It is the value of a plant which has incurred all these expenses that the Master is now considering.

No witness in the record intimates that it is not proper to include these items of expense in arriving at the present value of the plant. Mr. Polk, the main expert telephone engineer on behalf of the Defendant, allows in his amended estimate for overhead charges the sum of ..... $ 90,000,00

Trans., p. 1411.

The Chicago Commission, composed of three telephone engineers, after a careful study from January 7 to April 3, allowed overhead charges of about 20 per cent of the cost of the plant.

Trans., p. 825.

In this report the Commission allows:

Supervision and engineering	$ 700,000.00
Interest and insurance	600,000.00
Brokerage in selling securities	1,877,333.00
Or a total of	$3,177,333.00

The total value of the plant, including these items and real estate, is 18,773,333.00

The estimate furnished this Commission by the Manufacturers' Telephone Company in estimating the cost of construction of a plant they proposed to erect, provided overhead charges as follows:

Supervision and engineering	$ 600,000.00
Interest and insurance	550,000.00
Brokerage	687,300.00
	$1,837,300.00
Total cost of plant, including real estate and foregoing items	14,983,300.00

Mr. Jagoe, in his valuation of plant, allowed less than 15 per cent overhead charges, and excluded from his valuation teams and tools, working capital, supplies and furniture and fixtures, and if these items had been included and deducted from the overhead charges allowed by Mr. Jagoe, it would have reduced the overhead charges to considerably less than 10 per cent.

That all these items of expense are necessary in estimating and valuing a going plant is so self-evident that we submit that the Master was in error even though there was no proof sustaining these items in the report, and for these reasons Complainant excepts to the Master's report in disallowing any of these items of expense.

"D"

Complainant excepts to the report of the Master in not allowing as a part of the present value of the plant the expense of securing business, franchise value, right-of-way, tree trimming privileges, tools and teams, supplies, office furniture and fixtures, and working capital.

Mr. Polk, in his second deposition, admits that all of these items of value are right and proper.

Trans., p. 1438.

The Chicago Commission concedes and allows these items in fixing the valuation of the Chicago plant.

The Manufacturers' Telephone Company, in their estimate, both original and amended, allow these items.

It is apparent that a plant cannot be operated, maintained and

reconstructed without having on hand supplies. It cannot be maintained, constructed or reconstructed without the use of tools and teams, office furniture and fixtures. It cannot do business until it has procured the consent of the municipality. It cannot serve patrons until it has secured patrons, and necessarily the expense of securing patronage is a part of the cost of the plant, and is entitled to be capitalized. No property can be operated without having on hand a working capital.

All of these items the Master disallows, and Complainant excepts to this part of his report, and insists that he should have allowed all of these items in arriving at the value of the plant.

"E"

Complainant excepts to the report of the Master in ascertaining the value of Complainant's toll lines to have been on March 6, 1909, *only* $112,866.12.

Supra. p. 46.

The accountants ascertained that the cost of the toll lines, purchased by Complainant from the Ohio Valley Telephone Company in June, 1899, was $125,000, and the Master assumes this to be the value of *all* toll lines on March 6, 1909, *less* 10 per cent depreciation.

Complainant owns and operates five hundred and seventeen exchanges all connected together with a system of toll lines.

Trans., pp. 208 and 209.

The cost of building toll lines and exchanges is kept separate and distinct.

Trans., pp. 211, 508 and 509.

The Master has erroneously assumed that no toll lines have been built since January 1, 1900, and that the toll lines in existence on that date have depreciated in value 10 per cent.

There is no evidence of the value of Complainant's toll line system

in the record for the reason that the Master was not directed by the Court to ascertain such valuation, and, therefore, no proof was introduced upon this point.

The Master (pp. 46-7) says:

> "There is some evidence—though vague and unsatisfactory—that some additions to construction of toll lines have been made since 1900, but the only special line mentioned is one from Louisville to Nashville. This entire line cannot be considered as a part of the Louisville exchange construction. Its cost is said to have been $40,000—but all this cannot be charged to Louisville toll lines. Half of it, at least, must belong to Nashville, and there are other exchanges tapped by it between the termini, such as Bowling Green, Elizabethtown, Franklin and Edgefield."

The discussion with respect to the toll line from Nashville to Louisville was incidental entirely to another question which had arisen, and was not in connection with the construction of Complainant's plant in Louisville.

Trans., p. 444.

Notwithstanding the fact that the Master insists that the toll line between Louisville & Nashville belongs to all the exchanges between these two cities, yet, after ascertaining the value of the toll lines owned by the Ohio Valley Company on January 1, 1900, the Master, instead of prorating this value among the nine exchanges owned and operated by the Ohio Valley Company at that time, has allotted to the Louisville Exchange the entire value of the toll line system of the Ohio Valley Telephone Company.

That this is improper treatment is so manifest that no proof is necessary to overthrow it, and Complainant excepts to the action of the Master in respect to his method of ascertaining toll line value, and its apportionment to the Louisville Exchange.

"F"

Complainant excepts to the report of the Master in that it fails to report the value of the real estate and improvements thereon, which constitute a part of the Louisville Exchange.

This real estate has cost to March 6, 1909, the sum of.....$ 162,191.42

Its value is equal to its cost.

Dep. of Burton (Trans., p 969).

Dep. of Brand. (Trans., p. 978).

The Master should, therefore, have reported the value of Complainant's real estate and improvements thereon, which constitutes a part of the Louisville Exchange, and having failed to do so, Complainant excepts.

"G"

Complainant excepts to the report of the Master in not allowing anything for "Supplies" and "Working Capital."

It is apparent that these things are necessary in order to conduct a business. There must be supplies on hand to care for the plant from day to day; there must be *some money* on hand to handle the business. All these things are recognized and allowed by the different experts. Mr. Polk says that he thinks that supplies and furniture and fixtures should be allowed to the extent of $20,000.00, and that there should be from $10,000.00 to $20,000.00 for working capital.

Trans., p. 1410.

The Chicago Commission allowed in a plant costing $18,773,333.00, including real estate, tools and supplies, furniture and fixtures, supervision and engineering, interest and insurance, bank balance and brokerage, the following amounts:

Tools and supplies	$ 250,000.00
Bank Balance	300,000.00
Or a total of	$ 550,000.00

Trans., p. 825.

Complainant, therefore, excepts to the report of the Master in not including any of these items in his estimate of the value of the property.

Summary.

Complainant insists upon a valuation of its plant, excluding toll lines and real estate, as of March 6, 1909, of	$1,702,391.68
Real estate and improvements	162,191.42
Total	$1,864,583.10

The foregoing figures do *not* include franchise, going business, interest, working capital and supplies.

That all of these items are proper to be included in the valuation of the plant is apparent, but Complainant is content with the values above set out, and allows all these omitted items to offset deterioration in the plant, or any lessening of its value below that of a newly constructed plant.

Therefore, Complainant insists that the Master is in error, and should have reported the present value of Complainant's plant and property in the City of Louisville, as of March 6, 1909, and the date of filing his report to be:

Exchange plant	$1,702,391.68
Real Estate	162,191.42
Total	$1,864,583.10

THE MASTER'S REPORT.

III.

"The gross earnings and the net earnings of the Complainant upon its plant and property employed in its business in said City for the years 1905, 1906, 1907 and 1908, stating separately as to each of said years, and giving the percentage of net income in each year, and whether said percentage is inclusive or exclusive of any allowance for depreciation of property and plant or claims for damages for personal or other injuries."

OPERATING EXPENSES OF THE COMPLAINANT IN CONDUCTING ITS BUSINESS IN THE CITY OF LOUISVILLE DURING 1905, 1906, 1907 AND 1908, ACCORDING TO COMPLAINANT'S BOOKS.

	1905	1906	1907	1908
1. General Expenses (pro rated)	$11,205.34	$11,270.15	$11,226.76	$ 9,531.29
2. General Expenses (direct)	29,271.49	35,948.37	34,826.91	32,545.46
Total	$40,476.83	$47,218.52	$46,053.67	$42,076.75
3. Operating Expenses	84,264.54	80,738.06	79,661.04	75,440.28
4. Maintenance	49,819.14	52,796.93	65,616.31	54,705.91
5. Reconstruction	41,051.02	40,626.07	41,895.10	31,450.07
6. Instrument Expense	11,559.76	12,518.70	13,372.49	13,722.52

TOTAL OPERATING EXPENSES.

Year 1905	$227,171.29
Year 1906	$233,898.28
Year 1907	$246,598.61
Year 1908	$217,395.53

The classified gross earnings of Complainant for the years 1905 to 1908, both inclusive, as they appear on its books, are as follows:

	1905	1906	1907	1908
1. Exchange Service	$264,675.13	$280,076.12	$297,501.14	$307,431.55
2. Proportion of Toll Earnings	6,539.92	7,064.91	8,030.15	7,632.11
3. From Telegraph Companies	983.88	1,018.12	939.48	761.79
4. From American Telegraph & Telephone Company	2,865.29	3,427.09	3,864.17	3,272.37
5. Private Line Rentals	1,342.01	1,079.92	1,153.91	.....
6. Pole Service and Attachments	953.11	1,096.28	1,177.75	1,229.99
7. List Advertisements	751.83	2,497.25	2,984.22	3,151.59
8. Telegraph Drops	215.49	976.40	2,110.61	2,130.55
9. Messenger Fees	862.02	812.40	769.15	658.30
10. Removals and Miscellaneous	1,001.12	680.53	3,278.70	2,682.97
Gross Total	$280,189.80	$298,729.02	$321,809.28	$328,951.52
Deduct bad debts	10,366.42	4,230.58	2,050.77	3,113.22

TOTAL GROSS EARNINGS OF COMPLAINANT AS PLACED TO THE CREDIT OF LOUISVILLE EXCHANGE.

Year 1905	$269,823.38			
Year 1906		$294,498.44		
Year 1907			$319,758.51	
Year 1908				$325,838.30

In 1908 "Private Rentals were reported from the Exchange and included in $307,431.85 'Exchange Service'."

In the above list of classified gross earnings of Complainant the first item which was called to my attention is No. 2, "Proportion of Toll Earnings." There is in the record much evidence which was directed to the Toll Line operations of Complainant Company in the City of Louisville. The object of this testimony was to determine whether or not the Louisville Exchange receives its proper proportion of the Toll Earnings which originated in Louisville. The amount of such earnings which is allotted to the Louisville Exchange is fifteen per cent of the total of outgoing messages. The salaries of toll line clerks and operators, as well as wages of those engaged in the maintenance and repair of toll lines, are charged to Expense Account and Construction Account, respectively, of the Louisville Exchange.

Trans., p. 404.

The Exchange in Louisville is operated as a whole, and the toll lines are embraced in the operation. There are no pole lines leading out of Louisville which carry toll lines exclusively. (Trans., p. 456.) Hence it is that the maintenance and repairs of all pole lines leading out of Louisville, whether such lines carry toll lines or not, are charged to the Louisville Exchange. It appears further that the equipment of the Toll Department, such as switchboards and toll trunks, have been charged to Construction Account of the Louisville Exchange.

Trans., pp. 328, 331 and 333.

The last items mentioned, equipment of Toll Lines Department, are probably included in the total cost of toll lines of the Ohio Valley Company as reported by the accountants. This amount was a little more than $125,000.00. But be that as it may, the evidence shows that the salaries of employes who perform duties in the Toll Department, as well as the wages and salaries of laborers and others who are engaged in maintaining and reconstructing the toll lines, which bear

toll wires in connection with exchange wires, are all charged to and paid by the Louisville Exchange.

In accordance with what is alleged to be a general custom among telephone companies which operate toll lines in connection with an exchange, the Complainant allots to the Louisville Exchange fifteen per cent of the toll revenues which originate in the City of Louisville, and pays over the remaining eighty-five per cent to the general company for its general purposes. I have been very much perplexed by this state of affairs, as disclosed in the evidence. Custom of trade among merchants has generally received the sanction of the courts. The reason of this is obvious, because merchants trade with each other at arm's length, and what is generally done under such circumstances ought to be and is generally upheld by the courts. But the custom here testified to is a very different thing from the custom of merchants. The parent company manages and controls its subsidiary departments as it deems best. The subsidiary department occupies no position of independence, and, in fact, does not and can not raise a protest. And when it appears, as in this record, that the Louisville Exchange is required to pay all, or nearly all, of the operating expenses of the Toll Line Department and in return is given compensation that is utterly insufficient to pay the expenses it is required to pay, such a custom does not and ought not to appeal to the judicial mind.

Mr. Caldwell and Mr. Smith emphasize the fact that the toll line connections are arranged for the convenience of the subscribers, so that at a moment's notice any subscriber in Louisville may connect with the Long Distance Department, and that this accessibility is an important factor in determining what are reasonable or unreasonable rates to be charged the subscribers.

This argument would be plausible if the Toll Service and its conveniences were furnished by a stranger company, in which case the fair and reasonable distribution of the revenues and the proper allotment of the cost of operation would be regulated and controlled by a solemn contract between independent parties. But Complainant is the owner of the toll lines. It operates them and is entitled to receive and does receive the revenue. It is also the owner of the

Louisville Exchange. The question then is whether or not the division of toll line revenues, as set out above, is fair and reasonable under existing conditions.

The Toll Department and all its apparatus and employes are located in the Main Exchange Building of Complainant. No part of the rent nor taxes nor insurance on this building, nor any part of the insurance on the toll switchboards and equipment are charged to the Toll Department, but all of same are charged to and paid by the Louisville Exchange out of its earnings. The salaries of toll clerks and messengers are also paid by the Exchange. Nor is any part of the salaries of the Private Branch Exchange Operators paid by the Toll Department, but these also are all charged to the Exchange.

It is shown by Mr. Warren (Trans., p. 1089) that a claim for personal injuries, amounting to $1,500.00, was paid in 1905 to a toll operator who was injured while engaged in the Toll Department, and that this amount was charged to and paid by the Louisville Exchange.

I find that for the years 1905, 1906, 1907 and 1908 the Louisville Exchange has been charged with and paid out as salaries for toll operators, toll chief and telegraph operators, toll clerks and messengers, the following amounts:

1905	$ 11,661.80
1906	13,616.89
1907	13,126.97
1908	9,680.10

For the same years the fifteen per cent of the earnings of the Toll Department has been credited or paid to the Louisville Exchange as follows:

1905	$ 6,539.92
1906	7,064.91
1907	8,030.15
1908	7,632.11

These items standing alone show a large loss to the Louisville Exchange by reason of the Toll Department. In addition to the above, I find that the Complainant charges up against the Louisville Exchange the rent of all its exchanges, and in addition thereto requires the Exchange to pay the taxes and insurance and repairs on said structures.

It is vigorously insisted by the City, and with much plausibility, that the Toll Department should be charged with its proportion of the general expenses of the Exchange, with printing, stationery, with legal expenses, with advertising, incidentals (operating), traveling expenses and incidentals (repairs), but in view of my findings as to the Toll Department, I will not disturb the last named accounts.

There is another branch of this question that requires notice. It appears that the maintenance repairs and maintenance reconstruction of toll lines and the toll equipment are paid by the Louisville Exchange. What the cost of the labor and materials for these purposes amounts to, I have been unable to ascertain from the record. That it is a substantial sum may be assumed.

The mode of conducting a great business like the one I am considering ought not to be lightly or inconsiderately interfered with, but as to the matters now under consideration, the evidence is of such a character that one is forced to the conclusion that the toll line revenues ought not to be segregated from the exchange revenues.

If the toll business ought to be treated as claimed by Complainant, that is, as a separate and distinct department of Complainant's business, then in fairness it ought to be required to pay all the expenses of its operation, and the Exchange ought to be fairly compensated for its services in aid of the toll line business; but very nearly the entire burden of conducting the toll business has been imposed on the Exchange.

The proper relation of the Toll Department to the Louisville Exchange is a most important factor in determining the revenue belonging to the Exchange, as well as arriving at the proper cost of operating the Exchange. The officers of Complainant, and their witness, Wil-

kinson, in their testimony, have assumed the correctness of the methods of conducting the toll business as above outlined. From what has been said, it is obvious that the Exchange in Louisville would be more remunerative if the Toll Department were not in existence, unless there be merit in the contention that the existence of the toll lines has a direct tendency to attract and increase the number of subscribers. I am not disposed to attach importance to this last suggestion.

It is further true that the Toll Department could not be as profitably conducted, unless it were intimately connected as it is with an exchange. The Complainant owns and controls both departments. Complainant has introduced testimony which shows that the Toll Department, as it is operated, is very profitable, while the Exchange is unremunerative. This condition, as appears from the evidence, is brought about, as I have shown, by the arbitrary allotment of all operating expenses of the Toll Department to the Exchange, and by setting aside only fifteen per cent of its revenue to the Exchange, and by passing eighty-five per cent thereof to the general surplus or reserve fund of Complainant.

While there are some employes of Complainant whose duties are confined to the Toll Department in Louisville, there are many others whose duties are divided between the exchange operations and those of the Toll Department. As already stated, the two departments are located in the same building, and the business of each is intimately and almost inseparably connected with that of the other.

The Exchange is required to pay the total rent of the main building in Louisville where the Toll Department has its headquarters; and, in addition, is required to pay the taxes and insurance and incidental expenses of maintaining the building. I do not find any fault with the requirement that the Exchange should be charged with a fair rental of the various exchange buildings. The evidence shows that the Louisville Exchanges during the years 1905, 1906, 1907 and 1908 were required to pay an average of 8.0675 per cent of the book value of the main exchange as rent. This rent, while somewhat in excess of what similar real estate ordinarily pays in Louisville, might not be deemed exhorbitant. But in addition to the above, Complainant

requires the exchange to bear all the cost of taxes, insurance and maintenance. The rent, taxes and insurance charged to the Exchange aggregate an amount equal to 9.91 per cent of the book value of the real estate for each of the four years named.

If the rent and taxes were paid by Complainant out of its general fund, the average rent on the book value of the main exchange would be 6.227 per cent, which is slightly in excess of the customary rental values in Louisville for the years named.

Under the system of management of its properties in Louisville, Complainant treats the Toll Department as an independent entity, separate from the Exchange. It also treats its real estate in Louisville (all of which is a necessary adjunct) as a separate and independent department. The practical result of this system or method is that the net revenue arising from the operations of the Toll Department, the Exchange and the Real Estate Department, amounts in the aggregate to a considerable sum and is most profitable and remunerative to Complainant.

It appears from Complainant's books that under the existing methods, while the Toll Department and Real Estate Department yield a handsome net revenue, the Exchange in Louisville is not earning a fair annual return on the cost of the plant.

It is clearly inequitable that the Exchange be charged with the taxes or the insurance on the buildings of Complainant; and it is equally clear that the Exchange should not be charged with the cost of operating and conducting the Toll Department.

There is evidence in the record which tends to show that the cost of operating the Toll Department and the taxes and insurance on the buildings belonging to Complainant, ought to be shared by the Toll Department and the Exchange in proportion to the revenue received by each, and this percentage is figured out to be 16 1-4 per cent to be paid by the Toll Department and the remainder by the Exchange. But I am not disposed to accept this tentative solution of the problem.

The Toll Department, which handles long distance messages, is

so intimately connected with the Exchange and its operations that it is difficult to segregate them; the operators are largely engaged in handling both local and long distance business; the pole lines leading out of the Exchange carry both toll lines and exchange lines; the maintenance of these pole lines is borne by the Exchange, and nearly all of the cost of operating the toll business is borne by the Exchange; the Toll Department occupies a part of the Main Exchange Building, yet it pays no rent nor insurance nor taxes nor cost of repairs or maintenance. In addition, Mr. Smith, the Auditor of Complainant (Trans., pp. 328 and 331), frankly states that the cost of construction or reconstruction of the toll switchboard was paid for by the Exchange and charged to Construction Account of Exchange.

I fail to see any just reason for separating the earnings of the Toll Department from the earnings of the Exchange. If all the toll earnings be given to the Exchange and the expense of toll operations and the taxes and insurance be paid out of Exchange earnings, the result will not affect the net cash receipts of Complainant.

I have given this matter much thought and consideration, and I am satisfied that the arbitrary division of the toll revenues at Louisville between the Complainant and the Exchange under all the existing conditions above enumerated, is unjust and inequitable and should not be approved.

It is, perhaps, not unnatural in this controversy that Complainant should, by all plausible means, undertake to increase its Expense Account and decrease its Revenue Account. This effort on its part involves no moral problem, but is purely and simply a question of business propriety. It is more strictly a matter of bookkeeping.

Therefore, if the various expense items above enumerated growing out of the Toll business are allowed to stand, as they appear on the books of Complainant, as charges against the Exchange, the Exchange in return should be credited with the net toll revenues for the four years of 1905, 1906, 1907 and 1908.

The Joint Report of the accountants shows that, according to the books of the Complainant, the total gross earnings of Complainant, as placed to the credit of the Louisville Exchange, were as follows:

1905	$ 269,823.38
1906	294,498.44
1907	319,758.51
1908	325,838.30

The above amounts include fifteen per cent of the toll earnings which are set out supra. In their separate reports, the accountants differ as to the net toll receipts at Louisville for each of the years under consideration. I have attempted to reconcile these differences, but the effort has been unsatisfactory, chiefly because the accountants have pursued different methods of analysis. For instance, the city's accountants have considered and embraced the incoming toll messages as well as the outgoing, and have surcharged the accounts in a few instances, and thus they show that the Toll Department's receipts were greater each year than appear on Complainant's books.

The accountant for Complainant accepts the Complainant's books as correct. In order to avoid sundry technicalities, I give Complainant the benefit of the doubt, and I have accepted these accounts as they appear on its books.

The net Toll receipts, *after deducting fifteen per cent*, which were credited to the Exchange on Complainant's books, were as follows:

1905	$ 37,059.53
1906	40,034.58
1907	45,504.16
1908	43,248.70

With these amounts added to the total gross earnings of Complainant, as shown above, it appears that the total gross earnings were as follows:

1905	$ 306,882.91
1906	334,533.02
1907	365,262.67
1908	360,087.00

Having ascertained the gross earnings of Complainant in Louisville, it becomes necessary to determine the amount of Operating Expenses, in order to ascertain the net earnings, and thus establish the percentage of such earnings for the years 1905, 1906, 1907, 1908.

The Joint Report shows that the Operating Expenses for each year, according to the books of Complainant, were classified as follows:

First: General Expenses (prorated).
Second: General Expenses (direct).
Third: Operating Expenses.
Fourth: Maintenance.
Fifth: Reconstruction.

General Expenses consist of the pro rata proportion of Executive Management Expenses at Complainant's principal office at Nashville, which include general officers' salaries and those of their assistants, and salaries and wages of clerical force, rent, light and heat at principal offices, traveling expenses of officers and incidental expenses.

The Joint Report shows the amount of such prorated general expense for each year as they appear on Complainant's books, as follows:

1905	$ 11,205.34
1906	11,270.15
1907	11,226.76
1908	9,531.29

The accountants employed by the city find fault with these totals and insist that some of the items which are embraced in the totals of General Expenses—prorated—should have been charged

to the Toll Department; and that some of them should be charged to the Supply Department, and some to Expense of Real Extate.

As to the objection first stated, my conclusion as to the proper disposition of the Toll earnings, logically places the expenses of that Department as a proper charge against the Exchange earnings.

Those items which are claimed to be chargeable to the Supply Department amount, on an average, to $830.45 for each of the four years above named. There is much reason for criticizing the operations of the Supply Department, as has been shown heretofore in this Report. But as the elucidation of this alleged error is difficult, and by no means satisfactory, and as the amount in dispute is not large, I have not felt justified in sustaining the point raised.

I find, therefore, the item "Prorate of General Office Expenses" correct, as stated supra.

The next item of General Expenses—direct—and pro rata of General Account, which includes postage, printing and stationery, directory expenses, taxes and legal expenses as claimed by Complainant, amount to the following:

1905	$ 29,271.49
1906	35,948.37
1907	34,826.91
1908	32,545.46

For reasons already assigned, I find that the taxes charged to the Exchange for the years 1905, 1906, 1907 and 1908 should be disallowed. The rent charged to the Exchange is, under the evidence, at a reasonable and customary rate; but if, in addition thereto, the taxes and insurance are added, the charge against the Exchange becomes excessive. I speak now of the Main Exchange only. I do not make any change in the accounts relative to the other three exchanges.

The taxes which I find should be deducted from the General Expense Account are as follows:

1905	$ 1,118.97
1906	1,059.91
1907	1,077.72
1908	1,032.15

Thus I find the General Expenses of the Louisville Exchange for the four years were as follows:

1905		$ 29,271.49
		1,118.07
		$ 28,152.52
1906		$ 35,948.37
		1,059.91
		$ 34,888.46
1907		$ 34,826.91
		1,077.72
		$ 33,749.19
1908		$ 32,545.46
		1,032.46
		$ 31,513.00

The accountants in the case agree as to the total of the next item, to-wit, Operating Expenses, but they differ as to its proper distribution.

The totals of this item for the four years are as follows:

1905	$ 84,264.54
1906	80,738.06
1907	79,661.04
1908	75,440.28

The city insists that the Toll Department should be charged with its proportion of these totals, to-wit:

1905	$	16,517.88
1906		18,247.44
1907		17,660.18
1908		14,533.13
Total	$	66,960.63

These charges against the Exchange should clearly be made against the Toll Department, if the latter be treated as an independent department, as I have shown supra. But, as I have already disposed of this question, it is unnecessary to go critically into an investigation of the correctness of these figures.

In regular order, the next items of expense are Maintenance Repairs. "The charges under this heading are for the current repairs, mending breaks, tightening wires, rectifying 'trouble,' and generally maintaining the property in first-class running order." (Trans., p. 783). "These expenses include salaries and wages of foremen, linemen, electricians and troublemen, materials for repairs of plant, and for replacement of parts which wear out in less than a year; traveling expenses and keep of teams, repairs to wagons and vehicles, coal, conduit and roof rent, fire insurance on plant, payments for damages to persons and property and miscellaneous expenses incident to maintaining the telephone plant in good working condition."

The accountants for Complainant and Defendant respectively, differ as to what should be a proper distribution of these maintenance expenses. For instance, a certain proportion of the traveling expenses of the officers and employes; a certain proportion of the insurance on the Main Exchange, and a personal injury compromise claim, and a certain proportion of incidentals, it is insisted, should be charged to the Toll Department.

These items, for the four years stated, amount in the aggregate, as follows:

1905	$	2,267.95
1906		867.13
1907		1,148.36
1908		630.44
Total	$	4,913.88

But, for reasons stated supra, these items must stand, as the revenue from the Toll Department is credited to the Exchange.

The other objections I disallow, so that the maintenance for the four years must stand as follows:

1905	$ 49,819.14
1906	52,796.93
1907	65,616.31
1908	54,705.91

The next item of expense to be considered is entitled Maintenance Reconstruction. This is a subdivision of Maintenance. (Trans., p. 815.) The items making up this account are mainly salaries and wages, materials and traveling expenses. Why this separate account should have been kept I cannot understand from the evidence. The witnesses on behalf of Complainant admit that the two accounts, Maintenance and Maintenance Reconstruction, are practically one and the same. Mr. Caldwell says the distinction between them is shadowy. Indeed, prior to 1905, no separate Reconstruction Account was kept by Complainant. From 1905 to 1907, inclusive, such an account was kept, but in 1908 was again discontinued and was merged into the Maintenance Account.

The amount of this account, Maintenance Reconstruction, for the four years is as follows:

1905	$ 41,051.02
1906	40,626.07
1907	41,895.10
1908	31,450.07

The account for 1908 is estimated.

I see no reason to disallow these items.

The next item, "Instrument Expense," seems to be agreed to by both accountants, and this amounts to the following:

1905	$ 11,559.76
1906	12,518.70
1907	13,372.49
1908	13,722.52

I therefore find that the total Operating Expenses of Complainant for the four years, including the accounts last above considered, were as follows:

1905	$ 226,052.32
1906	232,838.37
1907	245,520.89
1908	216,363.07

If the operating expenses of Complainant be deducted from the gross revenues as I have found them, the net income for each year will be found as follows:

1905.	Gross revenues	$ 306,882.91
	Operating Expenses	226,052.32
	Net Income	$ 80,830.59
1906.	Gross revenues	$ 334,533.02
	Operating Expenses	232,838.37
	Net income	$ 101,694.65
1907.	Gross revenues	$ 365,262.67
	Operating expenses	245,520.89
	Net income	$ 119,741.78
1908.	Gross revenues	$ 369,087.00
	Operating expenses	216,363.07
	Net income	$ 152,723.93

On page 46 of this Report, I have placed the value of Complainant's plant, as of March 6, 1909, including toll lines, after deducting ten per cent as a proper allowance for depreciation, at $1,355,878.09 This does not include real estate nor working capital.

In order to ascertain the percentage of the net earnings for each of the four years, it is necessary to ascertain what the value of Complainant's plant was at the end of each year from 1905 to 1908, inclusive.

It appears from the Joint Report (Trans., p. 742), that the total amount expended for Construction Account of the plant, stated by years, was as follows, according to Complainant's books:

1905	$ 60,691.21
1906	89,125.15
1907	20,770.42
1908, taken out	4,351.83

At the end of each of the years last named, the value of Complainant's plant, including Toll Department was:

1905	$1,355,878.09
Deduct Construction Account for 1906 and 1907	109,895.57
Value of plant at the end of 1905	$1,245,982.52
1906	1,355,878.09
Deducting amount expended in 1907 for Construction.	20,770.42
Value of plant at the end of 1906	$1,335,107.67
1907, Value of plant at the end of year	1,355,878.09
1908	1,355,878.09
Amount of error in Construction Account taken out	4,351.83
Value of plant at end of 1908	$1,351,526.26

I have found, in answer to Interrogatory No. 5 (see pp. 144-5), that a proper allowance for depreciation will be seven per cent of the value of the plant for each of the years 1905, 1906, 1907 and for 1908, and for subsequent years.

In order, therefore, to make my finding as to the net profit and the percentages thereof, I must show under this division the amount of such depreciation found and how it will affect the net earnings.

The value of the plant has been found supra as of the years 1905, 1906, 1907 and 1908, and the seven per cent depreciation allowed for each of said years is found as follows:

1905	$86,818.77
1906	93,457.53
1907	94,914.66
1908	94,606.83

The amount of depreciation allowed for the four years gives an annual average of $92,449.45

The amount actually expended by Complainant for Maintenance and Reconstruction for each of said years is as follows:

1905	$ 90,870.36
1906	93,423.00
1907	107,511.41
1908	86,155.98

These amounts show an annual average outlay for Maintenance and Reconstruction of ..... $ 94,490.19

The average annual excess of expenditures over allowance for depreciation is 2,050.74

An analysis of the above figures leads me to believe that in a period of ten or fifteen years the allowance of seven per cent for depreciation will be ample. An expenditure for maintenance in one year of an amount in excess of seven per cent will probably be followed in the next year by a requirement of a less amount.

But in ascertaining the percentage of Net Earnings to the value of the plant, it is proper to deduct from the Net Earnings as found above, the average excess of the Maintenance Expense over the average allowance for depreciation.

The Net Earnings were as follows:

1905	$ 80,830.59
Deduct excess of expenditures as above	2,050.74
Leaving Net Earnings	$ 78,779.85
1906, Net Earnings	101,694.65
Deduct excess of expenditures over depreciation	2,050.74
Leaves Net Earnings	$ 99,643.91
1907, Net Earnings	119,741.78
Deduct excess of expenditures over depreciation allowance	2,050.74
Net earnings	$ 117,691.04
1908, Net Earnings	152,723.93
Deduct excess of expenditures over depreciation allowance	2,050.74
Net Earnings	$ 150,673.19

The percentage of Net Earnings to the value of Complainant's plant, for the four years, was as follows:

1905	6.32 per cent
1906	7.46 per cent
1907	8.68 per cent
1908	11.14 per cent

The above percentages are inclusive of allowance for depreciation of property and plant and claims for damages for personal or other injuries.

EXCEPTIONS OF APPELLEE.

"A"

The Master reports Complainant's gross earnings as set out in his report.

The Master states (supra pp. 72 and 73), what he says are the classified gross earnings of Complainant for the years 1905 to 1908, as found by the accountants:

1905	$ 269,823.38
1906	294,498.44
1907	319,758.51
1908	325,838.30

This includes all exchange earnings, 15 per cent on tolls, toll earnings from American Telephone & Telegraph Company, private line rentals, pole service and attachments, list advertisements, telegraph drops, messenger fees, removals and miscellaneous.

"B"

The Master refusing to accept the joint report of the accountants as to what the gross earnings really were for the respective years has undertaken to rearrange the earnings upon a basis of his own, which is not reported by any of the accountants, nor testified to by any of the witnesses, and the first of these items to be noticed is:

Complainant excepts to the report of the Master (supra p. 73), in which he declines to allow 15 per cent of the toll earnings to be credited to the exchange as a proper allowance to the exchange for the service performed by it in handling the toll business.

The records show, without controversy, that Complainant owns and operates a system of exchanges and toll lines throughout a territory one thousand miles long and four hundred miles wide.

Trans., p. 209.

At these five hundred and seventeen exchanges, exchange service is given to local subscribers, and toll or long distance service is given through the exchange to these local subscribers and to the public generally, for a compensation graduated according to distance and the time of the conversation.

It is shown in the record without dispute that the construction of toll lines and exchanges, and receipts from exchanges and toll lines can be and are kept separate and distinct, but that it is impossible to

separate the operating expenses of the exchange from the operating expenses of the toll lines.

Trans., p. 509.

Trans., p. 677.

Trans., p. 459.

It is stated by two of Defendant's witnesses that this separation of expense can be done. One of them, Mr. Polk, gives no way in which it can be done.

Trans., p. 1508.

Mr. Crumb in his deposition, after stating it can be done, when asked to explain how, shows conclusively that it is impossible.

Trans., p. 898.

The record shows that it is the universal custom among telephone companies throughout the system to contract with each other for this service, and fifteen per cent is the maximum amount allowed the exchange for handling the toll business.

Trans., pp. 466, 509 and 677.

It also appears that in more than a hundred cases Complainant has contracts, some of which provide that Complainant shall at some of its exchanges handle the toll business of other companies for a compensation of fifteen per cent of the out-going toll messages, and that many other companies handle Complainant's toll business through their exchanges for the same compensation.

Trans., p. 466.

There is no evidence in the record to the contrary, and no instance is cited in which a higher compensation has ever been allowed to an exchange by a long distance company for performing this service.

The Master (p. 74), states:

> "Custom of trade among merchants has generally received the sanction of the courts. The reason of this is obvious, because merchants trade with each other at arms' length, and what is generally done under such circumstances ought to be, and is generally upheld by the courts, but the custom here

testified to is a very different thing from the custom of merchants. The parent company manages and controls its subsidiary departments as it deems best. The subsidiary department occupies no position of independence, and, in fact, does not and cannot raise a protest."

The Master overlooks the entire testimony with respect to other companies dealing with Complainant on this basis, and Complainant dealing with other companies on this basis. The Master assumes, through inadvertance, no doubt, that the only contracts referred to in the record are contracts between Complainant dealing with itself, with respect to its toll and exchange departments.

This, however, is not a fact. Complainant, of course, makes no contract between its toll and exchange departments. It operates its entire system of exchanges and toll lines as one property; it carries in its general books the construction, receipts and disbursements of each of its five hundred and seventeen exchanges, and its system of toll lines; but for the purpose of ascertaining the earnings of each exchange, and the earnings of the toll lines, it becomes necessary for Complainant to separate the exchange earnings and the toll line earnings, both gross and net. There is no difficulty in separating its gross earnings. That is kept separate and distinct, but when it becomes necessary to separate the expenses between the exchange and the toll lines entering that exchange, the problem is most difficult. It has been attempted to separate accurately the expense of doing both kinds of business at the same place, but it has been found to be impossible.

Trans., p. 510.

Therefore, in order to ascertain the net earnings of an exchange, it must separate on its own books the earnings and expenses of the two kinds of business on precisely the same basis that it is willing to and does contract with other companies, and the basis upon which other companies are willing to and do contract with Complainant. It is for this reason that evidence has been introduced to show the universal custom of telephone companies dealing with each other at arms' length, independent, and each seeking every proper and just advantage.

These companies deal with each other on the basis of the owner

of the toll lines paying to the owner of the exchange fifteen per cent of the out-going messages as compensation for the exchange service in handling the toll business, including necessary central office equipment, rent, operating services, accounting and collecting; and the owners of the exchanges are willing to and do handle the toll business of the long distance companies for a compensation of fifteen per cent of the toll earnings originating at their exchange.

It is also to be noted that no one in this record criticises this basis except the Mutual Audit Company. Neither Mr. Polk, Mr. Levings nor Mr. Crumb criticises this compensation to the exchanges by the toll lines.

On p. 779 of Trans., Wilkinson states:

"RATE OF CONNECTING COMPANIES."

"We find that the Complainant does business with a great many other telephone companies, whose toll lines connect with the Complainant's exchanges, at various points throughout the State of Kentucky, *excepting* Louisville.

19 companies or individuals receive from the Complainant a commission of 15% (or less) on originated messages.

14 companies or individuals agree to interchange services without charge.

2 companies receive 15% with a small added charge for extra facilities furnished.

35 in all.

We submit for your consideration the suggestion that the foregoing facts establish that the 15% commission allowed to the Louisville exchange for the terminal facilities and recording furnished, is a sufficient remuneration for the service rendered.

In this connection, it is proper to bear in mind that the plant and property owned by the Complainant in the City of Louisville, includes the switchboard and other exchange equipment used in affording terminal facilities for long distance traffic."

The separate report of the Mutual Audit Company was prepared by Mr. Farnham, its General Manager, and Mr. Warren, one of its employes.

Trans., p. 1116.

Neither of these witnesses have ever had any experience in the telephone business. Mr. Farnham is not even an expert accountant. He has been a locomotive engineer, a telegraph operator, a train dispatcher, engaged in construction work, electrician, detective, express business, and general manager of some railroad companies, but has never been either a telephone man or an expert accountant.

Trans., p. 703.

Mr. Warren testifies that he never before examined telephone accounts, and has been a bookkeeper throughout his career, being only thirty-two years of age.

Trans., pp. 1026 and 1113.

So far as this record shows, fifteen per cent commission to the exchange for operating and handling of long distance calls from the toll lines *is* the *correct* and *proper* compensation for the service rendered.

It is also shown, and not in any way disputed, that it is an added value to the exchange subscribers to be able to be put into communication with the toll lines so as to receive, or send, long distance calls from their particular station in their residence or business house, and this advantage and benefit is taken into consideration in fixing the exchange subscribers' rates.

Trans., p. 509.

The Master (Post. 178) says:

> "Connection with these long distance lines may be had promptly by subscribers, and this, I consider a most valuable asset, and in my opinion, it will in the future, as in the past, materially aid Complainant in its efforts to secure new subscribers."

If Complainant owned no toll lines, it would, as the Master states, be willing and anxious to make a contract with a long distance company to connect with it and handle its toll business, in order that its subscribers might have this added facility, and would, in fixing subscribers' rates, take into consideration this added advantage, which had been contracted for with the long distance company.

The Master (supra p. 74) states:

"Mr. Caldwell and Mr. Smith emphasize the fact that the toll line connections are arranged for the convenience of the subscribers, so that at a moment's notice any subscriber in Louisville may connect with the Long Distance Department, and that this accessibility is an important factor in determining what are reasonable or unreasonable rates to be charged the subscribers.

This argument would be plausible if the toll service and its convenience were furnished by a stranger company, in which case the fair and reasonable distribution of the revenues and the proper allotment of the cost of operation would be regulated and controlled by a solemn contract between independent parties. But Complainant is the owner of the toll lines. It operates them and is entitled to receive, and does receive the revenue. It is also the owner of the Louisville exchange. The question then is whether or not the division of toll line revenues, as set out above, is fair and reasonable under existing conditions."

The Master, stating that fifteen per cent of the out-going tolls does not appeal to him as being a reasonable division, proceeds to allot to the exchange *one hundred per cent* of the tolls, thus taking the entire revenue of the toll lines and treating it as a part of the exchange revenue.

It is submitted that if fifteen per cent is not sufficient compensation to the exchange, one hundred per cent is certainly too much compensation.

The Master, no doubt, was influenced in his conclusion by assuming that the fifteen per cent commission was largely less than it really is.

He states (supra p. 75) that the fifteen per cent of the earnings of the toll department has been credited or paid to the Louisville Exchange as follows:

1905	$ 6,539.92
1906	7,064.91
1907	8,030.15
1908	7,632.11

The correct amount is:

1905	$	10,482.72
1906		12,280.80
1907		14,774.08
1908		13,693.33

See p. 72, where the proportion of tolls earned includes items 2, 4, 8 and 9, making the totals above set out.

For the foregoing reasons, Complainant excepts to the report of the Master in declining to accept fifteen per cent of the toll earnings as a proper compensation to the exchange for handling the toll business for the long distance lines.

"C"

Complainant excepts to that part of the report of the Master in which he states that the exchange plant is charged with the expense of maintenance and reconstruction of toll lines.

The Master states (supra p. 76):

> "There is another branch of this question that requires notice. It appears that the maintenance, repairs and maintenance—reconstruction of toll lines and toll equipment are paid by the Louisville exchange. What the cost of the labor and material for this purpose amounts to I have been unable to ascertain from the record. That it is a substantial sum may be assumed."

It is not shown anywhere in the record that the cost of maintaining and reconstructing toll lines is charged to the Louisville Exchange. In this the Master is in error. The most that can possibly be claimed is that where a break or accident happens to a pole route in the Louisville Exchange plant which carries toll lines as well as exchange subscribers' lines, that the employe of the company who repairs the break in the subscribers' lines also repairs the break in toll wires. It is only such small items as this,

if any, that can be shown to have been charged to the Louisville Exchange.

But even though the entire toll lines inside the Louisville Exchange area were maintained and reconstructed and charged to the Louisville Exchange, the amount would be too insignificant to affect any result or call for special attention and treatment.

It is shown in the record that there are only eighty toll circuits entering the Louisville Exchange, and a part of these are used to give free service to the exchange subscribers of the Louisville plant to the various small exchanges in metropolitan Louisville.

Trans., pp. 226 and 457.

It is also shown that every toll circuit entering Louisville comes in on exchange subscribers' pole routes.

Trans., p. 456.

These pole routes would have to be maintained whether they carry toll circuits on them or not, and the proportionate amount of the maintenance to be apportioned to toll circuits in comparison with exchange subscribers' circuits is shown as follows:

The proportion of circuits to the number of telephones installed in the Louisville Exchange is sixty-two per cent.

Trans., p. 632.

The number of telephones in use in the exchange is 9,395.

Trans., p. 624.

It thus appears that 62 per cent of 9,395 gives 5,824, the number of exchange circuits in use in the exchange. Assuming that the entire eighty toll line circuits were used exclusively for toll line business, and no part of them were used in giving free service to the Louisville subscribers to the small adjoining exchanges, it would result that less than one and one-half per cent of the circuits in the Louisville Exchange are toll circuits. And thus it is that, assuming they are maintained in the Louisville Exchange area, and charged to the Louisville Exchange Expense Account, the amount is so inconsiderable as to be of no practical use or value in this case. One and one-half per

cent of the entire maintenance and reconstruction expense of the Louisville Exchange, covering switchboards, instruments, poles, wires and all apparatus and material of every kind is for 1908, $1,292.32, but of course the entire amount of maintenance and reconstruction expended in 1908 was not expended on either poles or wires. Even if fifty per cent of the maintenance and reconstruction for 1908 was incurred on account of poles and wires in the Louisville plant, then the amount to be borne by the toll circuits, assuming all of them to have been used exclusively for long distance business, would amount to less than $646.16.

It is, therefore, submitted that the criticism of the Master in this respect is quite immaterial.

"D"

Complainant excepts to the report of the Master in the method by which he reduces the rent of the real estate and improvements owned by Complainant in Louisville.

It has been the practice of the Complainant to carry upon its books its real estate in a separate account. It added no part of the cost or value of its real estate to the plant account. It required the exchange to pay a revenue of not exceeding eight per cent upon the actual cost, but the buildings on the real estate were maintained out of this not exceeding eight per cent, and the exchange paid the insurance and taxes.

This was done as a convenience to Complainant in keeping its accounts. It is not unfair to its patrons, since Complainant is entitled to a net revenue of at least eight per cent (less the repairs on real estate improvements), as compensation for furnishing the real estate and improvements for the use of the plant. Another reason for this is that Complainant does not charge any depreciation against any part of the real estate and improvements in ascertaining depreciation of the plant, and for this reason it is necessary to keep separate the real estate department from the remainder of the plant; but the criticism of this treatment of the real estate only involves a small amount.

In 1908 the exchange paid as rent for the real estate and buildings	$ 13,800.00
Trans., p. 786.	
Complainant paid out of this sum for repairs on the buildings	2,092.48
Trans., p. 787.	
Making a net rental of	$ 11,707.52
The cost and value of the real estate to December 31, 1908, is	160,841.42

Which gives Complainant a net return on its real estate in Louisville for 1908 of only 7.28 per cent.

However, if no rent is to be charged against the plant for the real estate, then the plant value must be increased by the value of the real estate, and in this way the amount for 1908 upon which a net return must be earned is increased by	160,841.42
If Complainant is allowed to earn net only 6 per cent on the value of its plant, the difference is only	2,056.62
It is thus seen that the Complainant's treatment of real estate can only increase the expenses of the exchange, on a basis of a 6 per cent net return	2,056.62

"E"

Complainant excepts to the following language from the Master's report; (page 77).

> "It is further true that the toll department could not be as profitably conducted unless it were intimately connected as it is with an exchange. The Complainant owns and controls both departments. Complainant has introduced testimony which shows that the toll department as it is operated is very profitable, while the exchange is unremunerative. This condition, as appears from the evidence, is brought about, as I have

shown, by the arbitrary allotment of all operating expenses of the toll department to the exchange, and by setting aside only fifteen per cent of its revenue to the exchange, and by passing eighty-five per cent thereof to the general surplus or reserve fund of Complainant."

The Master is entirely in error in this statement. No proof was introduced showing whether the toll department was remunerative or unremunerative. The toll department was not under inquiry, and no proof was offered by either party to show the result of the operation of the toll lines, nor did the Master request any such proof.

The Master assumes that eighty-five per cent of the toll line receipts are net profits, and are passed to the reserve account of Complainant. Complainant excepts to this statement. Such matters were not gone into in the evidence because there was no inquiry directed to this part of the Complainant's business by the Court in the Order of Reference.

There is no evidence in the record that the toll department could not be as profitably conducted if it were independent of the exchange, and the statement that its intimate connection with the exchange is responsible for its prosperity is a conclusion of the Master without evidence to support it.

"F"

Complainant excepts to that part of the report of the Master (p. 79), where he states.

"I fail to see any just reason for separating the earnings of the toll department from the earnings of the exchange. If all the toll earnings be given to the exchange, and the expenses of toll operations and taxes and insurance be paid out of exchange earnings, the result will not affect the net cash receipts of Complainant."

In this statement the Master again assumes that the only expense connected with the toll department is that performed by the exchanges for which they receive fifteen per cent commission.

This assumption leaves out of view entirely the expense of maintenance, reconstruction and other expenses in connection with the operation of a toll line system. It ignores the many items of expense which of necessity must be incurred in keeping toll lines free from obstructions, keeping insulation in proper condition so that the lines may be used by Complainant's patrons. It leaves out of view the enormous expense of erecting these pole lines throughout the entire area of Complainant's territory, the taxes, damages, various other items of expense in constructing, maintaining and reconstructing the toll line system.

"G"

Complainant excepts to the report of the Master in stating that its books show operating expenses as set out in his report.

The Master sets out (p. 72), what he says are the operating expenses of the Complainant for the years 1905 to 1908 inclusive, "*according to Complainant's books.*"

In this the Master is in error. These are the operating expenses of Complainant as corrected and classified in the joint report of the accountants, *and are not what the books of Complainant show*, but are essentially different.

Trans., p. 745.

The joint report of the accountants shows operating expenses as follows:

1905	$227,171.20
1906	233,898.28
1907	246,598.61
1908	217,395.53

The books of Complainant show operating expenses as follows:

1905	$240,263.39
1906	247,130.03
1907	260,126.33
1908	227,495.66

There is a difference between the operating expenses as shown on Complainant's books and the amount reported in the joint report of the accountants as follows:

1905	$ 13,092.10
1906	13,231.75
1907	13,527.72
1908	10,100.13

A part of the difference in each of these years is accounted for as follows:

Complainant in keeping its books charges up all exchange earnings under the head of "Revenue." This is done because these charges are placed upon its books before it is known whether all these accounts can be collected. Thereafter, when it is ascertained that any accounts are uncollectible, they are charged as expenses, which offsets a like amount of revenue. This is done because it is more convenient in keeping the books to do it this way.

The accountants, in making up their joint report, knowing what revenue had been collected, stated the net revenue that had been collected by Complainant, and, therefore, did not charge uncollectible accounts as an expense. The result to Complainant is the same, and its books at the end of any given period would show larger gross earnings, and larger expenses by the exact amount of uncollectible accounts, but the one would offset the other. The accountants have eliminated bad debts, both from the earnings and expenses, thus leaving earnings and expenses without being encumbered with uncollectible accounts.

So that, as stated, a part of the difference in expenses between the books of Complainant and the joint report of accountants, as above set out, is as follows:

	Bad Debts.	Net Difference.
1905	$1,679.39	$11,412.71
1906	1,519.41	11,712.34
1907	2,344.94	11,182.78
1908	3,707.34	6,392.79

Trans., Exhibit attached to p. 474.

Substantially all the remainder of this difference is accounted for in the following way:

During the time the Mutual Audit Company were examining the books of Complainant they had in their employ at Nashville, Tenn., but *not* in the office of Complainant, where they were engaged in their work, a man by the name of Settle, who had been for many years local cashier of Complainant at its Louisville Exchange. It was developed that he was a defaulter and he was discharged about September, 1908.

Trans., pp. 1005-1006.

This witness occupied a desk in Complainant's office of its Main Exchange Building in Louisville on the first floor. He undertakes to give with great accuracy, during all of the time he was so employed, the exact amount of time various of Complainant's employes spent in the Louisville Exchange, and the time spent by them elsewhere. He undertakes to give the time spent by the Superintendent of the Louisville Division in his office, although the Superintendent's office was on the next floor, and was entered by a door not connected with the floor on which Settle had his desk.

Trans., p. 992 *et seq.*

The Mutual Audit Company, having in its employ this young man Settle, undertook to deduct from the Louisville Expense Accounts a part of the wages and salaries of the men named by Settle in proportion that the time Settle said they were in the Louisville Exchange compared with the time he said they were in other places.

It thus appears that these deductions were made from the expenses as entered upon the books of Complainant, and as shown by the original pay-rolls, *alone* upon the statement of a man who had proven unworthy of confidence, and who had been discharged from Complainant's service.

As soon as these facts were developed in the evidence, proof was introduced by Complainant to show, not only that these deductions from its expenses were unjust, but that it was a physical impossibility for Mr. Settle to have any such knowledge as he claimed to possess,

and upon which deductions of several thousand dollars per annum had been made from the expenses of conducting Complainant's Louisville Exchange.

Mr. Hume, the General Manager of the Company, makes the following explanation:

> "The exchange, in addition to being under the general supervision of a district superintendent, has its local manager, its general foreman of plant or construction, its chief electrician, its chief operator, and the employes that work in these respective departments, and what is there is what would be found in the same size exchange, approximately the same size exchanges as at Nashville and Memphis, no more and no less. As to Mr. Settle's charge that there were men there who were giving one-fourth of their time or any other material part of their time to outside matters, he has made the charge without personal knowledge and without fact. The matter that he has gotten on his mind in a twisted manner is simply this, that in the development of the business around what we term the metropolitan district of Louisville, we have put in a number of small switching exchanges in various sections of the country, both in Kentucky and in Indiana, within a radius of twenty or twenty-five miles of the City of Louisville itself, and at each of these small exchanges, we have employes to take care of the exchange and to give the service from the switchboard. In other words, at each of those switchboards, we have exactly the force we would be compelled to have and that would be found in other small exchanges, even though they might be a hundred miles from any large exchange, but, on account of the fact that to all those exchanges and from all those exchanges there are certain subscribers who have arranged for Louisville service, and the further fact that all the subscribers of Louisville are given access to all these special subscribers in all these exchanges referred to, and given this service without any charge whatever in the way of tolls or additional monthly rate in their exchange, in the interest of their exchange, in the interest of the Louisville service, we allow the manager and the other supervising officers of the Louisville Exchange to do whatever may be necessary in the way of supervising, in watching over the service at these smaller exchanges, but whenever it comes to any actual work, the employment of any of our linemen or troublemen or electrical men or plant men or material shipped to Louisville for the use of Louisville, every item and every

minute of time employed by such employes is reported and the proper credit given on the Louisville account and proper charge made against these smaller exchanges that are not in every respect and, in fact, a part and parcel of the Louisville plant."

Trans., pp. 674–675.

Mr. Hume then shows how impossible it is for Mr. Settle to have been able to determine what portion of time any of these employes spent in or outside the Louisville Exchange.

Trans., p. 675.

Notwithstanding these facts, the accountants, who are merely bookkeepers and did not know anything about the reasons actuating Complainant's officers in charging up the expenses of the Louisville Exchange as they did, have seen fit to deduct several thousand dollars each year from the expenses of the exchange which properly belonged thereto.

However, under the agreement heretofore referred to, if Complainant is bound by the joint report of the accountants, then the total expenses for the four years are as follows:

1905	$ 227,171.29
1906	233,898.28
1907	246,598.61
1908	217,395.53

"H"

Complainant excepts to the report of the Master pp. 82 and 83, where he deducts from the General Expense Account taxes paid on the Main Exchange Building, and charged as an expense against the exchange.

It has heretofore been shown under the head "D" pp. 98 and 99 how real estate is treated by Complainant.

However, the amount deducted by the Master is small and not material in the final result.

"I"

Complainant excepts to the statement of the Master on page 84 in which he states that certain expenses should be deducted as chargeable to toll department in the event the toll department is separated from the exchange.

He says:

> "These charges against the exchange should clearly be made against the toll department, if the latter be treated as an independent department, as I have shown supra. But, as I have already disposed of this question, it is unnecessary to go critically into an investigation of the correctness of these figures."

The Master is giving the figures presented by the Mutual Audit Company upon some kind of a theory that the expenses of the toll business and the exchange business should be divided and prorated on the basis of revenue derived from each.

This is purely a theory which has no evidence to support it, and it is manifestly erroneous. It assumes that the toll department is equally as profitable as the exchange department; it leaves out of view any question of what the total toll expenses of conducting the toll department may have been; expenses are then prorated on the basis of toll earnings; it presumes to pro rate expenses on one business because expenses on another business have been ascertained.

However, if these expenses are to be charged against the toll department and taken out of exchange expenses, then the toll receipts should not be credited to the exchange earnings. The result would not be substantially different from that obtained by charging the expenses to the exchange and crediting the exchange with 15 per cent of the toll line earnings, as Complainant has done in its accounts. The difference between the two amounts is not very material.

The total toll expense, as claimed by the Mutual Audit Company is:

1905	$ 23,536.25
1906	24,671.90
1907	24,478.86
1908	20,239.65

Trans., exhibits 9, p. 1357.

The amount added to exchange earnings, by allowing the exchange 15 per cent of toll earnings, is:

1905	$ 10,482.72
1906	12,280.80
1907	14,674.08
1908	13,693.33

Page 72, items 2, 4, 8 and 9.

The difference is all that can be claimed by any one to have been added to exchange expenses above what is admitted by all to have been exchange expense.

This difference is:

1905	$ 13,053.53
1906	12,280.80
1907	9,804.78
1908	6,546.32

"J"

Complainant excepts to the method by which the Master applies depreciation of plant in arriving at a basis of net earnings for each of the four years, 1905 to 1908, inclusive.

On page 84 supra the Master states:

> "In regular order, the next items of expense are maintenance repairs. The charges under this heading are for the current repairs, mending breaks, tightening wires, rectifying trouble, and generally maintaining the property in first-class running order."

On page 85 supra he says:

"The next item of expense to be considered is entitled Maintenance Reconstruction. This is a subdivision of Maintenance. The items making up this account are mainly salaries and wages, materials and traveling expenses. Why this separate account should have been kept I cannot understand from the evidence. The witnesses on behalf of Complainant admit that the two accounts, Maintenance and Maintenance Reconstruction, are practically one and the same. Mr. Caldwell says the distinction between them is shadowy."

Both maintenace repairs and maintenance reconstruction are a part of the expense of conducting the business. Maintenance repairs is, as stated by the Master, making current repairs. In other words, maintaining the property in an operating condition, *but no part of maintenance repairs* adds anything to the value of the plant, nor, indeed, does it rebuild any part of the plant.

On the other hand, maintenance reconstruction is not simply taking care of ordinary breaks or ordinary repairs so as to keep the plant in an operating condition, but it is a *renewing*, or a rebuilding of parts of the plant. It is the substitution of new construction for old construction.

It is wholly immaterial to the owner of the plant whether these two items be kept separate or not. Both are items of expense in operating the plant. Both items must be treated as expense of conducting the business precisely as operating expenses, insurance and taxes, and various other expenses necessarily incurred in operating a plant. *It is only important to separate maintenance repairs from manitenance reconstruction when it is desired to ascertain the amount of reserve for depreciation.* Before it can be determined what depreciation is to be set aside, it is necessary to first ascertain how much depreciation has been taken care of during the particular year under inquiry. If the plant has been partially rebuilt, to this extent depreciation has already been taken care of, and nothing is to be set aside for that part of the depreciation, and it is for this reason alone that maintenance repairs must be separated from maintenance reconstruction.

A simple illustration of the difference between maintenance repairs and maintenance reconstruction is given by one of the witnesses:

"If you will let me use the illustration, I will take a suit of clothes. During the time that suit of clothes is kept or worn, it is often brushed, sometimes cleaned by a cleaner, and it is giving good service, but there does come a time, notwithstanding the very best treatment that can be given that suit of clothes by a careful man, the most careful care a man can take of it, that it has to be cast aside, but, up to the day it is cast aside, it is giving, as far as wearing is concerned, one hundred per cent service. Now, during that time, using the suit of clothes in connection with the telephone plant, the plant is being maintained by a percentage or sum of money set apart from time to time as may be necessary to do that, but there comes a time necessarily when that thing actually and in fact goes out of commission and out of service, and must be taken out of the plant. Then comes in the question of falling back on this account which has been set apart for depreciation or *de facto* replacement of the property."
Trans., p. 672.

Maintenance repairs and maintenance reconstruction *do* run into each other. They run into each other because the line of demarcation between what is repairs and what is a replacement or reconstruction is vague and shadowy, and, as stated by Mr. Caldwell:

"It is a hazy line in there that requires very careful auditing to determine just where it should properly belong."
Trans., p. 841.

It is plain that, where a new pole route is substituted for an old pole route, this is replacement, or "maintenance reconstruction;" it is a renewal of that part of the plant which has served its life; and, on the contrary, where wires become so slack that the service is impaired, and employes take the slack out of that wire, and tighten it up, this is current repairs, or "maintenance repairs," because no part of the plant has been renewed, but the same wire has been put into an operating condition. If all reconstruction and all repairs were as plain and simple as these two illustrations of renewal of the pole route and tightening up of the wires, there would be no difficulty; but as these two extremes approach each other, the line of demarcation between what is maintenance repairs and maintenance reconstruction becomes vague and shadowy, and it was in this sense that Mr. Caldwell said that "the line between the two required very careful auditing to determine to which item such expenses should be charged."

But, as heretofore stated, it is of not the slightest concern to the owner of the property to determine whether any particular item of expense shall be charged to maintenance repairs, or to maintenance reconstruction, because both are expenses of conducting the business, and must come out of the gross receipts before there can be any talk of profit. It is important, as stated before, only in connection with the inquiry as to what amount of depreciation has been *cared for* in order to determine what amount of *uncared for* depreciation shall be added to the other expenses, before ascertaining net profits.

At this point it becomes necessary to except to the report of the Master with respect to his treatment of

DEPRECIATION.

On page 87, the Master says:

> "I have found, in answer to interrogatory No. 5, that a proper allowance for depreciation will be seven per cent of the value of the plant for each of the years 1905, 1906, 1907, and 1908, and for subsequent years.
>
> "In order, therefore, to make my findings as to the net profit and the percentages thereof, I must show under this division, the amount of such depreciation found, and how it will affect the net earnings."

The Master then gives what he says is seven per cent on the value of the plant as found by him for each of the years in question, and states that the average amount of depreciation allowed for the four years is, per annum, $92,449.45.

The Master then states, on page 88:

> *The amount actually expended by Complainant for maintenance and reconstruction for each of said years on an average is* $94,490.19.

The Master then proceeds to find that "the average annual excess of expenditures over allowance for depreciation is $2,050.74."

The Master then proceeds, on p. 88:

"An analysis of the above figures leads me to believe that in a period of ten or fifteen years, the allowance of seven per cent for depreciation will be ample. An expenditure for maintenance in one year of an amount in excess of seven per cent will probably be followed in the next year by a requirement of a less amount.

"But in ascertaining the percentage of net earnings to the value of the plant, it is proper to deduct from the net earnings as found above, the average excess of the maintenance expense over the average allowance for depreciation."

Upon this basis, the Master proceeds to figure the per cent of net earnings to the value of Complainant's plant as found by him for the four years involved.

Supra p. 89.

"K"

The Master, after allowing seven per cent for depreciation, has included, as a part thereof, maintenance repairs. This is clearly erroneous.

Depreciation is not repairing or maintaining the property or plant in an operating condition. Depreciation is intended to care for silent decay, changes in the art brought about by the evolution in the business, changes required in shifting parts of the plant, owing to the municipal authorities' orders, and unknown but certain disasters which come in a cycle of time.

There is another expense of operating a telephone plant which is not connected with in any way the depreciation of the plant, and that is *maintaining* the property in an operating condition, and called "current repairs," "operating maintenance," "maintenance repairs," or merely "maintenance."

Depreciation does include reconstruction. It embraces reconstruction; and, in addition, embraces evolutions in the art requiring the replacement of parts of the plant that have not worn out, but are replaced because of newer and better apparatus and appliances; and, also, as stated, shifting of plant on account of the necessities of the city, and unknown disasters, or losses, that always come within a cycle of time, and must be provided for out of earnings.

There is no confusion in the record among the witnesses as to "maintenance" and "depreciation."

Mr. Caldwell, Complainant's President, states:

> "Depreciation covers—in other words, when I am considering depreciation and when I am discussing it, it covers quite a wide field. Not only is contemplated the wear and tear that is not observable, or that does not require immediate attention, but it also contemplates the changes in the art, the evolution that has gone on and is going on continuously, and the unknown dangers and hazards that are likely to come up and are sure to arise in some form, not at stated intervals, and not perhaps frequently, but will arise in some form or other and call for extraordinary expenditures. That, I say, is the field that I have before me when I am considering the question of depreciation, and the necessity to provide therefor is imperative. As to how it may be treated, or how it may be kept, it is a subject that will vary and has varied with different people in different lines of business, but whether it is reckoned within the accounts or not, does not alter the fact that the force is working its way all the time, and that it will have to be reckoned with inevitably. In other words, it is a force that is not dependent upon the whims or idiosyncracies or opinions of individuals. They are entirely above and beyond any such influences."
>
> Trans., p. 838.

And again, in reply to a question by the Master, he explains the difference between depreciation and maintenance as follows:

> "If a brick—if something should fall off of this house, a brick or something, and break our route in two there, men would go there to repair that. The cost of doing that would be Incidental Repairs, and it would go into Maintenance, but it would not be that class of expenditure which would be counted as a thing to perpetuate and renew the property. Now, then, all that class of expenses, if it had gone into Maintenance, would have to be taken out, and excluded before you made up the amount that would represent what you term the equivalent of seven and a half per cent (Depreciation)."
>
> Trans., p. 841.

Mr. Crumb, one of the city's expert engineers, says:

"Assuming there are ten thousand telephones and operating, general and maintenance expense of $150,000, *there should be added to those expenses the sum of money based upon the actual cash investment in the plant sufficient to cover the depreciation.* Taking the actual cash investment in the plant at approximately one million dollars, and figuring depreciation at seven per cent, would be $70,000, which should be *added* to the $150,000, making $220,000, which would be necessary for the telephone company to earn to cover the actual cost of operation, maintenance, general expense and depreciation."

Trans., p. 904.

Mr. Levings states that:

"In figuring the expenses of operating a telephone plant, you must allow for depreciation, operating, maintenance, and general."

Trans., p. 1535.

Mr. Polk says that:

"In operating a telephone plant, you must allow for general expenses, operating expenses, maintenance expenses, and, in addition, depreciation."

He speaks of maintenance as "maintenance operating," instead of "maintenance repair," as some of the other witnesses call it.

Trans., pp. 1418 and 1419.

In the statement of the estimated expenses as found by the Chicago Commission in 1907, it is shown under what classification telephone expenses should be grouped, and they are as follows:

Operation, maintenance, general, depreciation and interest.

The commission includes under maintenance the following:

Switchboard repairs, etc., line and telephone repairs, cable repairs, conduit repairs, pole line repairs, line wire repairs, telephone and private branch exchange inspections, out orders, plant changes, etc., care of buildings, etc.

After allowing all of these expenses under the head of main-

tenance, the commission, over and beyond this, allows for depreciation and interest.

Trans., p. 831.

It thus appears that the treatment by the Master of depreciation is erroneous, and his findings as to any return for each of the four years from 1905 to 1908, inclusive, is based upon an erroneous conclusion, to which Complainant excepts.

"L"

Complainant excepts to the report of the Master in finding net earnings for the years 1905 to 1908, inclusive, as shown on page 89, and also the percentage of net earnings to the value of Complainant's plant for same years, and that the above percentages are inclusive of allowances for depreciation of property and plant.

First Basis.

This basis is upon the assumption that the Master allows seven per cent per annum of the value of the plant as a proper amount for depreciation.

The Master states in his report, on page 88, that seven per cent depreciation per annum upon the value of the plant, excluding real estate, is reasonable, and that he allows this amount.

But when he comes to apply this depreciation he does so in an improper manner.

The Master finds on page 86 the balance of revenue over expenses to be:

1905	$ 80,830.59
1906	101,694.65
1907	119,741.78
1908	152,723.93

The Master finds, on page 88, the amount which he allows for depreciation to be:

1905	$ 86,818.77
1906	93,457.53
1907	94,914.66
1908	94,606.83

There was actually expended on reconstruction in

1905	$ 41,051.02
1906	40,626.07
1907	41,895.10
1908	31,450.07

Trans., p. 745.

The amount actually expended on reconstruction each year should be deducted from the amount allowed by the Master for depreciation in order to arrive at the balance, or the reserve for unexpended depreciation.

Deducting the amount actually expended on reconstruction from the total allowance by the Master for depreciation gives a balance of:

1905	$ 45,767.75
1906	52,831.46
1907	53,019.56
1908	63,156.76

This balance of the reserve for depreciation as allowed by the Master should be deducted from the revenue as found by the Master in order to arrive at net earnings. This balance deducted from earnings as found by the Master leaves net earnings of:

1905	$ 35,062.84
1906	48,863.19
1907	66,722.22
1908	89,567.17

But this amount must be further reduced, because the Master

has included the entire toll receipts as a part of the exchange earnings. As has heretofore been shown under "I" (p. 107), the most extravagant claim by any one in the record as to the expenses for the toll department for the respective years, are:

1905	$ 23,536.25
1906	24,671.90
1907	24,478.86
1908	20,239.65

Exhibit No. 9, attached to p. 1356 of Trans.

Total toll earnings:

1905	$ 47,542.25
1906	52,315.38
1907	60,278.24
1908	56,942.03

(These toll earnings are arrived at by adding the toll receipts as shown on page supra 80, and the fifteen per cent of toll business allotted to the exchange on page 72, consisting of items 2, 4, 8 and 9.)

If from the total gross toll earnings there be deducted total gross toll expenses, the result will be the net toll earnings which the Master has included in the net exchange earnings. The net toll earnings are:

1905	$ 24,006.00
1906	27,643.48
1907	35,799.38
1908	36,702.38

In order to correctly ascertain the net earnings of the exchange on this basis it becomes necessary to deduct the net toll earnings from the Master's net exchange earnings, as the Master includes gross toll earnings in exchange earnings, and gross toll expenses in exchange expenses, so that if only net toll earnings be deducted from net exchange earnings, as found by the Master, we thus eliminate toll earnings and toll expenses.

The net exchange profits, on the Master's basis, are:

1905	$ 31,011.45
1906	48,897.72
1907	54,125.47
1908	98,018.02

Deducting therefrom the net toll earnings for the respective years, the result is:

1905, net exchange earnings	$ 7,005.45
1906, net exchange earnings	21,254.24
1907, net exchange earnings	18,326.09
1908, net exchange earnings	61,315.64

It will be recalled that the Master deducted $100,000 from the construction account for the years 1900 to 1908, inclusive, because he said that it was improperly charged to construction. If this $100,000 is to be deducted from construction, then, a part at least, must be added to the expenses of conducting the business during that period, because a part, at least, according to the Master's report, of this $100,000 was expended, and the only controversy is as to whether it was expended in operating the exchange, or in adding to the construction account. However, since the Master leaves it uncertain how much of the $100,000 is expense, no part of it will be added to exchange expense.

If there be deducted the loss which would be sustained under the rates prescribed in the ordinance of	$ 49,721.76
The result is, for 1908, a net profit of only	11,593.88

Second Basis.

This second basis is upon the assumption that Complainant is entitled to no amount for depreciation, beyond the amount actually expended in each year for depreciation.

The Master finds the net earnings to be for:

1905	$ 80,830.59
1906	101,694.65
1907	119,741.78
1908	152,723.93

In order to correctly ascertain the net earnings of the exchange on this basis, it becomes necessary to deduct the net toll earnings from the Master's net exchange earnings, as the Master includes gross toll earnings in exchange earnings, and gross toll expenses in exchange expenses, so that if only net toll earnings be deducted from net exchange earnings, as found by the Master we thus eliminate toll earnings and toll expenses. Eliminating net toll earnings, the result is:

1905, exchange earnings	$ 56,824.59
1906, exchange earnings	74,051.17
1907, exchange earnings	83,942.40
1908, exchange earnings	116,021.55

It will be recalled that the Master, on page 46 supra, has deducted ten per cent of the value of the plant for depreciation, *i. e.*, from January 1, 1900, to December 31, 1908, he says the plant depreciated $138,112.44.

It is apparent that this loss must be considered a part of the expenses of conducting the business. If Complainant had a property which had cost $1,381,124.41, and it depreciated in nine years $138,112.44, if the depreciated value is to be accepted as the present value, then the depreciation, or loss in value of the plant, must be added to the expense of conducting the business.

It is also apparent that this $138,112.44 ought not to be prorated in the expense evenly over the nine years, for the reason that there was very much more property to depreciate in 1908 than there was in 1900.

On the Master's basis, the property was worth on January 1, 1900, $457,579.07.

Supra p. 9.

There was only added to construction that year $166,775.23.

Trans., p. 761.

So that at the end of the year 1900, on the Master's theory the property had cost only $624,354.30; whereas, at the end of 1908,

the Master finds the property had cost $1,381,124.41. It thus appears that this $138,112.44, should *not* be pro rated evenly over the nine years, but a much *larger* proportion should be pro rated on the last four years than on the former years. However, if it be prorated evenly over all the years, the result is a total annual deduction of $15,345.82, the one-ninth of $138,112.44.

This deducted from the net earnings as above, leaves real net earnings on the Master's basis of:

1905	$ 41,478.77
1906	58,705.35
1907	68,596.58
1908	100,675.73

If there be deducted the loss which would be sustained under the rates prescribed in the ordinance of ..... $ 49,721.76
The result is, for 1908, a net profit of only 50,953.97

Third Basis.

This third basis is upon the assumption that the Master should have allowed the 15 per cent of toll receipts to the exchange as sufficient compensation for its service to the toll lines.

The amount of net earnings as reported by the Master, on p. 86, is:

1905	$ 80,830.59
1906	101,694.65
1907	119,741.78
1908	152,723.93

Included in these net earnings are the total toll earnings.
Supra p. 80.

These toll earnings, over and above the fifteen per cent allowed the exchange, amount to:

1905	$ 37,059.53
1906	40,034.58
1907	45,504.16
1908	43,248.70

If this should be deducted from the net exchange earnings, as found by the Master, the result is:

1905, net earnings	$	43,771.06
1906, net earnings		61,660.07
1907, net earnings		74,237.62
1908, net earnings		109,475.23

There must also be deducted a proportionate amount of the depreciation deducted by the Master from the construction account, as shown on page 46, of $138,112.44.

As has heretofore been pointed out, it is not fair to deduct only the one-ninth part of this depreciation from each of the last four years under consideration. A much larger amount than an equal pro rata should be allowed as heretofore shown. However, if the total depreciation of $138,112.44 is pro rated *evenly* over the entire nine years, the result is for each year $15,345.82.

If this item be deducted from the Master's net earnings for each of said years, it reduces the Master's net earnings to:

1905	$	28,425.24
1906		46,314.25
1907		58,891.80
1908		94,129.41

If there be deducted the loss which would be sustained under the rates prescribed in the ordinance of	$	49,721.76
The result is, for 1908, a net profit of only		44,407.65

Mutual Audit Company's Basis.

It will be recalled that the Mutual Audit Company, the accountants selected by the Defendant, made a separate report to the Master, and in this report they find the net earnings for the years in controversy to be as follows:

1905	$	101,010.80
1906		118,737.95
1907		130,012.58
1908		151,612.74

Trans., pp. 1372 to 1374.

These net earnings are arrived at by eliminating what is called toll expenses and toll revenue. There is also eliminated for each of the years the exact amount spent by Complainant on reconstruction, and nowhere is this expense charged in the operation of the exchange for the respective years. They simply deduct the amount expended on reconstruction, stating that this amount should be charged against reserve, but nowhere do they create a reserve to which this reconstruction can be charged.

Trans., p. 1322.

The amount of reconstruction for each year, as found by the Master on p. 85, is as follows:

1905	$ 41,051.02
1906	40,626.07
1907	41,895.10
1908	31,450.07

Deducting these amounts from the net revenue as reported by the Mutual Audit Company leaves net revenue on this basis of:

1905	$ 59,959.78
1906	78,111.88
1907	88,117.48
1908	120,162.67

The Master has stated that the plant has depreciated in the nine years $138,112.44.

Supra p. 46.

If only one-ninth of this amount be deducted for each of the years, which, as above shown, is manifestly unfair, it will result in a further reduction of net earnings of $15,345.82 for each of the years. Deducting this amount leaves net earnings on the Mutual Audit Company's basis for each of the years as follows:

1905	$ 44,613.96
1906	62,766.06
1907	72,771.66
1908	104,816.85

The Mutual Audit Company, in arriving at this result, has deducted expenses which they insist should have been charged against other exchanges, as explained in "G" (p. 101). If these amounts, erroneously deducted by the Mutual Audit Company, be added in expenses for the respective years, it would result in the net earnings, as given above, on the Mutual Audit Company's basis, being further reduced, as follows:

1905	$ 11,412.71
1906	11,712.34
1907	11,182.78
1908	6,392.72

This, deducted from the net earnings as above shown, leaves the net earnings on the Mutual Audit Company's basis:

1905	$ 33,201.25
1906	51,053.72
1907	61,588.88
1908	98,424.13

If there be deducted the loss which would be sustained under the rates prescribed in the ordinance of ..... $ 49,721.76
The result is, for 1908, a net profit of only 48,702.37

The Master finds the value of the plant, exclusive of toll lines and real estate, to be $1,243,011.97
Supra p. 46.

The net earnings on the report of the Master are:

First basis, 1908	$ 11,593.88
Second basis, 1908	50,953.97
Third basis, 1908	44,407.65
Mutual Audit Co.'s basis, 1908	48,702.37

Summary.

Gross earnings:

The Master, following the joint report of the accountants, reported gross earnings:

1905	$ 269,823.38
1906	294,498.44
1907	319,758.51
1908	325,838.30

This includes the 15 per cent of tolls.

Gross expense:

The Master reports gross expenses, as shown in the joint report of the accountants:

1905	$ 227,171.29
1906	233,898.28
1907	246,598.61
1908	217,395.53

Unless Complainant is bound by the joint report of the accountants, these gross expenses must be increased, as shown in "G" (p. 101), as follows:

1905	$ 11,412.71
1906	11,712.34
1907	10,886.81
1908	6,392.79

The real gross expenses, which the Master should have reported, will be, after adding these omitted items last above set out, the following:

1905	$ 238,584.00
1906	245,610.62
1907	257,485.42
1908	223,788.32

The Master should, therefore, have reported the balance of revenue, after deducting expenses, as follows:

1905	$ 31,239.38
1906	48,887.82
1907	62,273.09
1908	102,049.98

The foregoing does not include any allowance for depreciation, *except* the actual amount expended for each of the years on reconstruction. It is only important to show that for the year 1908 the amount expended was only..... $ 31,450.07

Supra p. 85.

Rates Prescribed by Ordinance.

If the rates prescribed in the ordinance had been in effect in 1908, the net profit would have to be reduced by.. $ 49,721.76

Leaving a balance of revenue over expenses for the year 1908 of..... 52,328.22

From this amount there must be deducted *incomplete* depreciation of whatever amount may be allowed.

If the depreciation be allowed as found by the Master on p. 88, amounting to ..... $ 94,606.83

The reserve for, or the incomplete depreciation, will be reduced by..... 31,450.07

Leaving a reserve for depreciation of..... 63,156.76

Or a net loss under the ordinance rates of..... 10,828.54

Complainant excepts to the report of the Master, because he did not so report.

THE MASTER'S REPORT.

IV.

"The said Special Master is directed to make an estimate upon the testimony, and state his conclusions therefrom, as to what would be the reasonably probable gross and the reasonably probable net income of the Complainant from its said plant and property employed in its business in said city for the current year, and the year 1910, if the rates of telephone charges fixed by the ordinance enacted by the legislative body of Defendant and approved by the Mayor on March 6, 1909, should be put into operation and effect.

The accountants, in their Joint Report, agree that if the ordinance rates be put into operation, the loss in revenue to Complainant annually would probably be $49,721.76. From what subsequently appears in their Joint Report, this loss is based upon the hypothesis that this loss will result if there should not be an increase or decrease in the number of subscribers.

The accountants then agree on the following statement:

"Against this probable loss of $49,721.76 a year, will probably be an increase in gross earnings in respect of the natural growth of the business and the increased number of subscribers due to the lowering of rates upon the enforcement of the ordinance. What this increase will amount to, we cannot definitely determine."

It must be borne in mind that the practical effect of the ordinance rates has not been tried. Complainant comes into a Court of Equity and seeks, by injunction, to prevent the operation of the proposed rates, upon the ground that their enforcement would be confiscatory of its property.

In *Knoxville* vs. *Water Works*, 212 U. S., 16, the Court says:

"It must be prepared to show to the satisfaction of the Court that the ordinance would necessarily be so confiscatory in its effect as to violate the Constitution of the United States."

In their separate reports, the two accountants widely differ as to what will be the net results, if the rate ordinance be put in operation. The accountant of Complainant very adroitly argues, and furnishes figures in support of his contention, that the net loss to Complainant, if the ordinance rates be adopted, would be, in 1910 (1911) $18,852.97, and that this net loss would probably decrease annually thereafter.

The accountant of the city does not go into detail as to calculations to the same extent as does Complainant's accountant, but states that the net increase in earnings would be:

In 1910 (1911)	$ 14,972.40
And would be in 1911 (1912)	21,441.82

The reasoning of both accountants on this subject is speculative and hypothetical. Both admit that the lowering of rates will produce an increase in the number of subscribers, and consequently in gross earnings. They also agree that an increase in the number of subscribers will entail an increase in Operating Expenses. One says this increase in expenses will be nominal; the other says it will be substantial.

It is impossible to foresee whether the expected increase in subscribers will be in respect of business 'phones or residence 'phones. This uncertainty must necessarily affect the expected gross revenue. And, to a certain extent, this uncertainty will affect the operating expenses, and consequently the net revenue.

Complainant's accountant shows from the books that the operating expenses vary in a sort of ratio to the number of subscribers. He says in 1906 there were 5,956 subscribers, and the operating expenses were $80,738.06. In 1908, he says, there were 5,158 subscribers—800 less than in 1906—and the operating expenses that year were $75,440.28. He argues, therefore, that a loss of about 800 subscribers shows a decrease in operating expenses of about $5,300.00. This calculation shows an annual saving in expenses of about $6.50 for each subscriber lost.

The statement of this contention shows it is an unreliable basis

of calculation. No account is taken of the other Operating Expenses, and they would have to be analyzed before the above figures could be safely relied upon.

Again, Complainant's accountant assumes that many subscribers who are not content with party lines, will take a private line, and that this probable condition would result in little net increase of revenue.

The views of the two accountants are irreconcilable as to the net results of a lowering of rates. But they do agree that the primary result of the lowering of rates would be an increase in the number of subscribers, and that the operating expenses would thereby be increased, but to what extent there is uncertainty.

It is obvious that the increase in the number of subscribers is deemed desirable by Complainant. The evidence throughout this record shows that Complainant's efforts are mainly directed to this end, and I am persuaded that every such increase must be remunerative to Complainant. After a certain increase in the number of subscribers is reached—say one hundred—it becomes necessary, in the proper conduct of the business, to add two additional operators to the company's force; in addition, a small annual percentage of other expenses becomes necessary, such as additional wiring and maintenance. These items must be considered. Complainant's accountant produces a computation showing that if the ordinance rates be enforced, it is fair to estimate that there will be a natural increase of 483 subscribers the first year, which would probably require 800 stations; and that the taking on of the 483 new subscribers would be at a net loss to Complainant for the year 1910 (1911) of $1,294.00. I cannot accept this result as reasonably probable.

The suggestions of Defendant's accountant on this subject are not satisfactory. Neither accountant seems to have considered all the essential elements of this extremely hypothetical question. For instance, Complainant insists that new wiring would be a necessary expense of putting on the new subscribers. This item appears to have been heretofore charged uniformly to Construction Account. The charge for Maintenance or Maintenance Reconstruction for the first

year would be nominal, and after the second year it would probably be a negligible quantity, in view of the reasonable expectancy that the increase in new subscribers would be continuous.

Defendant, on the other hand, suggests that the salaries and wages of additional operators and Main Office clerks would be merely nominal, as compared with the gross revenue to be received from the new subscribers.

Without discussing this question further, I find that if the ordinance rates be enforced, there will be an increase in the number of telephone subscribers; but the number of such new subscribers is problematical. The new subscribers will probably be of two classes:

(*a*) Those secured as the result of the natural growth and extension of business;

(*b*) Those who may be induced to become subscribers as the direct result of a lowering of the rates.

It appears in evidence that many persons cancelled their subscriptions in 1908 when the rates were raised. It is reasonable to expect very many of these to renew their subscriptions.

It is not possible for me to do more than to express my opinion as to how large will be the increase in the number of new subscribers in case the ordinance rates shall be enforced, nor as to whether the new subscribers will require business 'phones or residence 'phones. All the witnesses who speak of this subject express the opinion that there would be a substantial increase in the company's business. But only two witnesses went further and hazarded a guess as to the probable number or as to the probable financial results.

I am of the opinion that the first year after the new rates shall be in force, say 1911, the net decrease to the company in revenue will probably amount to $30,000.00 below what the Net Earnings have been found to be under present rates in 1908.

In 1912, I am of the opinion that the gain to the company will probably be large and continuous, and that it will probably overcome

the decrease in net revenue entirely. In other words, I believe that in 1912, the net income of Complainant under the ordinance rates would be equal, if not greater, than those for 1908, as given supra under present rates.

In the above findings I have assumed that the net earnings of the company have remained in 1910 as I have found them to be in 1908. But it is not unreasonable to suppose that they were greater in 1910 than they were in 1908 or 1909.

But adopting the net earnings of 1908, as I have found them, under the present ordinance	$ 150,673.19
And deducting what will be the probable loss in 1911 if the ordinance rates be enforced as stated above	30,000.00
The net earnings of the company for the year 1911 under the ordinance rates will probably be	$ 120,673.19
If the value of the plant be assumed to be in 1911	$1,400,000.00
The net earnings as shown, without considering any increase, would yield to the Complainant, net on the then value of the plant.	8.60 per ct.

EXCEPTIONS OF APPELLEE.

The Master states, on page 125, that the joint report of the accountants agreed that if the ordinance rates be put into operation, the loss in net revenue to Complainant would amount to $49,721.76.

"V"

Complainant excepts to the statement of the Master on page 128, *as follows*: "*I am of the opinion that after the new rates shall be in force, say* 1911, *the net decrease to the company in revenue will probably amount to* $30,000 *below what the net earnings have been found to be under present rates in* 1908."

The joint report of the accountants, as has heretofore been shown

and as reported by the Master, states that the loss in revenue under the ordinance rates will amount to $49,721.76 per annum. The record shows beyond any controversy whatever that there will be no decrease in expenses in operating the exchange if the rates prescribed in the ordinance be put into effect.

It is also shown in the record, and without any contradiction, that any increases in patronage will entail *at least* a corresponding increase in expenses, and also in capital account, *i. e.*, new subscribers obtained will necessitate new construction to serve them. In this respect the telephone is different inherently from all other known kinds of business. A water company, gas company, street railway and other like public service companies obtain additional patronage without a corresponding increase in expenses and capital account. They may obtain new patrons without the necessity of increasing their facilities. A new patron enters a street car and pays his fare. This does not entail upon the company the necessity of increasing its equipment, and does not increase its expenses appreciably. The gas company may obtain a new patron and he is served by the existing facilities and appliances, and so with the water company and other public service companies, excepting the telephone company. Each new subscriber of the telephone company must have his own wires leading from his place of business or residence to the exchange. He must have his separate and distinct instrument, which must be installed for his use; his wires at the switchboard must be connected in such way that he may have access to all other subscribers, and all other subscribers may have access to him, which means that increased patronage calls for increased facilities, which brings *at least* a corresponding increase in operating, maintenance and other expenses.

This principle is recognized by the Supreme Court of the United States in *La. R. R. Com.* vs. *Cumberland Tel. Co.*, 212 U. S., p. 426.

The Court says:

> "We say this because the evidence shows that in the case of telephone companies the general result of a reduction of rates in some other kinds of business does not follow,

namely, that there would be an increased demand, which could be supplied at a proportionately less cost than the original business. Such, it is admitted, would be the case generally in regard to water companies, gas companies, railroad companies, and perhaps some others, where the rate is a reasonable one. For example, it is said that it would cost no more, or certainly scarcely an appreciable amount more, to haul a train of two cars both filled than it would to haul the same train with both cars half filled, and if the reduction in rates should result in filling the cars where previously they had not been half filled, there might be an increased carriage at a cost very little more than before, and probably an increased profit. So, in the case of a water company, the reduced rate might result in furnishing more water to consumers already existing, and the increased cost of furnishing the same would be infinitesimal, where there was a supply sufficiently large to fill the demand. So, also, in furnishing gas at reduced rates, the reduction in the rate would very probably result in increased consumption, not only in increased demands from more consumers, but also an increased consumption by consumers already existing, and the increased cost of furnishing the gas would be nothing like in proportion to the increase in consumption. In these cases increased profits might be the results of decreased rates. But with telephone companies, as shown by the testimony of the president of the Complainant, the reduction in toll rates does not bring an increased demand, except upon the condition of corresponding increase in expenses."

The evidence in the record with respect to the future in operating on the schedule of rates prescribed in the ordinance is as follows:

JAMES E. CALDWELL, *President of Complainant.*

This witness states, in reply to an inquiry as to the policy pursued with respect to rates by himself and associates as compared with the policy pursued by the former owners and managers of the Louisville property:

"The former owners had two rates. They had one business rate, that is to say, they had a rate for private or direct telephones, and a rate for private or direct residence purposes. We endeavored to make a variety of rates which

would meet the requirements and wishes of every phase of the community. Our effort was to put the service within reach of everyone in the community. We adopted schedules of rates that were not only a modification of the direct or private business service and the private or direct resident service, but public stations, party-line stations, measured service, and, in the greatest variety, and extending this service not only to the suburbs but well out into the country around Louisville, extending toll line facilities in every direction out of Louisville, so as to offer that community the very greatest sort of value, and expansiveness in the telephone service, we extended it to farmers, market gardeners, dairymen, summer residences, etc., and we endeavored to reach every class and kind of business and individual."

Trans., p. 508.

Again, he says that any decrease in earnings will not decrease expenses; and in reply to an inquiry as to what would be the result to the Complainant if there should be an increase in subscribers owing to the reduced rates, he says:

"Well, if you increase your subscribers you would be compelled to increase your facilities and your capital account. You would be compelled to increase your operating force to take care of the greater number of calls that would go over the system; you would have to encounter certainly a shifting of customers from one class of rates to another, which expense you would be certain to meet, but you do not know what it would be. The growth that would take place in that, you could not tell whether it would be on the maximum or the minimum, or in what direction in the city it would be found; it would all be a matter of speculation so that to forecast the future on that is a matter of speculation and doubt."

Trans., p. 512.

And again, he says:

"My opinion is that we would have to provide a considerable additional capital outlay; that we would get little or no additional gross revenue, certainly we would not get more than would be offset by the additional expense. My

deliberate opinion is, it would be a very losing and disastrous experiment."

Trans., p. 513.

LELAND HUME, *General Manager.*

Mr. Hume states that no man who had any practical experience, or any reasonable information about the business, would be willing to say that if the rates prescribed in the ordinance should be put into effect, that it would result in an increase in patronage without *at least* a corresponding increase in expense. He says such a statement is not a fact, and could not be. On the contrary, he says that an increase in the number of subscribers would entail an increase in the expense of conducting the business, that it would not decrease expenses in any way per subscriber; that an increase in patronage would bring about a proportionate increase in the cost of operating the telephone per subscriber, and that it would be impossible for it to decrease expenses.

Trans., pp. 699 and 700.

He further states:

"When we purchased the Ohio Valley Telephone Company we found what we considered a very small development of the telephone business in Louisville; we promptly set about to provide facilities that would enable us to take on business very rapidly, believing that by providing the facilities that we could then secure the business, and we set about it with the best traffic men that we could procure, men who had established themselves as good traffic men, and solicited business. The rates that the Ohio Valley Telephone Company had formerly charged were not increased, notwithstanding the fact that we proposed to add largely to the exchange if we could, but as the business did not respond except very slowly, we retained those rates, but at the same time added a schedule of rates that were considered very attractive, offering various kinds of service, including the metered service, and measured service, and pay station service, following plans that had been successful in other large cities. Those rates brought about some increase in business, but nothing phenomenal, or nothing that we

thought was in accord with what should be accomplished, and as a consequence, we have, from time to time, put out schedules of rates with attractive features, and we have offered, at Louisville, all the features that were attractive and that were taken hold of by other communities, and I can state that we have never conducted our business in any place where more study has been given to the question of placing before the public various types of service and plans for service than has been done by us in the city of Louisville."

Trans., p. 700.

H. BLAIR SMITH, *Auditor.*

Mr. Smith states that a reduction in rates would not decrease the expenses

Trans., p. 227.

These witnesses not only have a very large experience in the telephone business, but have an intimate knowledge and experience with the operation of the Louisville plant.

Turning to the evidence of the Defendant, we have the same result.

W. H. CRUMB.

Mr. Crumb is a telephone engineer. He states, "Based upon the flat rate basis of charging for telephone service, in my opinion, there is a slight increase in producing telephone service in a given locality in large quantities over what it costs to produce telephone service in moderate quantities, but I believe the cost is often considerably overestimated, and, in fact, very generally overestimated by telephone people; that the cost is not so great as is usually believed to be."

Trans., p. 908.

This simply means that in Mr. Crumb's opinion there would be a slight increase per subscriber in expenses as the number of subscribers increases.

W. C. Polk.

Mr. Polk is also a telephone engineer. He states that as the number of subscribers increases the cost of the plant must also increase.

Trans., p. 1434.

He also states that the effect of putting into force the rates prescribed in the ordinance would result in an increase in the number of subscribers, and that this would result in an increased capital account, and that it would result in an increase in all expenses of conducting the business; that a reduction in rates would not reduce the expenses at all, but that an increase in patronage would increase the expenses per station to a certain point.

Trans., p. 1439.

Mr. Polk also says, when asked in regard to the reasonableness of the rates prescribed in the ordinance, that he would not be willing to invest his money in a plant only costing $1,300,000, including real estate, if it was to be operated on the rates prescribed in the ordinance; and that it would be a risk he would not care to take if his money was involved to any large extent; he might be willing "to take a gamble" for a small amount.

Trans., pp. 1439 and 1440.

In the report of the Committee to the City Council of Chicago, September 3, 1907, it is said on page 12:

> "The average person does not understand why it costs more per telephone to supply telephone service in a large city than in a small city. The assertion of this principle to many seems a paradox. It is regarded as contrary to the ordinary principle of business—that is, that the unit cost becomes less as the volume of business done increases. It is but natural to think that the wholesale principle ought to apply in the telephone business as in other lines. This idea prevails because the ordinary individual does not understand the peculiar features of the telephone business, and does not look beyond the telephone on the wall or on the desk. He does not take into consideration that the real business of a telephone is to furnish service, transmit messages, and not merely to rent instruments.

> This prevailing idea has been constantly brought home to the members of the committee by having their attention called by people thus uninformed to the lower rates existing in other cities; cities between which and Chicago there can be no common basis of comparison. Attention is called to some of the reasons for this exception to that rule of business, so well established."

There is attached as an exhibit to the deposition of Mr. Caldwell a pamphlet giving the reasons why increased patronage entails a proportionate increase in expenses.

Trans., p. 552.

This pamphlet was handed to Mr. Crumb, and he was requested to read it.

Trans., p. 917.

After reading it, he stated that he did not have anything to say specific in reply thereto other than what had been said generally in his deposition.

Trans., p. 952.

But as has heretofore been shown, Mr. Crumb said nothing in his deposition contrary to this known fact in the telephone business, but sustains what is therein said.

There is but one suggestion to the contrary in this entire record, and that is the separate report of the Mutual Audit Company, the so-called experts employed on behalf of the Defendant. In this report it is claimed that a lowering of the rates would result in an increased patronage, and that this would result in increased profit.

Trans., p. 1323.

Mr. Farnham, who wrote this report (Trans., p. 1116), is not a telephone engineer, has never had any experience in the telephone business, and does not appear to know anything about the business (Trans., p. 703). On the contrary, it appears that when he was first employed he went to see Mr. Crumb, a telephone engineer, to ascertain along what lines his investigation of Complainant's books should be made.

Trans., p. 946.

Mr. Wilkinson, the expert for Complainant, gave his deposition, and full opportunity was given to test any statements made in his report, *but* Mr. Farnham did not give his deposition, and no opportunity was given Complainant to cross-examine him and test either his accuracy or his means of knowledge.

In view of the undisputed evidence in this record by all the witnesses qualified to speak, if the rates prescribed in the ordinance of Defendant should be put into effect, it would result in the immediate reduction in gross revenue of nearly $50,000; it would *not* result in any decrease in expenses, and it would certainly result in a large increase to the capital account, if new subscribers were obtained, and these new subscribers would entail *at least* a corresponding increase in expenses.

The Master seems to have relied upon theories of *bookkeepers* to the exclusion of *practical telephone men*, testifying on behalf of Complainant and Defendant. It is not to be expected that bookkeepers will be able to forecast the future as to telephone rates, and the only people who have a right to hazard an opinion upon such a subject are those who have had actual experience in the business, or show themselves to have made a study of the matter.

A reading of the reasoning of the Master upon this branch of the case clearly discloses that he has not considered the statement of any witness in the record except the bookkeepers of the Mutual Audit Company, neither of whom appears to have had any experience whatever in the telephone business, or the experience of examining the accounts of a telephone company.

The Master agrees that the joint report gives the annual loss in revenue under the ordinance rates as $49,721.76.

Supra p. 125.

On p. 128, he says:

> "I am of the opinion that the first year after the new rates shall be enforced, say 1911, the net decrease to the company in revenue will probably amount to $30,000.00 below what the

net earnings have been found to be under present rates in 1908."

To bring about this result it is clear that the revenue of the exchange operating under the ordinance rates must increase enough after they are put into effect to add the difference between $49,721.76 and $30,000.00 to net revenue. The loss to be thus recouped is ..... $ 19,721.76

The greatest amount of net exchange revenue for 1908 under the various bases (p. 122) is $50,953.97. The net revenue to be recouped, $19,721.76, is 38.7 per cent of this amount.

The Master reports the cost of the exchange plant, exclusive of real estate and toll lines, as $1,381,124.41

Supra p. 46.

It is submitted that under the evidence, to gain 38.7 per cent in net exchange revenue it will require at least an addition of 38.7 per cent to exchange plant. That is, new capital must be added to the extent of 535,495.14

So that, at the end of the first year, the exchange plant alone, excluding real estate, will have cost at least $1,916,619.55
And not, as the Master estimates on p. 129, viz. 1,400,000.00

On an earnings basis it is also shown that the Master is in error.

The value of exchange plant with toll lines added is estimated by the Master to be at the end of the first year $1,400,000.00
And the present value of the same plant he gives on p. 46 as 1,355,878.09

Making the new capital to be added the first year ..... $ 44,121.91
Which, he says, will produce $19,721.76 net revenue. That is, the new capital will produce 44.7 per cent net revenue, annually, while the ordinance rates are said to be only reasonable rates, and only capable of producing a fair return upon the capital invested.

Again, the number of telephones in use in the exchange is (Trans., p. 624)	9,395
The revenue of the exchange is derived from the exchange telephones, and to increase the net revenue 38.7 per cent, it will be necessary to add 38.7 per cent to the present number. This will require a gain of	3,636
Making the total number at the end of 1911	13,031

For these reasons, Complainant excepts and insists that:

The Master should have reported that the reduction in revenue under the rates prescribed in the ordinance would have been $49,721.76; *and that a reduction in the rates would not have in any way decreased expenses. Also, that a decrease in rates would probably result in increased patronage, which would necessitate an increase in cost of construction, and at least a corresponding increase in expenses.*

THE MASTER'S REPORT.

V.

"He will ascertain and report from the testimony what would be a fair amount or proportion of annual income to set aside as a substantial provision and allowance for depreciation of Complainant's plant and property employed in its business in said city and the basis of his estimate thereof."

The evidence as to depreciation presents a diversity of views as to what proportion of the annual income of Complainant should be set aside as a provision and allowance to cover depreciation of plant and property employed in Louisville by Complainant.

The general officers of Complainant say that the annual allowance for depreciation should be ten per cent of the value of plant and property. Mr. Smith, the Auditor of the Complainant, fixes seven and a half per cent as the proper amount, and Complainant's accountant says seven per cent will be sufficient. They all admit that the annual outlay for Maintenance and Reconstruction must be deducted from the Depreciation Fund.

In taking up this question, it is a noteworthy fact that no amount has ever been set aside for depreciation by Complainant. The reason alleged is that the earnings of the company have not been sufficient to provide such an outlay. It is insisted by Complainant that in those years when its earnings were not sufficiently large to enable it to set aside a fund to cover depreciation, the deficit should be taken care of out of the earnings of subsequent years. This deficit, it is claimed, represents incomplete depreciation.

Before discussing the actual figures as disclosed by the evidence, I may say that this claim of Complainant is disposed of by the Circuit Court of the United States in *Knoxville* vs. *Water Company*, 212 U. S., 13, 14, where the Court says:

> "Before coming to the question of profit at all, the company is entitled to earn a sufficient sum annually to provide not only

for current repairs, but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste without making provision out of earnings for its replacement."

On page 14 the Court says further:

"If, however, a company fails to perform this plain duty and to exact sufficient returns to keep the investment unimpaired, whether this is the result of unwarranted dividends upon over issue of securities, or of omission to exact proper prices for the output, the fault is its own.

When, therefore, a public regulation of its prices comes under question, the true value of the property then employed for the purpose of earning a return cannot be enhanced by a consideration of the errors in management which have been committed in the past."

While this record does not show that unwarranted dividends have been paid out of earnings, it is claimed by Complainant that the company failed to earn a sufficient amount to cover the annual depreciation of its plant and property in 1905, 1906, 1907 and 1908, and therefore the Court must allow it to apply, out of future earnings, a sum equal to the deficits of former years, as compensation for the incomplete depreciation. In other words, Complainant contends that in 1905, 1906, 1907 and 1908 its earnings at the then existing rates were sufficient to take care of all operating expenses, taxes and insurance, maintenance and reconstruction, but not enough to cover the incomplete depreciation of plant; that the depreciation is not always annual, but, in a long period of time, the plant will require rebuilding or replacement, and it is necessary to begin and lay aside a fund each year, which fund, at the end of a period, will provide the amount necessary to overcome depreciation.

I have considered all of the evidence in the record, and I am satisfied that a fund to cover depreciation of plant is necessary, and this fund should come out of earnings. It has been shown that some parts of the plant begin to depreciate the moment they are put into use, while other parts last unimpaired for years. The poles will last, on

an average, ten years or longer. The wires are shorter lived. The conduit system is of long life—fifty years and longer. The switchboards, under the evidence, last many years. They are composed of separate parts or sections, and by replacing an impaired part or section, the life of the switchboard is extended indefinitely. The only hazard in respect of switchboards is the discovery and introduction of a better pattern. The evidence shows that the switchboards in Louisville are of the best and most approved type as to efficiency and lasting qualities. Thus it is obvious that the percentage of depreciation of the various parts of the plant and property is not subject to a general law or rule. To establish an average is beyond my power, as the evidence does not aid me in this regard.

I will now direct attention to what the Complainant has actually done with reference to depreciation since 1905.

Its books show, as appears in the Joint Report of the accountants, that in 1905, 1906, 1907 and 1908, Complainant expended in repairs or Maintenance and Reconstruction in Louisville, not including real estate	$ 377,960.55
This gives an average per year of	94,490.14
On the value of the plant, as I have found it, as of March 6, 1909, to-wit:	1,355,878.00
The above expenditure is, each year, on an average	7.046 per cent
In addition to this expenditure, it is insisted by Complainant, that for the four years supra, there remains an "unexpended portion of Reconstruction Reserve to be charged against future earnings"	$ 301,640.45
This amount is an average per year of	75,410.11
This claim each year is an average of	5.62 per cent
These two amounts added together make	$ 679,601.00
Or an annual percentage for depreciation of over	12 per cent

The statement of the above figures are startling, when the evidence discloses that the Home Telephone plant in Louisville, which is, in many respects, similar to Complainant's plant, was built anew for about $1,000,000.00. Witnesses for Complainant all testify in substance that the company's plant in Louisville is in nearly perfect condition in all respects.

It may be mentioned in passing, that during January, February, and to the 6th of March, 1909, Complainant spent only $491.65 for Maintenance and Reconstruction. This fact may fairly be accounted for by assuming that no greater outlay was required for such purpose.

I think it is reasonable and fair to assume that the amounts actually expended by Complainant during 1905, 1906, 1907 and 1908, and to March 6, 1909—made, as they were, when this or similar litigation was not contemplated—indicate more clearly than opinions of witnesses what expenditures were necessary to properly repair, maintain and reconstruct the plant. The plant was acquired in 1899, and Complainant took care of and maintained the plant up to 1905 just as it has done since that time.

In that part of the report where the cost of the plant was considered, reference was made to a questionable entry in the books of the Ohio Valley Company. It appeared that that company paid dividends on its capital stock, maintained and reconstructed its plant from year to year out of exchange earnings during a period of eight or nine years. At the end of each fiscal year the Ohio Valley Company wrote off from its "Construction" Account, and passed to "Depreciation" an amount aggregating $135,505.70.

Complainant attacks these bookkeeping entries vigorously, and in *its* Construction Account, it has reversed the entries made by the Ohio Valley Company supra, and that aggregate item of $135,505.70 appears as an integral part of the cost of Complainant's plant immediately after it was purchased from the Ohio Valley Company in 1899.

As to the correctness of this addition of $135,505.70 to Construction Account, and therefore to the Cost Account of the plant, its expert accountant, Mr. Wilkinson, on page 758 of the [illegible]ns., says:

"No such charge for depreciation was called for at all. *The amount actually expended by the Ohio Valley Telephone Company upon the upkeep of its telephone plant, was ample to provide for all reconstruction.*"

This argument, when applied to the claim of Complainant for an additional allowance out of earnings for "incomplete depreciation" over and above the annual outlay for Maintenance and Reconstruction, is conclusive. In further support of the justness of my position, I may refer again to the testimony of Complainant's witnesses, who say that the *physical condition of the plant is first-class in every respect.* (Trans., p. 766 states books in good order.) (Wilkinson's Report, p. 26.) (Smith & Caldwell.)

Again, the claim for depreciation is made on supplies, amounting to an average of $37,711.79 for the years 1905, 1906, 1907 and 1908, and it is also claimed that this Depreciation Fund should be based on the cash working capital used by Complainant amounting on an average for each of the four years to $28,597.45.

The claim to this extent ought not to be allowed.

I wish to say further, that the claim for an annual depreciation of seven per cent on the conduit system and the switchboards, is, in my opinion, not sustained by the evidence. If the value of the conduit system and of the switchboards and of supplies and of cash, be taken from the total value of the plant, it will appear that the amount actually expended each year for Maintenance and Reconstruction is substantially more than seven and a half per cent claimed by the company's officers as proper.

I do not intend by the foregoing to hold that there is no depreciation as to the conduit system and as to the switchboards. All I intend is that the depreciation as to these items ought not to be on a basis of seven and a half per cent per annum.

In view of the foregoing, I find that the fair and reasonable amount or proportion of annual income of Complainant that should be set aside as a substantial provision and allowance for depreciation of Complainant's plant and property employed in its business in Louis-

ville, and including everything except cash working capital and supplies, would be an amount equal to seven per cent of the value of the plant, as above limited, and that the amount expended annually for Maintenance and Reconstruction of the plant should be deducted from the seven per cent fund.

EXCEPTIONS OF APPELLEE.

The Master states, in concluding on this subject, page 144:

> "In view of the foregoing, I find that the fair and reasonable amount or porportion of annual income of Complainant that should be set aside as substantial provision and allowance for depreciation of Complainant's plant and property employed in its business in Louisville, and including everything except cash, working capital and supplies, would be an amount equal to seven per cent of the value of the plant, as above limited, and that the amount expended annually for maintenance and reconstruction of the plant should be deducted from the seven per cent fund."

Complainant excepts to the report of the Master in that he states that while seven per cent is a proper amount to set aside for depreciation, there should be deducted from this all amounts expended annually for maintenance and reconstruction.

The basis upon which Complainant insists upon depreciation, and, so far as this record shows, the only basis that any witness adopts is to set aside a fund equal to whatever per cent of the cost of the plant is thought to be proper by the respective witnesses as a depreciation fund. Whatever amounts are expended during the year for rebuilding or reconstructing any parts of the plant are deducted from this per cent, whatever it may be, and the remainder is the unexpended depreciation fund, or what is sometimes called a reserve or a fund to take care of incomplete depreciation.

It is not proper treatment to charge against this depreciation fund any of the expenses incurred for maintenance of plant. When a plant is being maintained in an operating condition, it is having nothing

added to the value of the plant, it is not a rebuilding or a substitution of new material for old material in the plant, it is simply keeping the plant in an operating condition, such as tightening up wires and other things necessary to keep the plant in a high state of efficiency from an operating standpoint. When the wires are tightened, nothing additional is being added to the plant, and new wire is not substituted for the old wire, but the old wire is simply tightened up so that it can be used in operating the plant.

A homely illustration may be used. A vehicle is maintained in running condition by being washed and greased, but this is not depreciation—it is not substituting any new part of the vehicle for a part which has served its life, worn out and must be renewed. It is simply keeping the vehicle in an operating condition, and so it is when a bolt or nut becomes loosened, and is tightened up. This expense is ordinary repair, or maintenance repair; but when a wheel breaks down and a new one is substituted, this is replacing a part of the vehicle with a new part, and this new part replaced is a charge to reconstruction or depreciation.

So that Complainant insists that the Master is in error in assuming that maintenance is included in the seven per cent allowance for depreciation.

Mr. Polk, in his second deposition, in speaking upon this subject, states that there are two kinds of maintenance—one is called "maintenance of operation," and the other "maintenance of plant."

Trans., p. 1419.

And on page 1419 of the Trans., he states, in figuring the expense of conducting a telephone exchange, that he would allow $40,000 to $45,000, "say $45,000," for maintenance.

And then, on page 1419 of the Trans., he says that he would allow 5 per cent of the physical value of the plant for depreciation, and that he would *not* charge maintenance to this depreciation account.

The Master quotes from the decision of the Supreme Court in *Knoxville* vs. *Waterworks*, 212 U. S., p. 14, where it is said:

"Before coming to the question of profit at all, the company is entitled to earn a sufficient sum annually to provide not only for current repairs, but for making good the depreciation, and replacing the parts of the property when they come to the end of their life."

Notwithstanding the fact that the Master quotes this language, he still insists that *current repairs* must be included in depreciation, while Complainant insists that the language of the Court is as plain as can be written, that current repairs and depreciation are wholly separate and distinct things.

Complainant, therefore, insists that the Master has erroneously included current repairs, or maintenance, in depreciation.

Probably the best analysis of the way depreciation of a telephone plant is ascertained is shown in the report of the committee to the Chicago Council, where the Telephone Commission states what the depreciation per annum on the different items of a plant will be, in their judgment, in the City of Chicago (see Trans., p. 831).

The commission first ascertained what they believed to be the life of each particular item composing the entire telephone plant. They gave the life of underground conduit as being fifty years; underground cable, twenty years; poles, including cross-arms, ten years; subscribers' station instruments, ten years; private branch exchange switchboards, eight years; fireproof buildings, forty years; teams, tools, furniture, etc., four years, and so on throughout the entire list of every item of material entering into a telephone plant.

Having ascertained the life in years of each particular part of the material in the plant, they next ascertained the original cost of each particular part, and then ascertained the per cent to depreciation. In this way they ascertained that underground conduit only depreciates .89 per cent of its original cost per annum; they ascertained that underground cable will depreciate only 3.72 per cent of its value per annum; that aerial cable will depreciate 5.38 per cent of its original value per annum; that subscribers' station instruments will depreciate 8.73 per cent of its original cost per annum; and that teams, tools, furniture, etc., will depreciate 23.92

per cent of their cost per annum. And so on with the other items composing the plant. In this way they arrived at how much each item in the plant will depreciate per annum, and by taking the *average* per annum, based upon the value in dollars of each, the commission ascertained that a telephone plant will depreciate 8.03 per cent of the original cost per annum; and, therefore, the commission sets aside 8.03 per cent of the original cost of the plant per annum for depreciation. This includes everything connected with the plant except supplies and working capital, but *does* include the fireproof buildings.

The basis insisted upon by Complainant is that seven and one-half per cent of the original cost of the plant should be set aside each year for the depreciation fund, and that this seven and one-half per cent of the original cost of the plant must be taken out of gross earnings before there can be any net profits, but in reaching the cost of the plant there is excluded working capital, supplies and material on hand, and real estate and buildings, which leaves the bare plant, and it is only seven and one-half per cent of the bare plant that is considered by Complainant in determining the depreciation fund.

In view of the fact that a telephone plant is deteriorating all the time, and in view of the fact that after the plant has been in existence some years, that different parts of the plant require renewing each year, the process of reconstruction or caring for depreciation is going on continuously, and whatever amount is expended in replacing any part of the plant that has worn out or reached the end of its life, either through decay, wear and tear, or the invention of something which takes the place of that part of the plant, is charged on the books as "reconstruction," and this amount is deducted from the seven and one-half per cent depreciation fund, because it is *pro tanto* taking care of depreciation, leaving the difference between seven and one-half per cent of the cost of the bare plant, and the amount actually expended during that year in re-construction, as the balance to be set aside out of earnings to take care of incomplete depreciation. This incomplete depreciation may arise from several causes, and it does not come evenly

year in and year out, but *does* come in a cycle of time. A telephone plant may escape the necessity for the incomplete depreciation for a number of years, inventions of apparatus or new methods of making cables, or new subscribers' station equipment, or other parts of the plant, are not discovered with regularity, but at intervals of time; disasters, which experience has taught owners and operators of telephone plants, are certain to come in one form or another in a cycle of time. When these inventions or disasters *do* come, then it is not merely seven and one-half per cent of the original cost of the plant that is needed to replace part of the plant, but it is often many times seven and one-half per cent.

And so it is that not only in the telephone business, but in every business where material, machinery, apparatus and appliances are being used, this risk and expense of the business must be taken into consideration, and provided against in order to prevent disaster to the enterprise.

Complainant does not contend that any part of the gross earnings of one year should be set apart to care for incomplete depreciation occurring in preceding years. It only asks that each particular year shall bear its proportion of the annual contribution to this depreciation fund. Complainant does not ask that the expenses of 1908 be burdened with any part of the depreciation which will occur in 1909. But does ask that 1908 be required to bear its proportion of the annual contribution to the depreciation fund.

The fact that Complainant has not in the past set aside as a sacred trust fund a part of its gross receipts from its Louisville plant to care for incomplete depreciation, when the time comes for such expenditure to be made, does not affect the principle it contends for—that is, that each year should be burdened with its proportionate amount, as a contribution to this fund.

In the process of its business Complainant may be compelled to provide this fund for incomplete depreciation from its other properties, from its reserve accounts, from its surplus, from borrowed money, or from the sale of securities. Whether this fund be pro-

vided in one way or another does not concern any one else than Complainant and its shareholders.

This record shows that since 1902 this Complainant has had active and untiring competition to meet, in operating its plant in Louisville.

So that the theory that Complainant *ought* to exact from its patrons a sufficient amount each year to pay all of its operating expenses, all of its current repairs, and provide a sufficient depreciation fund to care for the property when the time comes for its renewal, and over and above all these expenses, to yield to Complainant a fair and adequate return upon its investment is an ideal condition, that can only be approximated according to conditions over which Complainant neither has nor can have control.

The laws under which it is created expressly forbid that it shall either consolidate with or purchase its rival in business. The law demands that Complainant shall to the end exist under conditions which render it utterly impossible for it to obtain a fair reward for the service it renders. It is not a theory, but a condition that confronts it in the conduct of its business in the City of Louisville, and this record abundantly shows it.

The Master, on page 142, after stating that he is satisfied that a fund to cover depreciation of plant is necessary, and that this fund should come out of earnings, states that because different parts of the plant last longer than other parts, and because the percentage of depreciation on different parts of the plant and property is not subject to a general law or rule, states:

> "To establish an average is beyond my power, as the evidence does not aid me in this regard."

Complainant excepts to this part of the report of the Master, and insists that the record does show what amount is necessary and proper within a reasonable degree of accuracy that is necessary to be set aside for the depreciation fund.

Complainant's President, who has been engaged in the business for twenty-five consecutive years, says that:

> "It will not be found very far from ten per cent. It might be something under that, and it might be something more, but between seven and a half per cent and ten per cent is, in all likelihood, the amount that will be found necessary, and these estimates will necessarily vary, and will be varied from time to time as experience is gained."
>
> Trans., p. 511.

Mr. Hume, the General Manager of Complainant, who has devoted at least twenty-five consecutive years to the telephone business, over an area one thousand miles long and four hundred miles wide, comprising a system of exchanges and toll lines, says that "the proper depreciation is from seven to seven and one-half per cent of the cost of the plant."

Trans., p. 671.

He states:

> "Well, that is a matter and a feature of the business that has called for the closest study and attention on the part of the best operating men and the best engineers that could be gotten hold of, I mean, that question of depreciation as applied to telephone properties generally. The same general conditions that govern one in reaching conclusions at one place, enter into consideration at another, but the same results are seldom found, because the conditions confronting a plant in one city are, for the most part, so radically different from the conditions that confront the same kind of a plant in a different city. In the Cumberland Telephone & Telegraph Company's system that has been markedly true, because our lines run from up in Indiana and Illinois clear on through to the gulf coast country, but speaking of our experience in Louisville, a ten-year term, and during that time a great deal of the property having been put there as brand new property, you can only judge by your experience generally, and by the condition of the plant you had ten years ago, and the relative condition of property that has been put in during that time, these succeeding nine, eight or six years and on down to the present, but taking all of that into account, I am sure that the percentage

we are working on is as small as we could dare take with any degree of safety, that is seven or seven and one-half per cent."

Mr. Crumb, a telephone engineer, introduced as a witness for Defendant, states that seven per cent of the cost of the plant is proper for depreciation, and this does not include maintenance repairs.

Trans., p. 904.

Mr. Levings, another witness introduced on behalf of Defendant, states that telephone engineers differ as to the amount of depreciation that should be set aside—that the per cent of the cost of the plant ranges from twelve to fifteen per cent, and when asked to explain what he means by this, says:

"I meant by that expression that there are two ways of considering what is commonly termed depreciation. These two ways are subjects of argument among all engineers, and one way of arriving at a depreciation figure includes certain expenses which other engineers include as maintenance charges. When such a procedure is followed, the depreciation charge naturally is increased over that which is used by an engineer who does not include this disputed maintenance charge. Therefore, I say that some engineers calculate their depreciation with this disputed factor, while I do not."

Trans., p. 1542.

Mr. Levings thinks that in Louisville a depreciation charge of five per cent per annum on the cost of the plant would be sufficient.

Trans., p. 1534.

Mr. Polk, a telephone engineer, was a witness for the Defendant, and says:

"I would set aside (for) the depreciation account practically five per cent of the physical material—physical value. I have set aside fifty thousand dollars a year, and any renewals made I would charge against that account."

Trans., p. 1419.

He further states that *it is at last a mere matter of each man's individual opinion of what is sufficient; that engineers differ; that the man*

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who has best knowledge of what is necessary is the general manager of the company.

Trans., p. 1420.

H. Blair Smith, Auditor of Complainant, who has been such for more than ten years, who has of necessity a ripe experience in determining the life of telephone properties, and who, of necessity, has an intimate acquaintance with the cost and method of operating the Louisville plant for the past ten years, states that from his experience in the telephone business, he believes that a depreciation of seven and one-half per cent on the cost of the plant is justifiable.

Trans., p. 228.

He also states the difference between depreciation and maintenance to be:

> "Maintenance is simply the repair of the property.
>
> Yes, repairing troubles, replacing lines that are blown down, adjusting instruments and replacing light repairs like cords on telephones, and cords of switchboards, resoldering connections, replacing micas and fuses that are burned out and things of that kind.
>
> Maintenance is simply the keeping in repair of the property; and reconstruction is caused on account of depreciation, and is a replacement of the property which is no longer serviceable or must be discarded on account of having become useless, because of newer inventions."

He further states that:

> "Depreciation is the natural wear and tear that occurs to everything that is exposed, everything except the ground. Depreciation in telephony is the depreciation, or rather the antiquation of the plant, as well as its decay."
>
> Trans., p. 228.

This witness also sets out in great detail the different things that are included under each heading of expense. These headings of expense show clearly the difference between maintenance and maintenance reconstruction, and it is made clear that this *is* a difference between the two accounts.

Trans., pp. 214 and 215.

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There is no evidence in this record which in the slightest degree contradicts or varies what has hereinabove been shown to have been said upon this subject.

The Master, on page 143, says:

> "It may be mentioned in passing that during January, February and to the 6th of March, 1909, Complainant spent only $491.65 for maintenance and reconstruction. This fact may fairly be accounted for by assuming that no great outlay was required for such purpose."

In this, the Master has, by inadvertence, misstated the fact. It clearly appears that the item of $491.65 was not for maintenance or reconstruction, but was construction.

Trans., pp. 1051 and 762.

Complainant tendered to the Master the financial operation of the Louisville plant for the whole year 1909, and offered to go into the experience of Complainant with the plant during that year, but the Master stated:

> "Right now I am not able to say whether that would be important or not. When we get through with the proof, if we want it, I will take it myself. I will just order that myself."

Counsel for Complainant:

> "I merely make the tender so it cannot be said later that we did not bring these things down to date."

The Master:

> "I think we had better defer that for the present."
> Trans., p. 691.

For these reasons, Complainant insists that while the Master correctly reported that seven per cent per annum of the bare cost of the plant was a proper amount to allow for depreciation, his application of the depreciation fund is entirely erroneous, and to his method of the treatment of the depreciation fund Complainant excepts.

THE MASTER'S REPORT.

VI.

"He will ascertain and report whether the reasonably probable increase from Complainant's plant and property employed in its business in said city will, within the next few years, amount to a fair annual return upon the reasonable value thereof if the provisions of the ordinance approved March 6, 1909, are put into operation."

I have heretofore found the value of Complainant's plant, the gross and net earnings for 1905, 1906, 1907 and 1908, and the total operating expenses for each of said years, and the percentage of net earnings to the reasonable value of Complainant's plant. I have found what will be a proper allowance each year for depreciation of plant, and I have found what will be the probable net loss to Complainant the first year and second year, should the ordinance rates be enforced; and, basing my calculation on what I find to be the net earnings of 1908, and assuming that the earnings are the same in 1909 and 1910 as they were in 1908, and assuming further that the probable value of the plant in 1911 will be increased from $1,351,878.09 to $1,400,000.00, I find that the probable net income of Complainant

For 1911 will be..... $ 120,673.19
Which would be..... 8.60 per cent

of the then value of the plant.

I have found that in 1912 it is probable that the net earnings of the plant under ordinance rates will be equal to the net earnings in 1908 under operation of the present rates. The net earnings would then be ten per cent on a valuation of $1,500,000.00.

My reasons for so finding are, that the increase in the number of subscribers in 1911 and 1912, should the ordinance rates be enforced, will be large, and that the increase in net earnings thereby will more than offset the loss of earnings that will be caused by the lowering or rates.

I answer the sixth question, therefore, by saying that in my opinion the reasonably probable income from Complainant's plant and property employed in its business in said city will, within the next few years, amount to a fair annual return upon the reasonable value thereof, if the provisions of the ordinance approved March 6, 1909, are put into operation.

EXCEPTIONS OF APPELLEE.

The Master states that, after having as heretofore stated, found the value of Complainant's plant, the gross and net earnings for 1905, 1906, 1907 and 1908, the percentage of net earnings to the reasonable value of the plant, and a proper allowance each year for depreciation of plant, and probable net loss to Complainant the first and second year, should the ordinance rates be enforced, and basing his calculations *upon all these* things, and further *assuming* that the probable value of the plant in 1911 will only be increased less than $50,000, the probable net income of Complainant for 1911 will be at the rate of 8.60 per cent of the then value of the property.

He further finds that in 1912 the net return will probably be ten per cent upon this same value, which he assumes he has found for the year 1910.

The Master states:

> "My reasons for so finding are that the increase in the number of subscribers in 1911 and 1912, should the ordinance rates be enforced, will be large, and that the increase in net earnings thereby will more than offset the loss of earnings that will be caused by the lowering of rates."
>
> Supra p. 155.

Complainant excepts to this finding of the Master, because it is based upon an erroneous assumption of facts, and fails to take into consideration the inherent and essential features of the telephone business.

As has heretofore been pointed out in these exceptions, the Master has proceeded upon a fundamentally erroneous theory of the telephone business. He has failed to take into consideration the fact that as

the subscribers increase, the cost of the plant increases correspondingly.

Trans., pp. 512, 513, 514 and 1434, 1435 and 1436.

Mr. Caldwell says:

"Well, if you increase your subscribers you would be compelled to increase your facilities, and your capital account. You would be compelled to increase your operating force to take care of the greater number of calls that would go over the system; you would have to encounter certainly a shifting of customers from one class of rates to another, which expense you would be certain to meet, but you do not know what it would be. The growth that would take place in that, you could not tell whether it would be on the maximum or minimun, or in what direction in the city it would be found; it would all be a matter of speculation, so that to forecast the future on that, is a matter of speculation and doubt."

Trans., p. 512.

The Master has failed to take into consideration the fact that as the number of subscribers increase the expense of conducting the business per subscriber increases.

Trans., pp. 699 and 1439.

As was tersely stated by the Chicago Commission:

"It is a tradition in telephone circles that the service per telephone costs more as the number of telephones connected with the plant increases, as the number of telephones increases, each subscriber has the opportunity to call upon more people by telephone, and the law of averages would indicate that the number of calls per day from each telephone should increase, thus making the service more expensive to the operating company, provided the service is flat rate service and unnecessary use of the telephone is not deterred by a measured rate charge. This condition seems to have worked out in practice, according to the statements of telephone companies at Cleveland, Indianapolis, and elsewhere, and flat rate service seems to increase in cost per telephone as the number of telephones attached to a system increases."

Trans., p. 826.

There is one witness in the record who has had actual experience in dealing with telephone rates in the City of Louisville, whose testimony is of more service in solving this problem than the theories and opinions of witnesses who have not had experience, however skilled they may be.

Mr. Caldwell, the Complainant's President, says:

> "We have tried and experimented with every conceivable class and kind of rates and every theory of rating that those that were best qualified to talk on the subject, have suggested, we have tried, and our experience there was that every one of them proved disastrous, disappointing and a failure. In other words, we had poorer results, until this last series of rates which we inaugurated some two years ago—they show a betterment of conditions, the others all showed worse, so that it was not a matter of theory, but it has been a matter of actual experience with us in the City of Louisville."
>
> Trans., p. 513.

Experience gained in operating a plant under certain rates is the only safe guide to follow in forecasting the future upon different rates.

La. R. R. Com. vs. *Telephone Co.*, 212 U. S., 426.

Mr. Polk states that it is a *mere gamble* as to whether the rates prescribed in the ordinance are remunerative *even* in a plant *only* costing $1,300,000, including real estate.

Trans., pp. 1439-40.

If, therefore, the value of the plant be added to so as to make its value $1,500,000, and the increased patronage entails a greater expense per subscriber, it is manifest that the net profit would be less on a plant costing $1,400,000 (as the Master assumes it will be—Trans., p. 155) than a plant costing $1,300,000.

For these reasons Complainant excepts to this part of the Master's report, and insists that it is based upon an incorrect theory of the telephone business.

The Master should have reported that the certain result of enforcing the rates prescribed in the ordinance would spell disaster, and the more rapid the growth of the exchange the sooner would disaster overtake it.

THE MASTER'S REPORT.

VII.

"He will, from the testimony, ascertain and report whether the average net income or return from reasonably safe investments in business enterprises in said city approximately resembling that of Complainant, is above or below six per cent upon the reasonable value of the plant or property from which said income is derived."

The evidence adduced in this question shows that there is only one telephone company doing business in the City of Louisville besides Complainant, that is the Home Telephone Company. Its stock and bonds were mainly given to the contractors who built the plant. Some of the bonds and some of the stock were sold to the public. The company has paid four dividends of one per cent each within a given period of eighteen months. It has paid no dividends recently. Its stock has no market value, and its five per cent bonds in the latter part of 1909 were offered at $69.75, but there were few purchasers.

The Louisville Gas Company pays five per cent dividends on its capital stock, and its shares sell at about $95.00. It earns about seven per cent on the money invested.

The Kentucky Heating Company pays three per cent dividends on its common stock and five per cent on its preferred stock. Its common stock, in 1909, was worth, on the market, about $64.00, and its preferred stock $90.00.

The Louisville Lighting Company paid four per cent dividends for four or five years.

The Louisville Traction Company pays four per cent dividends on its common stock, and its market value, in 1909, was $94.00 and its highest price was $147.00. It earns a fraction under five per cent on its common stock.

The Bank of Kentucky pays eight per cent dividends and usually adds to its surplus fund every year.

The Union National Bank pays ten per cent dividends and adds to its surplus fund every year.

In 1909 the Fidelity Trust Company paid twelve per cent dividend.

may be permissible to classify all public utility companies— as traction companies, water companies, gas companies and ating companies—with telephone companies. It is doubtful whether banks should be placed in such a class. But certainly manufacturing and industrial companies are not in the same class with telephone companies.

But, it is insisted that unusual risks and hazards attend the telephone business, and that on account of these hazards, a greater return on the money invested should be permitted by the rate-regulating powers. It is urged that new capital must be continually put into this business, so that its lines and operations may be commensurate with the growth of the cities where they are located; that otherwise, the business must come to a standstill, and new companies will enter the field and take the new business offered and perhaps the old business. It is urged that eight per cent or perhaps ten per cent on the money invested would, therefore, be a fair return.

For the reasons given in my answers to former questions, I find that the average net income, or return, from reasonably safe investments in business enterprises in Louisville approximately resembling that of Complainant, is below six per cent upon the reasonable value of the plant or property from which said income is derived.

If banks should be included in the same class with telephone companies, then I find that the net average income of all such companies is above six per cent per annum in Louisville.

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EXCEPTIONS OF APPELLEE.

The Master reports that Louisville Home Telehpone Company five per cent bonds are selling on a basis of $69.75; the Louisville Gas Company's five per cent dividend-paying stock sells for $95.00 a share; Kentucky Heating Company's five per cent preferred stock sells at $90.00; Louisville Traction Company's four per cent dividend stock at $94.00; Bank of Kentucky pays eight per cent, and usually adds to its surplus fund annually; the Union National Bank pays ten per cent dividends, and adds to its surplus account; the Fidelity Trust Company in 1909 paid twelve per cent.

The Master then states:

> "It may be permissible to classify all public utility companies—such as traction companies, water companies, gas companies and lighting companies—with telephone companies. It is doubtful whether banks should be placed in such a class, but certainly manufacturing and industrial companies are not in the same class with telephone companies."
>
> Supra p. 161.

Complainant excepts to the statement of the Master in stating that the owner of a telephone property is not entitled to the same rate of return on the value of its plant that is received by banks, manufacturing and industrial concerns.

It is apparent from the evidence that there are no greater risks in banks, industrial or manufacturing concerns than is in the telephone business, and it appears from the Master's report on this branch of the case that while a five per cent dividend paying stock of a gas company sells for $95.00, and a traction stock paying a four per cent dividend sells for $94.00, a five per cent telephone bond only sells for $69.75.

The Master further states:

te. "But, it is insisted that unusual risks and hazards at-
haz d the telephone business, and that on account of these
rds a greater return on the money invested should be

permitted by the rate-regulating powers. It is urged that new capital must be continually put into this business, so that its lines and operations may be commensurate with the growth of the cities where they are located; that otherwise, the business must come to a standstill, and new companies will enter the field and take the new business offered and perhaps the old business. It is urged that eight per cent, or perhaps ten per cent, on the money invested would, therefore, be a fair return."

The Master then finds that the average net income or return from reasonably safe investments in business enterprises in Louisville approximately resembling that of Complainant, is below six per cent upon the reasonable value of the plant or property; and that if banks be included with telephone companies, the net average income is a little above six per cent.

Complainant excepts to this part of the report of the Master, and insists that he should have reported that a telephone investment is entitled to ten per cent net return upon the actual investment.

It is shown in the record that as a telephone plant increases its patrons it must increase its capital account, and in order to increase its capital account it must sell its securities, and in order to sell its securities it must show an earning power sufficient to attract new capital to the business.

Mr. Caldwell states a telephone property is successfully financed as follows:

"By an increase from time to time, of its capital stock, has been found the only practical way. Where bond issues have been resorted to, one issue clouds and interferes with subsequent issues, but where additional shares of stock are made and they all stand on the same basis, as they do stand on the same basis, the one issue does not take precedence over or destroy the standing of the next issue, but on the contrary they rather have a tendency to aid each other, and hence that has been found to be the most practicable and satisfactory, and, I may say, the only practical way to finance a telephone system."

Trans., pp. 513-514.

He further states that there must be additional capital invested in the business from time to time to meet the growth of the business.

> "The growth is continued and continuing; it is no let up, but on the contrary continues to grow, and unless the company meets this growth, its usefulness becomes impaired or lessened, and it at once is on the down grade instead of the up grade. It must go forward continuously, it must meet the public requirements, and to do this it must have continuously additional capital."

When asked what effect the earnings have upon its ability to increase its capital account, he states:

> "The whole question comes right there. Unless the company is on a profitable basis, and is doing a business that is profitable, it has no credit, and it is necessary for it to have credit. Therefore, in order to attract new capital, it must present sufficiently attractive profits to cause people to put their investments in the telephone business rather than in some other line of business, and, of course, unless it can show a profit in its business, it cannot possibly influence or attract capital to it. That is the key to the whole financial problem."

And he states that the net profit on a telephone property ought to be an actual cash return on its investment of ten per cent.

Trans., p. 514.

Mr. Polk thoroughly sustains all that Mr. Caldwell says upon this subject. He states that the construction account must be increased year by year; that to get new capital a sufficient return must be shown to attract new investors, and that a telephone property is entitled to *at least* ten per cent net profit.

Trans., p. 1436-7.

The Chicago committee recommended, and the Council approved, a net return to the Chicago Telephone Company of ten per cent.

Mr. Levings says that he does not know any one who has money

to invest in a telephone plant that will not promise *at least* eight per cent profit. He is then asked this question:

> "Do you regard 8 per cent as a fairly reasonable profit for a man to make on his telephone investment?
>
> A. I should say so."
>
> Trans., p. 1539.

A committee of the New Orleans Board of Trade, in investigating telephone conditions in that city, recommended that the company be permitted to earn a net return of ten per cent on its investment, and quoted with approval the following taken from the telephone report of the Merchants' Association of New York having under consideration what constituted a reasonable margin of profit for a telephone company. The report says:

> "The telephone business demands a continuous accession of fresh capital to satisfactorily serve the public. Having in view the importance to the public of constant improvement and expansion and the greatest possible efficiency of telephone service, as well as the necessity of offering an attractive investment to new capital to provide for such expansion, it is the opinion of this committee that to provide a fair return on capital actually and necessarily invested and a proper allowance for contingencies, 10 per cent margin above operating outlays is a reasonable and proper margin in the telephone business. In the various movements hitherto made for the limitation by law of telephone profits, wherever the permissible percentage of profit has been dealt with, this margin has been accepted as a proper one. It has also been specified by law in the case of some other public service corporations."
>
> Telephone Conditions in New Orleans, Trans., p. 495.

Mr. Polk, in his second deposition, states that a telephone company is entitled to a greater return than a steam or street railroad. He states:

> "Corporations have different ways of figuring. Street railways, steam railroads, figure five per cent as a safe return. Of course, a concern like a telephone company, I should consider as more than a fixed railroad, because the nature of its business fluctuates, and there are more risks than would be on a trunk

line of railroad, and I would say it would have a higher return than a trunk line railroad."

He then says:

> "I said I do not think it should be less than 10 per cent."
> Trans., p. 1437.

Complainant, therefore, excepts to the report of the Master on this branch of the case, and insists that he should have reported: That Complainant is entitled to earn per annum ten per cent net upon its plant in the City of Louisville.

THE MASTER'S REPORT.

VIII.

"He will further ascertain and report from the testimony whether the reasonably probable net income of Complainant from its plant and property employed in its business in said city, after making all proper allowances for cost of operation, claims for damages, repairs and depreciation, would, during the years 1909 and 1910, come up to or exceed the said average income upon such other business enterprises if said ordinance should be put into operation, and he will state in his report the results of his estimates and the basis thereof."

For the reasons contained in my report supra, I find from the testimony that the reasonably probable net income of Complainant from its plant and property employed in its business in Louisville, after making all proper allowances for cost of operation, claims for damages, repairs and depreciation, would, during the years 1911 and 1912, exceed the average net income upon such other business enterprises if the ordinance of March 6, 1909, should be put into operation.

My answer to the 7th question supra contains the basis of my answer to the 8th question.

EXCEPTIONS OF APPELLEE.

The Master states under this heading that his answer to the seventh question is the basis of his answer to this question.

Therefore, Complainant excepts to the report of the Master under this heading for the reasons stated in its exceptions to the Master's report under the seventh heading.

THE MASTER'S REPORT.

IX.

"He will also, from the testimony, report his conclusions and the basis thereof as to the reasonably probable extension and increase of the Complainant's business in said city within the present and next succeeding year, and the reasonably probable extent and effect thereof both upon its gross and upon its net income."

The evidence shows that the Complainant Company has thus far constructed its plant with a view to and with the expectation of a substantial increase in the number of subscribers. This policy, under the evidence, I find is wise and prudent, and ought to be approved. The business centers are not apt to be changed. They are generally stable and practically permanent. On the other hand, the residence centers frequently change, and this necessitates a change in telephone lines, and a prudent company will construct its plant so as to be prepared for such changes.

Complainant has laid its conduit system and erected its pole lines and properly equipped same so as to be in a position to take care of more than two thousand new subscribers without delay. The existence of such surplus plant has been criticised by Defendant's experts—not as to the fact of said surplus, but only as to its extent. But I am of the opinion that such surplus as is shown and as stated above, is not unwise or improper.

Should the ordinance rates be enforced, the wisdom of Complainant's foresight in providing its surplus plant will be amply justified.

I do not doubt that by the lowering of the company's rates, independently of the natural growth of its plant, the number of subscribers will be largely increased, and such increase will begin immediately after the lower rates are put into operation. There is no evidence as to whether the number of subscribers has increased naturally or decreased since March 6, 1909. I assume that there has not been any substantial decrease. I have already stated that I think an increase

in the number of subscribers will be remunerative to Complainant. The fact that surplus plant already exists sufficient to take care of more than two thousand new subscribers, removes any doubt on this subject that may have existed. The probable extent of such increase in the number of subscribers, as well as the increase in net earnings to be caused thereby, is problematical. But, considering the statements of all the witnesses, I am of the opinion that if the lower rates should be enforced in 1911, that by the end of 1912, the probable loss in revenue of about $49,000.00, would not only be wiped out, but a substantial increase in net earnings would result, without a corresponding increase in expenditures.

The main increase in subscribers may naturally be expected in the residential sections of the city, as well as in the suburban districts, where much of the surplus pole lines already exist. In the business sections, I take it, there will be smaller increases. If my hypothesis be justified by the actual results, that is, that the main increase will be in the residence 'phones, the evidence shows that there will be a less frequent use of such new instruments than there would be of new 'phones in business houses, and consequently the extra help as to operators would probably not be as large as if the main increase in subscribers were in business houses.

I am, by no means, satisfied from the evidence, that the increase in the number of subscribers will, on an average, increase the cost of operation per telephone or station. In other words, if the company now has nine thousand subscribers, and two thousand additional subscribers be taken on, I do not believe that the cost per station for eleven thousand subscribers will be as great as it is for nine thousand subscribers.

I find, under all the evidence, that the necessary result of an increase in the number of subscribers will be an increase in the gross revenues of Complainant in the next two years; and further, that the net revenues will also be increased, and that this ratio of increase will be continuous.

EXCEPTIONS OF APPELLEE.

The Master, under this heading, states:

> "The evidence shows that the Complainant company has thus far constructed its plant with a view to and with the expectation of a substantial increase in the number of subscribers. This policy, under the evidence, I find is wise and prudent, and ought to be approved. The business centers are not apt to be changed. They are generally stable and practically permanent. On the other hand, the residence centers frequently change, and this necessitates a change in telephone lines, and a prudent company will construct its plant so as to be prepared for such changes."
>
> Supra., p. 168.

The Master also states that Complainant has laid its conduit system and erected its pole lines and equipped the same so as to be in a position to take care of two thousand new subscribers without delay, and this the Master commends as being wise and proper, but adds: "Should the ordinance rates be enforced, the wisdom of Complainant's foresight in providing its surplus plant will be amply justified."

The Master then states that a lowering of Complainant's rates, independently of the natural growth of the plant, will largely increase the number of subscribers, and that such increase will begin immediately after the lower rates are put into effect.

The Master then adds: "The probable extent of such increase in the number of subscribers, as well as the increase in net earnings to be caused thereby, is problematical. But, considering the statement of the witnesses I am of the opinion that if the lower rates should be enforced in 1911, that by the end of 1912 the probable loss in revenue of about $49,000.00 would not only be wiped out, but a substantial increase in net earnings would result, without a corresponding increase in expenditures."

Complainant excepts to this part of the report of the Master, because the evidence shows that surplus facilities are necessary in every

plant, and there must be at all times kept a surplus of facilities to take care of new patrons, and because the Master assumes that increased patronage will not increase expenses and capital account.

In reply to a question as to whether or not it is necessary and proper that new business be anticipated, and facilities provided prior to the offering of new business, Mr. Caldwell says:

> "Yes, for the reason that it requires quite a length of time to provide additional facilities on an exchange and the customers could not be expected to wait so long a time for the service; hence, it is not only necessary but it is practiced in all companies which expect to meet the public requirements, to keep a certain surplus reserve of facilities always on hand, and as they are used up, to provide others, so that they will be able to meet the demands promptly, and any other method would leave the service open to very grave criticism and reflection, for the old customers have an interest in having new ones connected, have an interest quite as important as the new customer, for every new customer gives an additional value and opportunity to all the old subscribers.
>
> Q. What would be the result, practically, if the company should not provide facilities for future growth before such new business was offered, but should wait until the new business was offered before undertaking to provide the facilities necessary to serve the new patrons?
>
> A. Well, as it would often require a year in which to provide additional facilities, it is quite plain what a disappointment it would be and how far short a company would fall of meeting the public requirements, for the customers usually desire the service at once, and certainly could not be expected to wait longer than a very few days. They rather expect to have the facilities supplied to them within twenty-four or thirty-six hours, and they have been accustomed to that so long, that it is now recognized as a fixed condition. If, therefore, conditions should arise that would make delay in providing service longer than this, the company would be considered as wholly inadequate, and indeed, open to the criticism of being a rather poor affair."
>
> Trans., pp. 506-507.

There is no witness in this record who contradicts or varies this

statement in the slightest degree; indeed, the statement itself is so entirely reasonable and self-evident that we apprehend no intelligent witness could deny it.

If, however, this surplus of facilities *should* be used in supplying the additional patrons to be obtained under the ordinance rates, Complainant would have to provide *additional* surplus facilities to accommodate the new subscribers to be obtained on the normal growth of the city, unless it be assumed that Louisville is to stop growing and become a finished city, which no one will admit.

The evidence is that there must be *at all times* a surplus of facilities.

But the Master assumes that the Complainant will find this new patronage at the exact points where the surplus facilities are, and at the same time he says that the new business to be expected will naturally be in the residential sections of the city, as well as in the suburban districts, and that in the business districts there will be smaller increases.

The Master overlooks the evidence on this subject. Mr. Polk states that the surplus cable that he is speaking of exists in the conduits, which, of course, are in the central business portion of the city and not in the suburban or residential sections.

Trans., p. 1447.

But in another place, says the cable system covers the entire city.

Trans., p. 1448.

Just what he does mean is left in doubt. But Mr. Caldwell says there is no such surplus cable facilities, and adds:

> "We carry and aim to carry a certain excess service to take care of customers, as they would come in the ordinary growth, and I do know that we have some surplus here. It might be that we would have that amount of surplus in some conduit space. We might have it in buildings. We

might have adequate space in our buildings, and, as I say, in the conduits, but to say that we have that as a complete equipment, ready to take on those customers, that would not be true."

Trans., p. 836.

Mr. Polk was asked to state what would be the additional expense per subscriber if Complainant obtained eight thousand more subscribers at the points where the cables are; and he said, twenty to twenty-five dollars per station; "that is, if the subscribers are right where they can be served so that it would take nothing but the drop to make the installation."

Trans., p. 1449.

What the witness means by the "drop" is the drop wire from the pole or cable to the residence, or business man's house, interior wiring, instrument and the labor and expense of installing it.

But Mr. Polk did not mean to say that this was all the capital that the company would have to expend in obtaining additional subscribers.

Thereafter, in reply to an inquiry as to what new capital would be required to install eight thousand additional subscribers, he states:

"The question, the way it was put to me, as I understand it, was, assuming that there would be no expense except that of running the drop and installing the telephone at the subscriber's station, what would it cost per station to add eight thousand telephones, and I stated, assuming that those were to be the only expenses, it would cost about $25.00 per line.

Q. What other costs would there be in connection with installing 8,000 new subscribers here in Louisville?

A. The cost would be increased in the switchboards, increased in the trunking facilities between the offices—if 8,000 additional subscribers were added, of course, it would be unreasonable to assume there would be no expense at the outer end; there would have to be a certain number of additional cross-arms put on, a certain number of additional insulators, and a certain amount of aerial wire strung; so

the assumption, of course, is an impossible condition that wouldn't exist."

Trans., p. 1451.

And he again states:

"At the present time the switchboard is valued at $203,000, approximately; 10,000 line equipment would make the present average cost of switchboard for one line twenty dollars and a fraction. In order to place 8,000 more subscribers to the system, they would have to have at least 4,000 additional switchboard capacity average, and as these switchboards grow, being of a multiple character, the cost per line will increase; so it is reasonable to assume that these 4,000 additional lines would cost at least $22.00 per average. That would make an additional expense of 22x4,000, which would be $88,000 for switchboards alone. Also, for the expense at the outer end; stringing what additional aerial wire might be necessary, putting on additional cross-arms, and insulators, we will say, $5.00 a station, 8,000 would make an additional of $40,000 expense. I figure that this would probably be a reasonable additional expense assuming that the cable facilities were ample."

Trans., p. 1451.

So that adding the $25.00 per station, as above stated, amounting to $200,000, to the $40,000 and the $88,000, makes the additional construction account expense $328,000.

But the Master also says that the additional subscribers would come largely from the residential and suburban section of the city. Of course, this means more expense in equipping and serving these patrons than would be the expense of equipping and serving a like number of patrons in the business districts of the city, because it means longer wires, further distances for troublemen and other employes to go to repair telephones and wires, and other expenses necessarily entailed in operating the plant.

This would also mean that the growth of the plant would be upon the cheap rates, and not upon the high rates—that is to say, the growth would be largely upon the residence rates and not upon

the business rates. The great reduction in the rate ordinance comes on the business rate, and not on the residence rate. On the business rate it is $2.00, and on the residence rate it is only $0.50 per month. It is shown that there are 730 patrons in Louisville paying the maximum business rate of $7.50 (which the ordinance reduces to $5.50 per month), and there are 875 now paying the maximum residence rate of $3.50 (which the ordinance reduces to $3.00 per month).

Trans., p. 225.

The immediate effect of putting into effect the ordinance rates would be a reduction of $2.00 a month on each of the 730 business telephones, amounting to $17,520.00 per annum, and the reduction in the residence rate would only amount to $5,250.00 per annum; so that in order to overcome the loss in business telephones of $17,520.00 per annum an enormous number of residence telephones would have to be installed at even the maximum residence rate of $3.00; and if we assume that the residence rate of $3.00 only yields a fair profit to Complainant, then Complainant could not install enough residence telephones to offset the loss in revenue from the business telephones, because there could not be anything more than a fair profit on the residence telephones at $3.00 per month, regardless of the number installed.

It must be remembered that Complainant's witnesses say that the ordinance rates are unreasonable, and the chief witness for the defendant, Mr. Polk, states that it would be a mere *gamble* as to whether the Complainant could receive a return on the ordinance rates, assuming no more subscribers to the exchange than at present exist, and assuming the plant to cost only $1,300,000.00, including real estate.

Trans., p. 1440.

It is respectfully submitted that no one has the right to hazard an opinion as to what the result would be to Complainant if the rates prescribed in the ordinance should be enforced, so far as forecasting where and what classes of patrons it would receive. There is but one safe rule to follow, and that is the experience of the past, and this rule has received the sanction of the Supreme Court of the United States, as above stated, in *La. R. R. Com.* vs. *Telephone Co.*, 212 U. S., p. 426.

The Master should have reported that there was no reasonable method by which the future could be forecasted if the ordinance rates should be adopted.

The Master states:

> "I am by no means satisfied from the evidence that the increase in the number of subscribers will, on an average, increase the cost of operation per telephone or station. In other words, if the company now has nine thousand subscribers, and two thousand additional subscribers be taken on, I do not believe that the cost per station for eleven thousand will be as great as it is for nine thousand subscribers."

Complainant excepts to this statement of the Master because.

(1) The Master disregards the entire evidence of all the witnesses to the effect that increased patronage entails increased expenses.

Trans., pp. 513, 699, 227, 908, 1439, 517 and 518.

(2) The Master entirely overlooks the uncontradicted evidence in the record to the effect that so soon as the present facilities are used, additional facilities must at once be installed so as to at all times have a surplus on hand to care for new patrons in the business.

Trans., pp. 506, 507.

(3) The Master also overlooks the fact in forecasting the future that it is problematical as to where new patronage is coming from. Even where a plant is built brand new, by the time the plant is put into operation, conditions are so changed that the company finds itself in the attitude of having surplus facilities in one part of the city, and the immediate necessity of adding additional facilities in another part of the city.

Trans., pp. 506 and 1434.

(4) The Master overlooks the fact that it is shown in the record that during the taking of this proof, the paramount necessity of supplying additional cable in certain sections of the city confronted the Complainant.

Trans., p. 837.

Mr. Caldwell is asked to state what would be the effect upon the Complainant's business in the event the ordinance rates should be put into effect, and he states:

> "My opinion is that we would have to provide a considerable additional capital outlay; that we would get little or no additional gross revenue, certainly we would not get more than would be offset by the additional expense. My deliberate opinion is it would be a very losing and disastrous experiment."
>
> Trans., p. 513.

Mr. Polk says it would be a mere gamble.

Trans., p. 1440.

For these reasons it is insisted by Complainant that the Master should have reported that, if the ordinance rates be adopted:

(1) The future of Complainant's plant in Louisville is too uncertain to forecast; and

(2) Complainant's business would be destroyed.

THE MASTER'S REPORT.

X.

"He will also ascertain and report as to any peculiar advantages, if any, for the steady and reliable earning of income the Complainant may have in said city, and also as to any peculiar disadvantages or risks, if any, which it encounters or may encounter therein, which, with reasonable probability may affect or offset such advantages, and the extent thereof."

In answering this question, I will state that as to the advantages or disadvantages of Complainant for steady and reliable earning of income, there is not much evidence in the record on either side of the question.

The company's plant is well located. It is in excellent physical condition, and it is a remunerative business. If we compare it with the Home Telephone Company as to its earning power, it is obvious that it occupies much the superior position in this: It has extensive toll lines that connect with similar lines extending over the entire United States. Connection with these long distance lines may be had promptly by subscribers, and this, I consider, a most valuable asset, and in my opinion it will in the future, as in the past, materially aid Complainant in its efforts to secure new subscribers.

I find in the evidence no peculiar disadvantages that now affect the earning power of Complainant, or that are likely to do so in the future.

EXCEPTIONS OF APPELLEE.

The Master states:

> "I find in the evidence no peculiar disadvantages that now affect the earning power of Complainant, or that are likely to do so in the future."

The Complainant excepts to this statement of the Master, and

insists that he should have reported that the active competition which Complainant has, during the past four years, and now encounters, is a very serious disadvantage to Complainant, in causing Complainant to be unable to earn a proper amount upon the value of its Louisville plant.

In the report of the Board of Trade of New Orleans relative to telephone conditions in New Orleans, it is said:

> "Taken as a whole, the telephone business in this country has not been anything like a complete success. There have been innumerable failures, large and small. Competition has been very keen, and not always honest; in many instances, promoters have swindled the public in telephone ventures; distrust has been created; the financial interests of the country have lacked confidence in the business; and, notwithstanding the fact that the telephone is a public utility, savings banks, trust companies and other like institutions do not invest money or trust funds in telephone securities—one of the reasons for this being that the assets could not be turned to any other use than that for which they were originally intended.
>
> "This brings home the fact that the appliances, plant and structures of a telephone company are of a very unstable nature. The property is essentially perishable, easily damaged, and deteriorates very rapidly. The industry has not yet reached a point of stability, and costly appliances are frequently being superseded by other inventions, and have to be discarded long before they are worn out; radical changes are continually being made in construction methods and in equipment, and all these things have contributed to make the telephone business, taken as a whole, an extremely hazardous one. If a telephone company should cease to do business, it would not be able to salvage more than about 20 per cent of the original cost of construction."
>
> Trans., p. 491.

In speaking of the results of competition in the telephone business, this report states:

> "Competition does undoubtedly improve the service; both companies strive to please their patrons and are courteous and attentive. Prices are reduced, often to wholly inadequate figures, and the rival companies try, by selling a public utility below cost, to force one another from the field. Thus far, the

public appears to be getting the best of it; but from the start the utility of the telephone as a public service is impaired and after the first years, when it is clear that the business is not giving financial returns, fresh capital is impossible to obtain, the very maintenance charges cannot be met, extension is impossible, and 're-organization' ensues. As the struggle has progressed, the service has been getting worse and worse, and the public is made to feel the disadvantages of competition."

Trans., p. 495.

In speaking of the effect of competition in exchange telephone service, Mr. Caldwell, Complainant's President, says:

"It produces great dissatisfaction, so that no telephone company or system is looked upon as agreeable and satisfying by people that are in such a situation, and the various ordinances which have been passed and experimented with by the city authorities have in a very large measure been the outgrowth of that state of affairs, and an effort to try to cure the difficulty, but the difficulty is inherent in the fact that there is competition in a business and that competition is destructive to the business instead of beneficial."

Trans., p. 519.

He also states that the expenses are greater under competitive conditions, because the business does not flow in a normal way—"The community, telephonically speaking, does not act in a normal way"—and that this produces abnormal expenses and abnormal conditions.

Trans., p. 519.

For these reasons Complainant excepts to this part of the Master's report, and insists that he should have reported:

That competition in the telephone business creates peculiar disadvantages, which must exist so long as competition exists, and that this disadvantage is now being encountered by Complainant.

THE MASTER'S REPORT.

XI.

"The Special Master will also report his conclusions upon such other facts as the development of the case at the hearings before him may appear to be important to a determination of the issues made by the pleadings."

I may say in conclusion, that the expert witnesses in this case have testified as to the value of this plant in such a way as to confuse a Solomon. Men who, by their knowledge and experience, are equally qualified to express valuable opinions as to what it would cost to reproduce a plant similar in all respects to Complainant's plant, differ in their estimates as much as between $600,000 and $700,000. But on cross-examination as to the cost of construction, they fail to sustain their opinions by such evidence as a court would ordinarily allow to go to a jury. Several hundred thousand dollars of construction work on Complainant's plant is rested solely upon the Auditor's statement that vouchers representing in the aggregate these large sums were approved by him and were entered on the company's books as proper charges against construction, while he admits at the same time that these book entries, and the distribution of the sums they represented were based solely upon a notation on the vouchers made by some unknown foreman or gang boss to the effect that the work had been done—that it had cost the amount stated in the vouchers, and that the work was for Construction account. The witness did not have personal knowledge of a single feature of any of such vouchers.

The Construction Account, for a number of years, consisting largely of items similar to those just above referred to, contains a very large amount of charges in the aggregate. I was impressed by the idea that it would not be surprising if errors as to the proper distribution of these vouchers had occurred by reason of the carelessness or ignorance of the agents of Complainant who made notations on the vouchers. I have carefully considered the evidence to the effect that the totals of these vouchers were actually paid, and for that reason I

have not disturbed the accounts as they appear in the company's books.

I have ignored the Supplies Account and the working cash capital in making my estimate of the value of the plant, as well as in making a proper allowance for depreciation. The supplies are bought and paid for by Complainant, and when needed by the Louisville or neighboring exchanges, they are retailed to them, and the exchanges pay the Complainant the cost price and an additional ten per cent, and also pay the ordinary expenses of the Supply Department. The cash working capital is furnished by Complainant, and the exchange reimburses Complainant for all the money it uses. The evidence does not show whether interest is charged against the exchange or not.

There is no evidence in the record tending to show that the plant in Louisville is subject to any disadvantages that do not equally apply to all the other plants of Complainant extending over several States. The trend of the testimony is that very small net earnings are derived from the operation of the Louisville plant, while the Complainant pays regular dividends on its stock every six months, and its stock commands a premium of between forty and fifty per cent in the market. No satisfactory explanation of these conditions is offered.

The service rendered by Complainant is good, and the physical condition of its plant is excellent.

I have not seriously considered the testimony offered touching the operations of plants outside of Louisville, because the conditions were obviously different, and the rates there charged and the cost of operation were not necessarily nor directly pertinent to the inquiries I was engaged in.

Respectfully submitted,

HENRY BURNETT,
Special Master.

EXCEPTIONS OF APPELLEE.

The Master speaks of the large difference between the witnesses who have testified as to the value of Complainant's plant in Louisville.

While this is true, the Master fails to state that this difference is brought about by a lack of knowledge of the facts by some of the witnesses.

Complainant excepts to this part of the Master's report and insists that he should have reported that there is no substantial difference between any of the witnesses who speak with a due knowledge of the facts.

Complainant's President, General Manager, Auditor and Assistant Superintendent of Plant do not differ materially as to their estimate of the value of Complainant's plant.

Messrs. Crumb and Levings, two of Defendant's witnesses, show in their evidence on cross-examination that they have not a sufficient knowledge of the Louisville plant to entitle them to express an opinion upon its value. Mr. Polk, the other witness of the Defendant, does not differ materially from Complainant's witnesses whenever he is speaking of matters concerning which he has adequate knowledge.

The differences between Mr. Polk and Mr. Jagoe as to the value of the plant are shown not to be material differences whenever they speak of matters concerning which Mr. Polk has an equal means of knowing the facts.

The most material difference between them is as to the value of the underground conduits. The difference between them on switchboards and other apparatus is with respect to different types of apparatus used for the same purpose. Complainant believes that it is better and safer to purchase its equipment from the Western Electric Company, and Mr. Polk thinks that other equipment, costing much less money, should be used in constructing the plant in Louisville. This difference comes about from the experience of Mr. Polk in building telephone plants. His experience is in building, and not in operating telephone plants; and Complainant's witnesses speak with a knowledge of building and operating plants. Its experience in operating plants has taught its officers to rely upon the Western Electric Company's apparatus. While it is more expensive to purchase, it is believed by them to be more durable and to furnish a more reliable service.

The difference between Mr. Polk and Mr. Jagoe as to cable comes about from the fact that Mr. Polk merely *estimates* that the plant contains certain quantities and sizes of cables, whereas Mr. Jagoe gives actual quantities and sizes of cables, and if Mr. Polk's units of value be applied to Mr. Jagoe's statement of quantities and quality of cable, the difference is not material.

Mr. Polk *estimates* the poles in the plant to be 11,000. Mr. Jagoe states the number of poles to be, by actual count, 13,870. Mr. Jagoe gives the value of these poles, together with the appliances thereon, and the labor of setting them, at what it has actually cost the Complainant during the past two years to erect similar poles in Louisville, and also the price that other companies pay in purchasing a half-interest in similar poles. Mr. Polk *estimates* what, in his opinion, that class of poles should be purchased, equipped and erected for.

For these reasons the Master should have accepted what the witnesses said who have a knowledge of the facts, and not the statement of witnesses who are shown not to have had a sufficient knowledge of the facts to enable them to place a value upon the plant.

The Master states that several hundred thousand dollars of construction work on Complainant's plant is rested solely upon the Auditor's statement that vouchers representing in the aggregate these large sums, were approved by him and were entered on the company's books as proper charges against construction.

Complainant excepts to this part of the Master's report because it appears in what has heretofore been said in reference to the cost of Complainant's plant, that the local Manager, and then the Assistant General Manager, while the facts were fresh and errors easily detected, scrutinized these vouchers, and approved them before they were sent to the Auditor to be entered upon the books and records of Complainant.

Trans., p. 669.

The Master refers to the fact that these vouchers bore the notation of some unknown foreman, or gang boss, to the effect that the work had been done and that it was for construction account, and

further refers to the fact that the Auditor did not have personal knowledge of a single feature of any such vouchers.

Complainant excepts to this part of the Master's report, because there is no other known way in which construction account can be ascertained. The foreman or gang boss is selected because of his ability to know how to do work, and what work has been done. His notation at the time that the work has been done, and on what account, is the best method by which such facts can be ascertained, and when the local Manager, and then the Assistant General Manager, under whose direction such work has been done, examines and approves the notation of the foreman or gang boss, there is no just ground for criticising the method of keeping such records and accounts.

The Master refers to the fact that the construction account for a number of years consisted "largely of items similar to those just above referred to," and amounts to a large sum in the aggregate. He then states that he is impressed by the idea that it would not be surprising if errors "as to the proper distribution of these vouchers had occurred by reason of the carelessness or ignorance of the agents of Complainant who made notations on the vouchers."

Complainant excepts to this part of the Master's report, because it appears that accountants representing the Complainant and the Defendant had full and free access to all of Complainant's books, records and vouchers; that they examined the construction account, and *did* eliminate all errors they found and reported the result to the Master. If there were other errors they were not discovered by the accountants representing either Complainant or Defendant; they were not discovered by Complainant's Auditor, and, while it may be true, as the Master states, that there are other errors, yet Complainant insists that the Master cannot assume that any such errors exist which could affect appreciably the result reported by Complainant's Auditor and the expert accountants representing the Complainant and Defendant, and as shown to have been entered upon Complainant's books from time to time as the work was done and the cost thereof ascertained.

The Master states that he has ignored the Supplies Account and the working cash capital in making his estimate of the value of the plant.

He states that supplies are bought and paid for by Complainant and retailed to the exchanges as needed, and the exchanges pay Complainant the cost price and an additional 10 per cent, and also the ordinary expenses of the Supply Department.

Complainant excepts to this part of the Master's report, because it has been shown heretofore under the heading "Cost of Plant," that supplies have been charged against the exchange at the exact cost to Complainant; that the 10 per cent added was not a profit, but additional cost beyond that paid to the manufacturers, and represented the expense of purchasing, handling and delivering supplies to the various exchanges. The interest on the amount of supplies to the various exchanges. The interest on the amount of supplies necessary to conduct the Louisville plant has not anywhere been charged either to construction or expense of the Louisville plant.

The Master states:

> "The cash working capital is furnished by the Complainant, and the exchange reimburses the Complainant for all the money it uses. The evidence does not show whether interest is charged against the exchange or not."

There is no evidence that any of the expenses of conducting the Louisville Exchange includes interest for working capital. It is true as stated by the Master that the exchange reimburses Complainant for whatever money it furnishes, but Complainant submits that the money Complainant furnishes to the exchange upon which it is operated is a part of the capital employed in the business and should be treated as a part of the Construction Account, or a part of the capital necessary to operate a telephone exchange.

The Master states there is no evidence in the record tending to show that the plant in Louisville is subject to any disadvan-

tages that do not equally apply to all other plants of Complainant extending over several States.

Complainant excepts to the report of the Master, because it *does* appear in the record that Complainant has encountered active competition in its business in Louisville; that such competition does prevent normal conditions, telephonically speaking, and that it does actually increase expenses.

It is not shown in the record that Complainant has opposition in its 516 additional exchanges, but it does appear that in the City of New Orleans it does not have competition, and for these reasons Complainant excepts to this statement in the Master's report.

The Master refers to the fact that Complainant pays regular dividends upon its stock, which commands a premium in the market, and that "no satisfactory explanation of these conditions is offered."

From the Annual Report of Complainant for the year ending December 31, 1908, which is in evidence in this case, it will be seen that Complainant has outstanding only $19,680,150.00 of stock upon which it pays dividends, and that it has invested in plant $24,381,297.64

That it has invested in real estate and buildings $ 790,163.23

Material on hand 640,861.40

Stocks and Bonds 435,599.04

Cash 457,546.49

Or a total of $26,705,467.80

It appears in the record that Complainant has a comprehensive system of toll lines uniting its 517 exchanges, and from all these sources it derives a sufficient amount to pay a dividend upon stock of $19,680,150.00

And five per cent bonds of 1,000,000.00

For the foregoing reasons, and others to be assigned on hearing,

Complainant excepts to the report of the Special Master, and respectfully prays that his findings be disapproved.

Respectfully submitted,

ALEXANDER POPE HUMPHREY,
ALEXANDER POPE HUMPHREY, JR
WILLIAM L. GRANBERY,
Solicitors for Appellee.

Master's Report filed Nov. 17, 1910.

Exceptions filed Dec. 17, 1910.

SUPPLEMENTAL REPORT AND FINDINGS OF THE SPECIAL MASTER.

Since filing my report herein on November 17, 1910, my attention has been called to some matters that are deemed important, which I desire now to submit as a Supplemental Report.

Complainant began its testimony in this cause by introducing as a witness Mr. H. Blair Smith, Auditor of Complainant; and at the conclusion of his direct examination, counsel for Defendant moved "The Master for an order permitting Defendant, through its accountants, to examine said books, records and accounts of Complainant, and for an order directing and requiring Complainant to make a full and complete exhibit, and show all its books and records to Defendant's accountants." This motion was objected to by Complainant, and the objections were sustained and the motion was disallowed.

Thereafter, at a conference between the Special Master and counsel representing both litigants, Complainant's counsel submitted two propositions: One was that the Special Master should select an expert accountant who should examine the books and records of the Complainant Company, and make a report directly to the Special Master, and that this report should be treated as evidence in the cause by both parties.

The alternative proposition was, that each party to the litigation should select an accountant, and that the two accountants thus selected should make a joint examination of the books and records of the Complainant Company, and should make a joint report to the Special Master upon all matters that they could agree upon, and as to all matters they could not agree upon, that each was to file a separate report.

The defendant's counsel agreed to the latter proposition. It was then stated by the Special Master in the presence of counsel for both parties, that whatever these accountants should jointly agree upon, should be accepted as final by the Master, and no proof

should be permitted to vary or contradict such joint findings. As I understood it, this statement was accepted by both parties.

Thereupon, Complainant selected Mr. George Wilkinson as its accountant, and Defendant selected the Mutuald Audit Company as its accountant. During the progress of the work of these joint accountants in examining the books and records of Complainant, a conference was held in Nashville, Tenn., where the records were kept, at which were present counsel representing both litigants, representatives of both accountants, and the Special Master. This conference was held on June 7, 1909, and in this conference the Special Master stated:

> "Here are two auditors, by agreement of parties, allowed access to the books of the Complainant Company; and it is agreed that these auditors, after a thorough examination of all the papers connected with the case, shall make a joint report, so far as they may be able to agree, upon any and every proposition. They report, so far as it is the joint report of the two auditors, must be accepted by both litigants, by the Special Master and by the Court, as true; and I take it that no proof ought to be allowed from any extraneous source as to the correctness of that joint report.
>
> Now, as to such matters as these two auditors are unable to agree upon, the Court's order is that each auditor shall then, as to such matters, make a separate report to the Master, and that separate report should contain the reasons in detail of each auditor for his findings. As to these separate reports, if there be any, certainly each party to the litigation would be not only permitted, but it would be their duty, to produce other testimony, if accessible, so as to enable the Special Master and the Court to decide which of these special reports is true."

Then the order was further extended, directing the accountants to file with the Special Master their working papers and memoranda, and that same should be arranged in an orderly and systematic way, with any remarks or indices that they may see fit, so as to identify the papers hereafter.

Further, the accountants were directed to submit, one to the other, the results of their examination, and to state frankly in their reports

their reasons, one to the other, for any position that they might take, in order that the report, when made, shall be, if possible, the joint result of the labors of the accountants; and that when they came to make a separate report, if such should be the case, that each accountant should fully state in his separate report, his reasons for disagreement, and furthermore, his reasons in support of his said report. The accountants were further directed to file with the Special Master a statement that they had not withheld any working papers, memoranda, data or figures obtained by them in their investigation.

I append hereto a typewritten copy of my directions to the expert accountants, which is made a part hereof, marked Exhibit No. 1. (Trans., p. 104.)

Thereafter the accountants did submit to me a joint report, and each submitted a separate report, all of which have been filed by me as a part of my original report herein.

When the evidence was nearly completed, at a conference before me, at which counsel for both parties to this action were present, after considerable argument, I made the following statement:

> "It was my distinct understanding when that agreement was made, that whatever the two experts reported jointly, should be accepted as a finality by the Commissioner. Now, I have not seen the report; I have not read a line of any of this testimony, neither have I read either of the reports. If their report on the proposition as to the cost of the Ohio Valley Company, or whatever name it was, appears by the books to be so and so, and they appear to leave that matter open then I would take it that neither party would be bound by that sort of a report. That is the same question that is up here about these depositions. But wherever they report a fact, ascertained by a physical examination of the vouchers, papers and books of the Company, I have always understood it, and so stated to counsel several times, that that would relieve the Commissioner of any investigations as to those points agreed upon by the accountants. . . . I have not read the report. I don't know how they have worded it. I don't know how they have expressed it. I do not know a single point they have agreed upon. I don't know anything about it."

Counsel for Complainant then stated:

> "Of course, I don't ask Your Honor to rule now on questions that may arise as to whether they have reported certain facts or whether they have not. Of course, that is the chance I will have to take in preparing my rebuttal proof, as to whether this joint report does cover certain things or not; but the ruling that I wanted is what Your Honor has indicated, that that was the agreement, and that is the one that is to be enforced."

Upon an examination of the joint report, I find that the expert accountants agreed and so reported what the books of the complainant showed as to the cost of complainant's plant, and as to the expenditures for construction, as to the gross earnings and as to operating expenses. The report specifically states as to the foregoing matters as follows:

> "The foregoing joint report shows the money charged as the cost of the plant at Louisville, the gross amount credited to the Louisville Exchange as earnings, and the operating expenses charged as appertaining thereto, as recorded on the books of the Cumberland Telephone & Telegraph Company. It is not an agreement that the said accounts are properly distributed or charged as we believe they should be, therefore the right is reserved by each of the undersigned to make such individual report and statement relative thereto as each may feel justified in doing."

The only fact reported by the accountants, to which both agreed, was as to what would be the probable loss in earnings the first year after the ordinance rates should be put into operation. Their finding was that such loss would be $49,721.76. This fact I adopted in my report, and my calculations are all based thereon.

In accepting the above figures as true, I was not unmindful of the fact that Complainant, in its Bill of Complaint, on page 14, made the following charge:

> "If the rates prescribed by said ordinance are put into effect, it will result in a decrease in your orator's revenue, based upon the present rates and present subscribers located within the corporate limits of the City of Louisville, amounting to $33,504.00."

Neither was I unmindful of the statement occurring in the deposition of Mr. H. Blair Smith, Auditor of Complainant Company, wherein he stated that such loss would amount to $39,192.00. (Trans., p. 227.)

Saving and excepting the above loss in revenue to be caused by the enforcement of the ordinance rates, I do not consider that the joint report found any fact, except as to what the books of complainant showed. Of course, such a finding ought not to be binding on either party as an ultimate fact.

It is stated in my original report that the depositions of H. W. Ritterhoff and Charles H. Peale were not considered by me. This was an error. Exceptions were filed to the deposition of William Kavanaugh by Complainant, and those exceptions were sustained by me, but these exceptions did not extend to the depositions of Ritterhoff and Peale.

I desire further to state that the Complainant filed exceptions to the depositions of Charles Meriwether, S. M. Wilhite and Chas. E. Archer, and I sustained said exceptions and suppressed those depositions. The reasons for my ruling are given in a paper hereto attached as part hereof.

I desire further to state that a stipulation was filed in this case by the parties, showing what rates the Louisville Home Telephone Company was authorized to charge for telephone service in the City of Louisville during the years 1907 and 1908, and this stipulation is filed with the papers in the case and returned by me to the office of the Clerk.

The original deposition of W. C. Polk, W. H. Kessler Charles E. Archer, Charles Meriwether, S. M. Wilhite, Charles Meriwether recalled, and James F. Grinstead, have been mislaid, and by agreement of counsel on both sides, a carbon copy of the above named depositions is herewith returned; and it is further agreed by counsel that said copies of the depositions may be read and considered as the depositions of said witness.

A written stipulation by counsel on both sides of this controversy, that a copy of D. C. Jackson's report to the Massachusetts Highway Commission might be filed and read on the hearing of this case, is among the papers returned by me to the clerk's office, and same was considered by me so far as I deemed it relevant.

All of which is respectfully submitted.

HENRY BURNETT, *Special Master.*

No. 751

Supreme Court of the United States

OCTOBER TERM, 1911

CITY OF LOUISVILLE, ... Appellant,

vs.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, ... Appellee.

BRIEF AND ARGUMENT FOR APPELLEE.

ALEXANDER POPE HUMPHREY,
ALEXANDER POPE HUMPHREY, Jr.,
WILLIAM L. GRAMBLEY,
Solicitors for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911

No. 761

CITY OF LOUISVILLE. . . . . Appellant.

vs.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY . . . . . Appellee.

BRIEF FOR APPELLEE

May it please Your Honors:

This suit was instituted to enjoin the enforcement of an ordinance of the City of Louisville, regulating telephone rates for exchange service in the City of Louisville, upon the ground that the rates prescribed in the ordinance were confiscatory and would, if enforced, deprive the Telephone Company of its property without due process of law.

The case was referred to a Special Master, who made a report sustaining the reasonableness of the rates prescribed in the ordinance; but, on exceptions, the report was overruled, the Court sustained the bill, decreed the ordinance rates to be confiscatory, and enjoined their enforcement.

I.

HISTORY OF THE CASE.

The rate ordinance was adopted on March 6, 1909; the bill in this case was filed on March 7, and the case was at issue on March 31

On April 2, 1909, the case was referred to a Special Master to take proof and report the facts to the Court. Appellee commenced its testimony before the Master on April 14, 1909; its first witness was the Auditor of the Company. At the conclusion of the direct examination appellant's counsel asked permission of the Master to suspend the cross-examination of this witness until opportunity had been afforded appellant to examine appellee's books. Thereupon, by agreement of parties, each side selected a separate accountant, who were required to examine the books of appellee and make a joint report to the Master upon all matters of agreement, and make a separate report on all matters of disagreement—the Master stating at that time that whatever the accountants reported jointly would be accepted as final and conclusive, and no other proof would be permitted upon either side to either vary or contradict the joint findings of the accountants. (Supplement to brief, p. 189.)

The accountants commenced their examination on May 3rd and concluded the same on July 11th. Thereupon the cross-examination of appellee's auditor was resumed on August 30, 1909. The evidence was concluded in April, 1910, and the matter submitted to the Master, who filed his report on November 17, 1910. The case was in due course submitted, and was determined in favor of appellee on April 25, 1911.

II.

THERE IS NO PRESUMPTION IN FAVOR OF THE RATES PRESCRIBED BY THE CITY ORDINANCE.

It is doubtful whether any reduction in rates by a City Council should be presumed proper, when actual and active competition exists. This record shows that since 1902 the Louisville Home Telephone Company has had a telephone exchange in Louisville, and that the competition between the two companies has been, and still is, actual and active. Under such conditions, competition is sufficient regulation, and proves the reasonableness of the rates being charged.

The bill charges that this ordinance had been adopted without any investigation or knowledge of whether the rates prescribed were reasonable or unreasonable. This was denied in the answer. The

record shows that the City authorities only had knowledge of what *some other* companies in *some other* cities were charging for telephone service, and had examined the books of the Louisville Home Telephone Company.

The mere fact that *other* companies in *other* cities were charging different rates could not be of any value in determining reasonable rates in Louisville. Indeed, there was in Louisville another company in active competition with appellee charging $4.00 per month for a business telephone against $7.50 by appellee, and $2.00 for a residence telephone against $3.50 by appellee. The *value of the service* is the thing that counts, and determines the *cost of giving* the service. As was said by one of the witnesses:

> "There is an individuality about every plant that you cannot separate from it. There are conditions in every city that are different from the conditions in every other city, and one of the biggest features that often escapes attention is the class of service given. We can serve ten thousand subscribers of one class for one-third of the construction expense that we can serve ten thousand subscribers of another class, and then it is possible to give connection to subscribers at one price and then by increasing the efficiency of the service, or the reliability of the service, to add fifty per cent to the construction value."
>
> Jagoe's dep., Trans., vol. 1, p. 631.

> "A telephone plant is not different from any other property, real estate, or any other kind of property. You can build a four-room house for a couple of hundred dollars, or you can build it for a couple of thousand dollars. The telephone plant is similar to any other property in that way. The better you make the plant the more expensive it is, and one peculiar condition is that you can get service up to a certain point very cheaply to everybody, but you add to the efficiency; if you add 5 per cent to the efficiency, you will add more than 5 per cent to the cost, for the last 10 per cent of efficiency of your service will amount to 50 per cent of the cost of your plant."
>
> Trans., vol. 1, p. 661.

A comparison of rates in other cites is actually misleading. The Commissioner of the Board of Trade in New Orleans in his investigation of telephone rates, said:

"More than five hundred letters have been written and received by me in the course of this inquiry, and I have sought the opinions of men connected both with the Bell and the Independent Companies. . . . . .

"When I had classified and examined the replies received to my queries from the various telephone companies, it became abundantly apparent that, insofar as the fixing of telephone rates is concerned, comparison with other cities is worse than useless—it is absolutely misleading. There are no two cities in the United States where conditions are sufficiently similar to warrant comparison. It is a fact beyond dispute that the question of telephone rates is purely and essentially a local one; and is controlled by four factors: First, the cost of the plant; Second, the cost of operation and maintenance; Third, the amount of taxes and dues paid to the city; Fourth, the rapidity of depreciation, due to the climatic conditions."

Trans., vol. 1, p. 489.

The answer is sworn to by the Mayor of the city, and presumably reflects the attitude of the city officials. The answer avers:

"Said complainant company has a substantial monopoly on all long distance service in and around Louisville on account of its connection with the American Bell Telephone Company. All customers of the complainant company who are compelled, for business reasons, to have long distance connections with customers outside of the City of Louisville are compelled to pay the highest possible price for their telephone service, and the rates charged have been gradually increased on all such customers. To all customers who do not require long distance service, said complainant company will furnish, and does furnish, a telephone of the same character as above mentioned at a much less rate, and, in many instances, furnishes such telephone service for a nominal charge only; that such course has been pursued in order to stifle competition; that the result has been that many customers and citizens of Louisville are charged rates at less than the cost of the service furnished, thereby imposing on the customers of said complainant company who are so situated as to require the service of the complainant's long distance connections the necessity of paying the complainant company's losses in trying to crush out competition.

"Defendant says that the situation above detailed became so burdensome to some of the citizens of the City of Louisville that the Mayor and General Council of the City of Louisville attempted, in the year 1908, to remedy the situation by passing

an ordinance authorizing the sale of a franchise for a comprehensive system of telephones in the City of Louisville, which it was hoped by the Mayor and General Council of the City of Louisville, would result in one comprehensive system of telephones, with the right to charge such uniform rates as would be fair and just to all citizens, and at the same time permit the company acquiring such franchise to operate its system of telephones and obtain a fair return on its investment.

"Defendant says that said ordinance was prepared by the City Attorney of the City of Louisville upon request of the Mayor; that it was introduced in one of the Boards of its General Council, and passes said Board by practically a unanimous vote, and was favorably reported to the other Board of its General Council, and would have been adopted by said Board and approved by the Mayor but for the fact that the complainant company, through its President and Attorneys, appeared before the Mayor of the City of Louisville and before the Board of Aldermen of the City of Louisville and stated to said Mayor and to said Board of Aldermen that the complainant company had a franchise which was irrevocable and irrepealable, and that the City of Louisville was powerless to interfere with the rights of the complainant company in the conduct of its business or otherwise in the City of Louisville, and said officials and attorneys for said company further stated in unequivocal terms to the Mayor and Board of Aldermen of the City of Louisville that it, the said complainant company, would not become a bidder at the sale of such a franchise or in any manner acquire, or attempt to acquire, the franchise which, by said ordinance, was proposed to be sold.

"Defendant says that by one of the provisions of said ordinance, viz., Clause 16, it was proposed to repeal the ordinance which was approved on August 17, 1886, referred to in the Bill of Complaint, and that said repealing clause of said ordinance was in substance the same as the repealing ordinance referred to in paragraph 3 of the Bill of Complaint. Defendant files a copy of said proposed ordinance herewith and makes same a part hereof, marked 'Exhibit A.'

"Defendant, therefore, says that inasmuch as the defendant, at the time it first proposed to repeal the ordinance under which the complainant claims its right to conduct its business in the City of Louisville, proposed at the same time to offer for sale a franchise similar in nature to that now exercised by the complainant company, and inasmuch as the complainant refused to

become a purchaser, or to acquire the franchise so proposed to be sold, said Board of Aldermen declined to pass the ordinance above mentioned, and in lieu thereof, passed the ordinance referred to in the Bill of Complainant, being the ordinance referred to in paragraph 3 of the Bill of Complaint."

The copy of the ordinance attached to the answer, providing for the sale of a franchise for a comprehensive telephone system, prescribes a maximum business rate of $6.00 per month for a business telephone for the first ten years of the franchise, and $7.00 per month for the last ten years.

The rates in the ordinance in this suit prescribed a maximum business rate of $5.50 per month.

While the answer says that the conduct of appellee in giving poor service, and in being arbitrary, dictatorial and offensive to the citizens of Louisville, caused the city to have prepared and introduced the ordinance creating a franchise for a comprehensive telephone system, yet it was immediately withdrawn, when it was stated by appellee that it would not be a bidder therefor.

While the answer avers that appellee charged some of its customers extortionate rates and some others rates below cost of service, and that the city desired to correct this practice, yet the ordinance does not require all patrons to pay the same amount, but merely fixes *maximum* rates, leaving appellee to charge as much less as it may desire.

While the answer avers that poor service and discrimination was the real complaint against appellee, yet the ordinance dealt with nothing but prescribing *maximum* rates.

While the answer avers that the service was poor, the Master reports the service good, and there is no exception to his so reporting.

The answer avers that competition in the telephone business caused the irritation, and the city authorities sought to remove the irritation by selling another franchise and getting rid of competition, *not* by destroying appellee, *but* by destroying its competitor

This must have been the idea, since the ordinance for the new franchise was withdrawn so soon as appellee advised the city that it would not be a bidder therefor.

The proposed franchise prescribed certain maximum rates, but because appellee would not surrender its franchise, and buy a new one, the city passed another ordinance, prescribing *lower* rates.

Hence, appellee insist that instead of there being a presumption *in favor* of the rates, the presumption is the other way.

Again, the evidence shows there was no investigation or hearing on the rates prescribed. The Mayor in his deposition shows that the city *investigated* the Home Telephone Company, and then *regulated* the Cumberland Company. And more than this: Having made a so-called investigation of the Home Company, the ordinance prescribing the rates expressly excluded the Home Company from its provisions.

III.

THE MASTER'S REPORT.

The Master was directed by the Court, in the order of submission, to report:

(1) The cost of the plant;

(2) The value of the plant as of March 6, 1909, and as of the date of his report;

(3) The gross and net earnings for each of the years 1905 to 1908 inclusive;

(4) The probable gross and net earnings for 1910, if the ordinance rates had been in force;

(5) What amount should be set aside from earnings annually for depreciation;

(6) Whether the increase in business under the ordinance rates will, in succeeding years, yield a fair return upon the value of the plant;

(7) What is the average return on business enterprises in Louisville approximately resembling a telephone plant, and whether such return is above or below 6 per cent of the value of the property of such enterprises;

(8) Whether the income for 1910 on the telephone plant would have been above or below the income derived from other enterprises in Louisville, if the ordinance rates had been in force;

(9) The probable increase in the business, and the effect upon its gross and net earnings;

(10) The advantages, if any, for reliable earnings and income from the plant in Louisville, and the disadvantages and risks, if any;

(11) Such other facts as may appear of importance to the determination of the issues made in the pleadings.

As stated, the Master sustained the reasonableness of the ordinance rates, but any one of several patent errors of fact are responsible for this result—although numerous other smaller errors of facts and the misapplication of facts appear in his report.

The Court, upon exceptions, overruled the conclusions of the Master in an elaborate written opinion.

Vol. 2, p. 1618.

In presenting the case in this brief, it has been thought that it would be of advantage to the Court to follow the order of reference, the report of the Master, and the opinion of the Court below.

It may be stated now that everyone concedes that the earnings for 1908, the last of the four years shown in this record, is the most *favorable* to the contention of the city and the most *unfavorable* to the contention of the company. Hence, only the year 1908 will be considered, in order to prevent confusion.

The Master was directed to report:

IV.

THE COST OF THE PLANT IN LOUISVILLE TO MARCH 6, 1909, THE DATE THE RATE ORDINANCE WAS ADOPTED.

In June, 1899, the Ohio Valley Telephone Company was conducting a telephone business in Louisville and in towns adjacent to Louisville. All the stock of this company was purchased by appellee, and in January, 1900, the two companies were consolidated under the

name of appellee; 2,855 shares were purchased at $141.00 per share of $100 each, and 702 shares were purchased at $140.00 per share. This left outstanding 1,937 shares, which were purchased by appellee exchanging a like number of its own shares, which likewise had a market value of $141.00 per share.

From the time of this purchase in June, 1899, to January, 1900, when the properties were consolidated, the Ohio Valley Telephone Company was operated as a separate corporation. No further dividends were paid on its stock, but the earnings were put back into the plant. Appellee paid some of its debts, it loaned it money, and its properties (including the Louisville Exchange) were added to, and improvements made to existing plants—so that at the time of the consolidation in January, 1900, the properties received by the consolidated company were different and of greater value than they were in June preceding, when the stock was purchased. And when the books of the consolidated company were opened, these properties were put down at a larger value and cost than the books of the consolidating company showed them to have cost in June preceding.

The officers of the consolidated company, being the same as the officers in each of the consolidating companies, placed in the books of the consolidated company the cost of the plants, as they appeared from their records, and the cost of the Louisville exchange was stated to have been $678,354.09. The Master reported the cost to have been only $457,579.07.

Only two errors of the Master need be noted in this connection, these and all others are fully pointed out in the exceptions to his report. (Supplement to brief, pp. 15 to 40). The purchasing company exchanged 1,937 shares of its stock, worth in the open markets $141.00 per share, for a like amount of Ohio Valley stock, likewise worth in the market $141.00 per share. In placing upon its books the cost to it of these 1,937 shares, the purchasing company allowed a premium of $41.00 a share, so that the cost was stated on its books at $273,117.00, instead of its face value $193,700.00. The excess cost and the excess market value was $79,417.00, which the Master deducted from the cost as shown on appellee's books.

It was insisted by appellee that since its shares were selling for a premium of $41.00 in the open market, and it purchased a large number of shares of the Ohio Valley Company at a premium of $41.00 per share, that in determining the cost to appellee of the shares acquired by exchanging a like number of its own shares, this premium of $41.00 per share must be allowed, since it is apparent that if appellee had sold 1,937 shares of its own stock it would have received $79,417.00 *more than* its par value, and if it had purchased for cash the 1,937 shares of the Ohio Valley Company's stock, it would have paid therefor $79,417.00 *more than* its par value.

Again, if appellee acquired 1,937 shares of Ohio Valley Company's stock at par, it received property which was worth $79,417.00 *more* in the open markets of the country than was paid for it, and it gave for these 1,937 shares property that was worth $79,417.00 *more* than their par value.

The Master, conceding that the Ohio Valley Company's stock was worth in the open markets of the country a premium of $41.00 per share, held that because of the *manner* in which appellee acquired 1,937 shares, its value decreased $41.00 per share, or a total of $79,417.00, when any other purchaser would have paid therefor a premium of $79,417.00; and appellee itself could immediately, after acquiring these shares, have sold them for a premium of $79,417.00.

This error of the Master reduced the cost of the plant $79,417.00.

The remaining differences between appellee and the Master as to the cost of the Louisville exchange in January, 1900, comes about in this way: The Master stated the cost in January, 1900, to be what appellee had paid for its share capital in June preceding, and then deducted this premium of $79,417.00. The Master overlooked the obvious fact that stock only represents the equity of stockholders in the corporate assets. The *cost* of the corporate assets is the cost of the stock, plus the amount of the indebtedness of the Company. The cost of land under mortgage is the price paid for the equity plus the amount of the mortgage.

These two manifest errors of the Master account for his reduction in the cost of this exchange to January, 1900.

After the purchase of the telephone exchange in Louisville in January, 1900, it was added to from time to time as new patrons were obtained, and the public needs required. In this way, there was added to the exchange between January, 1900, and March 6, 1909, construction, which the books of the company show cost $1,023,545.34. That this money was spent on the Louisville exchange, there is no dispute. The experts representing both parties so reported, and they examined not only the books, but the original vouchers for this entire amount. Supplement to brief, p. 9.

The Master reduced this amount $100,000.00, because he thinks a part of this amount should have been charged to maintenance, or to reconstruction, but when he comes to ascertain the amount spent on maintenance and reconstruction, he does not allow any part of this $100,000.00 in his report of expenses. Having conceded that large parts of this $100,000.00 had been actually expended on the exchange, and having disallowed it in the cost of construction, the Master should have allowed it as expense, but he does not allow it *any where for any purpose.*

Again, the Master says that about $50,000.00, charged by appellee as added construction to the exchange, and so reported by the experts, was an erroneous charge. The facts are that appellee, conducting a large business over several States, and having need for various kinds of material and supplies almost daily, in constructing, maintaining and reconstructing its various exchanges and toll lines, has established warehouses at different points in its system. It purchases materials in large quantities, ships them to these warehouses, and then furnishes them to its exchanges, and charges to these exchanges the cost of the material and supplies so furnished. All this the Master agrees to be right. But the actual cost of the materials and supplies is not all the cost to the company of such materials and supplies so delivered to the exchanges. There is to be added freight, drayage, insurance, rent of warehouse, clerk hire in receiving and issuing materials and supplies. These expenses amount to 10 per cent of the first cost of the materials and supplies, and are added to the invoice cost in charging the exchange with the materials and supplies so furnished.

The Master thinks this 10 per cent is a profit to the Company and declines to allow it as an expense. The Master says:

> "I find that this charge on all supplies furnished is at least a burden on the business in Louisville, and should not be allowed. The Company in the first instance must have paid freight and drayage on all supplies furnished. The Company doubtless received the usual trade discount for cash. As to how the freight and drayage were charged, or the cash discount credited, the record is silent. I do not doubt that proper and correct entries were made on the company's books as to the rent of the supplies warehouse. This is doubtless charged to expense of supplies.
>
> "The amount of this ten per cent added charge, like the items of wages, is a matter of conjecture, but it is obviously a substantial amount, extending from 1900 to 1908, both inclusive. At the argument, counsel for Complainant admitted that the items of drayage, freight, rental, etc., are charged primarily to Supply Expense, but that ultimately they are charged to the operation of the exchange."

In the first instance, all these small items of expense *are* charged to "supply expense," but when the supplies are thereafter furnished to the exchange, both the cost of supplies and the expense of handling the supplies must be charged to the exchange. The Master may as well have said that the cost of supplies having already been charged to supplies, could not thereafter be charged to the exchange. If the accounts of the company had not been kept this way, no one could ever tell what any exchange had cost. But the Master evidently believed this added 10 per cent supply expense was a profit and not an expense. This is clearly erroneous. A merchant buys his goods, but he also must rent a store, insure his goods, and employ clerks to sell them. All *this* is expense and must be *added* to the cost of the goods before any profit to the merchant can be considered.

These errors resulted in the Master reporting a cost of the plant to have been only $1,381,124.41, when the books of the appellee show the cost to have been $1,700,045.26.

The examination of the expert accountants "involved a close inquiry in all matters relating to the business of the Complainant in the City of Louisville, including the books, accounts, vouchers,

pay rolls, agents' reports and other original sources of information, kept at the principal office of the Complainant in the City of Nashville, Tennessee," and they reported that the plant had cost complainant to March 9, 1909 ..... $1,702,391.68

This was not what the books of the appellee showed the plant to have cost, but was what these accountants agreed the books *should have shown after errors had been eliminated.*

The books of the company showed the cost of the plant to have been $1,700,045.26

To this must be added the real estate, which every one concedes cost the sum of 160,841.42

The Court, in deciding the case, deemed the cost of the exchange immaterial in view of the evidence of its present value, and did not attempt to ascertain its original cost. In this the Court was of course correct.

The Master was directed to report:

V.

THE VALUE OF THE EXCHANGE ON MARCH 9, 1909, THE DATE THE RATE ORDINANCE WAS ADOPTED.

The Master did not ascertain present value, but said:

> "The estimates of the witnesses as to present value are irreconcilable. It may be conceded that the opportunities of some of the witnesses for accurate knowledge on the subject are superior to those of others. This assumption is undoubtedly true. I would not be fair in assuming that either of the witnesses is guilty of knowingly making misleading statements.
>
> "Convinced as I am that my finding as to the cost of the plant is correct, I am, for the reasons stated, persuaded that the value of the plant as of March 6, 1909, all features of depreciation considered, ought to be and is $1,381,124.41
> Less depreciation of ten per cent 138,112.44
> Leaves $1,243,011.97

"This does not embrace real estate nor toll lines nor working capital, if any should be allowed."

The Court found the value of the plant, including real estate ($162,000.00), working capital and supplies on hand, ($51,000.00), toll lines ($125,406.80), to be $1,788,000. The value of the plant, as found by the Court, after deducting real estate and toll lines, is $1,500,593.20. This does not allow anything for "going concern," or "franchise" value, which has stood upon appellee's books at $80,000.00 ever since January, 1900.

When the Master was directed to ascertain and report the fair value of the plant, it meant something more than merely stating its cost. Yet this is all that he does. The Master seems to have been perplexed at the conflict of evidence, and abandoned the task of ascertaining value as a hopeless one.

In our view of the matter, the task is by no means so difficult as it appeared to the Master.

The valuations given by all the different witnesses who testified are:

Smith's total	$1,688,511.94
Jagoe's total	1,793,540.30
Polk's total	1,085,637.00
Crumb's total	975,000.00
Leving's total	1,000,000.00
Prof. Jackson's total, estimated according to his units of cost	1,779,413.18
Hume's total	1,793,540.30
Caldwell's total	1,702,301.68

Mr. Smith is appellee's auditor, and has been for twelve years.

Mr. Jagoe is appellee's superintendent of plant, whose duty it is, and has been, to supervise construction, and ascertain cost of construction.

Mr. Polk is a telephone engineer living in Toledo, Ohio, but has constructed plants in different parts of the country and built the Louisville Home plant in 1901 and 1902.

Mr. Crumb is a telephone engineer, living in Chicago, Illinois.

Mr. Levings is editor of a telephone journal in New York, but was formerly a clerk to an engineering firm in Chicago.

Prof. Jackson is a telephone engineer, and made a valuation of all the telephone plants in Massachusetts for the Highway Commission of that State.

Mr. Hume is appellee's general manager, has had twenty-five years' experience in the telephone business, and for more than ten years has had an intimate knowledge of the Louisville plant.

Mr. Caldwell is appellee's president, and has also had twenty-five years of experience in building and operating telephone properties, and has had an intimate knowledge of the Louisville plant since 1899.

It may be assumed, for the argument, that each of these witnesses is *equally* truthful, and *equally* competent.

However competent and truthful a witness may be, he must have a knowledge of the plant before his *estimate* of value is entitled to consideration.

As was said by one of the witnesses:

> "The cost of reproduction is a matter of individual opinion; no engineer in estimating on the several important items of construction work for the year will come within ten per cent of the total aggregate cost. Many of the more important items are frequently under-estimated from twenty-five to fifty per cent. If experienced engineers, knowing the local conditions, cannot estimate the exact cost, how can those without special knowledge be expected to do so? A very good illustration of this may be had by contrasting the original estimates with the ultimate cost of postoffices and other public buildings. An especially good illustration, and one known to all readers of the daily press, is that of the Panama Canal. The original estimate of the cost of engineering and construction work was $139,705,200, but the present estimate is $297,766,000, and it is probable that this cost will be greatly exceeded."
>
> Hume's dep., Trans., vol. 1, p. 678.

Another witness says:

"There is an individuality about every plant that you cannot separate from it. There are conditions in every city that are different from the conditions in every other city, and one of the biggest features that often escapes attention is the class of service given We can serve ten thousand subscribers of one class for one-third of the construction expense that we can serve ten thousand subscribers of another class; and then it is possible to give connection to subscribers at one price and then by increasing the efficiency of the service, or the reliability of the service, to add fifty per cent to the construction value."

Jagoe's dep., Trans., vol. 1, p. 631.

And on page 661 he says:

"A telephone plant is not different from any other property, real estate, or any other kind of property. You can build a four-room house for a couple of thousand dollars. The telephone plant is similar to any other property in that way. The better you make the plant the more expensive it is, and one peculiar condition is that you can get service up to a certain point very cheaply to everybody, but you add to the efficiency; if you add 5 per cent to the efficiency, you will add more than 5 per cent to the cost, for the last 10 per cent of efficiency of your service will amount to 50 per cent of the cost of your plant."

The Master very properly discarded the *estimates* of value given by Messrs. Crumb and Levings, because it clearly appeared that they had no knowledge of the plant, and their *estimates* of value need not receive further consideration.

Mr. Polk *did* have a *general* knowledge of complainant's plant in Louisville, *as it existed in 1902*. He at that time built the Home Telephone Company's plant in Louisville. But Mr. Polk admits that his estimate of the present value is only an *estimate*. He does not claim to have made an inventory of the plant, nor does he accept *ascertained quantities* of material in the plant, *but persists in estimating* quantities of materials, *far less* than the undisputed evidence shows to exist in the plant.

Under these circumstances we insist that his *estimate* cannot be accepted, if there be other evidence by *equally* competent witnesses, who have ascertained *actual* quantities of material in the plant, and applied *known* units of value thereto.

In order to facilitate the labors of the Master, and realizing that so long as mere *estimates* of value were to be reconciled by the Master, the task would be confusing and unsatisfactory, appellee caused its Superintendent of Plant to make a careful *inventory* of the plant, and submit it for the consideration of the Master.

The labor and time involved in making this inventory was very great, covering as it did a period of more than two months. Mr. Jagoe was in charge of this work, but as each item of material in the plant and its value was ascertained, it was submitted to appellee's General Manager, who is shown to be a thoroughly competent engineer of twenty-five years' experience, and under whose direction all additions to this plant for ten years had been made. So that the valuation made by Mr. Jagoe was approved by Mr. Hume, the General Manager.

A valuation arrived at in this way should not be lightly cast aside. Unless there be some controlling reason, it should be accepted.

An *inventory* is more than a mere *estimate*. It is not an estimate at all. It is the ascertainment of facts. Some of the cases speak of the valuation of real estate being an estimate, and so it is, but an inventory of a stock of goods, a lumber yard, a factory, or a telephone plant is not an estimate, but a fact. It is the best, if not the only way in which the "fair value" of a plant can be ascertained.

So we insist that the inventory of this plant must be accepted, unless it is shown to be fraudulent, or made on an improper basis.

The Master expressed dissatisfaction with it in two respects only. He thinks the underground system is valued too high, and reduces this valuation $37,561.11.

Mr. Jagoe's inventoried valuation was, as shown above	$1,793,540.30
There must be deducted from this amount the item last above mentioned of	37,561.11
Leaving a valuation of	$1,755,979.19

The Master has criticised this inventory in *only* one other respect, and that is, the "overhead charges." If overhead charges are *not* proper, the Master's criticism is just. If overhead charges *are* proper, the criticism of the Master is unjust.

The Master states that after eliminating overhead charges from the inventoried value of Mr. Jagoe, and after eliminating the over-valuation of the underground system, there remains as the inventoried value $1,587,447.55

This reduces the inventoried value of the plant, *after* deducting $37,561.11 for excess value on the underground, and $168,531.66 for overhead charges, leaving the "bare bones of the plant," to $1,587,447.55

The on y question that can properly arise is whether the proper uuits of value have been applied to ascertained quantities.

Prof. Jackson is a member of the Society of American Institute of Electrical Engineers, the American Society of Mechanical Engineers, and the American Society of Civil Engineers, formerly professor of Electrical Engineering of the University of Wisconsin, and later professor of Electrical Engineering in the Massachusetts Institute of Technology of Boston; he was the Chairman of the Telephone Commission appointed by the City of Chicago in 1907 to investigate the telephone conditions in that city, to prepare an estimate of the value of the telephone plant, to determine what it would cost to build an adequate plant, what the expense of conducting such a plant would be, and what rates would be reasonable and fair for the city to impose upon the operating company.

During 1908 and 1909 he was engaged under the employment and direction of the Massachusetts Highway Commission in preparing an inventory and valuation of the entire properties of the New England Telephone Company in the State of Massachusetts.

In order to value the plant of the New England Company in Massachusetts, after having ascertained quantities of material throughout the State, embraced in the various plants, it became necessary for him to ascertain units of cost for the various kinds and classes of material in the plants, and this he did.

As pointed out by the Master, if the units of value used by Prof. Jackson be applied to the quantities of material actually in this plant, the valuation is slightly in excess of Mr. Jagoe's inventoried value.

Overhead charges must be added in ascertaining the "fair value" of a plant.

It is respectfully submitted that in view of the fact that every witness in the record, every scientific writer on the subject, and all the Courts recognize overhead charges as a part of the value of the plant, the Master is in error in declining to allow any amount as overhead charges. It is undoubtedly true that a plant is worth more in a completed condition ready for business, than are the various materials unassembled, which constitute the plant. Before the material constituting the plant can be erected, there must be the services of a financier who conceives the enterprise and who determines what kind of a plant should be built; there must be an organization and the issuance and sale of securities with which to buy the material and build the plant; there must be a competent engineer who surveys the field and determines the location and the method of constructing the plant; there must be supervision during construction; there must be provision made for interest on the money invested during the building of the plant; there must be provision made for teams and tools used in constructing the plant, and which wear out during the construction of the plant; there must be provision made for accidents due to negligence during the progress of construction; there must be insurance on parts of the plant as constructed before its completion; and over and beyond this, there must be an amount provided for contingencies, accidents, unknown and unforeseen emergencies, so that when the plant is completed ready for operation, it has cost more than the manufacturers price on the material, the freight in getting it to the place where it is to be erected, and the labor of erecting it.

The Master thinks that nothing should be allowed for any of these items and we submit that if this record were barren of proof, the Court would judicially know that such expenses are necessary, and are of necessity a part of the value of the plant.

The lowest amount given by any of the witnesses for these items is by Mr. Polk, appellant's expert. We accept his valuations.

Mr. Polk allows for:

Taxes, rent and insurance during construction	$ 5,000.00
Soliciting and right of way	15,000.00
Engineering and supervision	20,000.00
General legal miscellaneous	50,000.00
Total	$ 90,000.00

Trans., p. 1517.

Working Capital.

The Master states that he has not allowed any amount for working capital. That *something* must be added for this is self evident.

In the Gas case, Judge Hough allows 3.5 per cent of the value of the plant.

Consolidated Gas Co., vs. *New York*, 157 Fed., 861.

The Supreme Court did not disturb this item.

Wilcox vs. *Consolidated Gas Co.*, 212 U. S. 19.

Mr. Wilkinson allows for the Louisville Exchange $33,353.15.

The Chicago Commission's report shows:

The Manufacturer's Tel. Co., estimated working capital at	$ 400,000.00
The Chicago Telephone Co., at	500,000.00
The Telephone Commission allowed	300,000.00
Mr. Polk allows for supplies alone, the sum of	18,000.00

It would seem that the amount allowed by Mr. Wilkinson ought not to be contested. This amount is 33,353.15

Franchise value must be included.

It is shown without any contradiction that on January 1, 1900, when the properties of the Ohio Valley Company were taken over on the books of the Cumberland Telephone and Telegraph Company, the franchise stood on the books of the Company at a valuation of $100,000.00.

If the franchise value of $100,000.00 be divided between Louisville and the other places where the Ohio Valley Company had exchanges, 80 per cent will belong to the Louisville Exchange. The Master approves and accepts this division of the physical properties, and hence the franchise value must be separated in the same way.

This gives to Louisville a franchise value of $80,000.

In the New York Gas case the value of the franchise was allowed by Judge Hough as placed upon the books of the Company, to which he added $5,000,000.00 for increased valuation since it was placed upon the books of the Company, at the time of the consolidation. This Court reversed Judge Hough in this respect, and held that the franchise value was to be limited to the amount at which it was taken over by the consolidated company from the consolidating companies.

Consolidated Gas Co., vs. *New York*, 157 Fed., 861.
Wilcox vs. *Consolidated Gas Co.*, 212 U. S. 49.

Therefore it is insisted by complainant that franchise value of $80,000.00 must be added to the valuation of the physical property in order to ascertain "the fair value of the plant."

In valuing a plant such as Appellee has in the City of Louisville, "going concern" must be included as one of the elements of value.

The value of "good will" and the value of "going concern" are wholly separate and distinct things, although the terms are often used interchangeably, and these two elements of value are oftentimes confused because of a failure to recognize the fact that they are separate and distinct things.

"Good will" is all that good disposition which customers entertain towards a house or business identified by the particular name or firm which may induce them to continue giving their custom to it."

Washburn vs. *National Wallpaper Co.*, 81 Fed., 20.

Judge Hough after quoting this language, proceeds to discuss the question as to whether the New York Gas Company is entitled to any added value on account of "good will" and he points out that a public service company under monopolistic conditions cannot have such a thing as "good will" value, because its customers must trade with the company whether they desire to do so or not.

Consolidated Gas Co., vs. *New York*, 157, Fed., 872.

In *Omaha* vs. *Omaha Water Works*, 218 U. S., 202, Mr. Justice Lurton, delivering the opinion of the Court, clearly distinguishes "good will" from "going value," or, as it is otherwise called, "going concern" value.

In that case the appraisers had included $562,712.45 for "going value." This was within a slight fraction of 10 per cent of the pyhsical value, and this was allowed as a part of the valuation of the plant, quoting, with approval, the decision of Judge Brewer in *National Water Works* vs. *Kansas City*, 62 Fed., 853.

Judge Brewer, in the Kansas City case, allowed $286,000.00 as the value of "going concern" on a physical plant worth $2,714,000.00, which is slightly in excess of 10 per cent.

The amounts allowed, both by Mr. Justice Lurton in the Omaha case, and by Judge Brewer in the Kansas City case, were for "going concern" and were not for "good will."

Mr. Justice Lurton in the Omaha case, points out the difference between "going concern" and "good will." He shows that "good will" as suggested in the Consolidated Gas case has no commercial value when the business is a monopoly; but whether there be a monopoly or not, there is a "going concern" value, or as Mr. Justice Lurton says: "That there is a difference between even the cost of duplication, less depreciation, of the elements making up the Water Company's plant, and the commercial value of the business as a 'going concern' is evident."

It may not be amiss to quote briefly from the opinion of Judge Brewer in the Kansas City case. He says:

> "The original cost of the construction cannot control, for 'original cost' and 'present value' are not equivalent terms. Nor would the mere cost of reproducing the water works plant be a fair test, because that does not take into account the value which flows from the established connection between the pipes and the buildings of the city. It is obvious that the mere cost of purchasing the land, constructing the buildings, putting in the machinery and laying the pipes in the streets—in other words, the cost of reproduction—does not give the value of the property as it is to-day. A completed system of waterworks, such as the company has, without a single connection between the pipes in the streets and buildings of the city, would be a property of much less value than that system connected, as it is, with so many buildings, and earning, in consequence thereof, the money which it does earn. The fact that it is a system in operation, not only with a capacity to supply the city, but actually supplying many buildings in the city—not only with a capacity to earn, but actually earning—makes it true that 'the fair and equitable value' is something in excess of the cost of reproduction."

In *State, etc.* vs. *Commissioners*, 106, Fed. 7, Judge Simonton tersely states the proposition as follows:

> "The basis of all calculations as to the reasonableness of rates, is the fair value of the property used for the convenience of the public—not its cost nor the amount of money expended for it, but its value as a productive factor, taking into consideration its location, character of country through which it passes and the reasonable expectation of business coming to it. The railroad company is entitled to a fair return upon the value of the property, ascertained in this way, and is not entitled to exact from the public more than this."

To the same effect are:

Smyth vs. *Ames*, 169, U. S., 466.

Chicago, etc. vs. *Thompkins*, 176, U. S., 167.

The case of *Smyth* vs. *Ames*, 169, U. S., 466, is probably the leading case in this country on this subject. In that case, the test is the fair value of the property used for the public.

If, therefore, the company is entitled to a reasonable return upon the fair value of its property, this element of "going concern" must be included, because all of the Courts hold that it is a part of the value of the plant, and there *is* a value beyond the "bare bones of the plant," as was said by Mr. Justice Lurton in the Omaha case.

The only question left for consideration is the amount that shall be allowed. Judge Brewer allowed a fraction in excess of 10 per cent of the physical property, and this Court in the Omaha case approved an amount little less than ten per cent. In this case, if only $50,000.00 be allowed, there can be no just criticism.

Summary.

With the data before us, we propose to show the Court that the valuation contended for by appellee is conservative, and fully sustained.

We contend for a valuation of $1,702,391.68

First.

The inventoried value, made by Mr. Jagoe, approved by Mr. Hume, and verified by Prof. Jackson, after deducting the item of $37,561.11, as found by the Master to be in excess of the value of the underground system, and deducting all overhead charges, leaving the "bare bones of the plant" is $1,587,447.55

To this must be added:

Franchise 80,000.00

"Overhead charges" as fixed by the defendant's own expert, and lower than any other witness 90,000.00

No working capital, but merely supplies on hand as fixed by defendant's own expert 18,000.00

Total valuation $1,775,447.55

Nothing is included for "going concern" value

Second.

The Master says the plant cost $1,381,124.41

He deducts 10 per cent for depreciation 138,112.44

Leaving the value of the plant $1,243,011.97

We will presently show that the Master is in error in deducting this 10 per cent depreciation.

However, accepting his value of $1,243,011.97

to this must be added overhead charges, which the Master declines to recognize as a proper element of value 90,000.00

Franchise value 80,000.00

Supplies 18,000.00

Working capital 33,353.15

"Going Concern" value 50,000.00

Total $1,514,365.12

If we add the amount deducted by the Master for depreciation erroneously on his own basis, as we shall clearly show ..... $ 138,112.44

The result is a total valuation of $1,652 477.56

Third.

And finally, the Court ascertaining the value of the plant to be "at least" $1,449,593.20

This is the "bare bones" of the plant.

To this must be added:

Franchise	80,000.00
"Going Concern" value	50,000.00
Total	$1,579,593.20

It is confidently submitted that the value of the plant at the date the rate ordinance was adopted, excluding toll lines and real estate, was conservatively worth *at least* the sum of $1,700,000.00

However, in view of the meaner earnings, as will be shown, the cost and the value of the plant is immaterial. The earnings under the ordinance rates are not sufficient to earn 6 per cent on the *lowest* valuation insisted upon by any witness in the record, and will show a much lower per centum of earning on the valuation reported by the Master.

The Master was directed to report:

VI.

THE GROSS AND NET EARNINGS FOR THE YEARS 1905 TO 1908 INCLUSIVE.

As has been stated, 1908 is the most favorable year to the contention of appellant, and is most unfavorable to the contention of the appellee of the four years, 1905 to 1908, hence the earnings and expenses for that year alone will be discussed:

Before coming to the receipts and disbursements for that year, it is important to state the facts relating to the examination of appellee's records and original vouchers by the expert accountants selected by both appellant and appellee.

In his supplemental report the Master states:

> "Complainant began its testimony in this cause by introducing as a witness Mr. H. Blair Smith, Auditor of the Complainant, and at the conclusion of his direct examination, counsel

for defendant moved "The Master for an order permitting defendant, through its accountants, to examine said books, records and accounts of complainant, and for an order directing and requiring complainant to make a full and complete exhibit, and show all its books and records to defendant's accountants." This motion was objected to by complainant, and the objections were sustained and the motion was disallowed.

"Thereafter at a conference between the Special Master and counsel representing both litigants, complainant's counsel submitted two propositions: One was that the Special Master should select an expert accountant who should examine the books and records of the complainant company, and make a report directly to the Special Master, and that this report should be treated as evidence in the cause by both parties.

"The alternative proposition was, that each party to the litigation should select an accountant, and that the two accountants thus selected should make a joint examination of the books and records of the complainant company, and should make a joint report to the Special Master upon all matters that they could agree upon, and as to all matters they could not agree upon, that each was to file a separate report.

"The defendant's counsel agreed to the latter proposition. It was then stated by the Special Master in the presence of counsel for both parties, that whatever these accountants should jointly agree upon, should be accepted as final by the Master, and no proof should be permitted to vary or contradict such joint findings. As I understood it, this statement was accepted by both parties.

"Upon an examination of the joint report, I find that the expert accountants agreed and so reported that the books of the complainant showed as to the cost of complainant's plant, and as to the expenditures for construction, as to the gross earnings and as to operating expenses. The report specifically states as to the foregoing matters as follows:

"The foregoing joint report shows the money charged as the cost of the plant at Louisville, the gross amount credited to the Louisville Exchange as earnings, and the operating expenses charged as appertaining thereto, as recorded on the books of the Cumberland Telephone and Telegraph Company. It is not an agreement that the said accounts are properly dis-

tributed or charged as we believe they should be, therefore the right is reserved by each of the undersigned to make such individual report and statement relative thereto as each may feel justified in doing."

"The only fact reported by the accountants to which both agreed, was as to what would be the probable loss in earnings the first year after the ordinance rates should be put into operation. Their finding was that such loss would be $49,721.76. This fact I adopted in my report, and my calculations are all based thereon."

The Master reports that the *books of appellee* shows exchange operating expenses for 1908 to have been ..... $ 217,395.53

In this, the Master is clearly in error. The accountants made up a statement of *their own* from original vouchers and other information and stated the expenses to have been for the year 1908 the sum of ..... $ 217,395.53

The books of appellee showed the expenses to have been 227,495.66

The difference of $10,100.13 is accounted for in two ways—$3,707.34 is bad debts.

Appellee in keeping its books charges up all exchange earnings under the head of "Revenue." This is done because these charges are placed upon its books before it is known whether all these accounts can be collected. Thereafter, when it is ascertained that any accounts are uncollectible, they are charged as expense, which offsets a like amount of revenue. This is done because it is more convenient in keeping books.

The accountants in making up their joint report, knowing what revenue had been collected, stated the net revenue that had been collected by appellee, and, therefore, did not charge uncollectible accounts as an expense. The result to appellee is the same, and its books at the end of any given period would show larger gross earnings and larger expenses by the exact amount of uncollectible accounts, but the one would offset the other. The accountants have eliminated bad debts, both from the earnings and expenses, thus leaving earnings and expenses without being encumbered with uncollectible accounts.

The remainder of this difference, $6,392.79, is accounted for in this way:

During the time the employes of the Mutual Audit Company, appellant's expert accountants, were examining the books of appellee, they had in their employ at Nashville, Tennessee, but *not* in the office of appellee, where they were engaged in their work, a man by the name of Settle, who had been for many years local cashier of appellee at its Louisville Exchange. He was a defaulter and had been discharged about September, 1908.

This witness occupied a desk in appellee's office at its exchange building in Louisville, on the first floor. He undertakes to give with great accuracy, during all of the time he was so employed, the exact amount of time various of appellee's employees spent in the Louisville Exchange, and the time spent by them elsewhere. He undertakes to give the time spent by the Superintendent of the Louisville Division in his office, although the Superintendent's office was on the next floor, and was entered by a door not connected with the floor on which Settle had his desk.

The Mutual Audit Company, having in its employ this young man Settle, deducted from the Louisville Exchange a part of the wages and salaries of the men named by Settle in proportion to the time Settle *said* they were in the Louisville Exchange compared with the time he *said* they were in other places.

It thus appears that these deductions were made from the expenses as entered upon the books of appellee, and as shown by the original pay rolls, *alone* upon the statement of a man who was a defaulter, and had, for this reason, been discharged from appellee's service, and who could not possibly know the facts.

As soon as these facts were developed in the evidence proof was introduced by appellees to show, not only that these deductions from its expenses were unjust, but that it was a physical impossibility for Mr. Settle to have any such knowledge as he claimed to possess, and upon which deductions of several thousand dollars per annum had been made from the expenses of conducting the Louisville Exchange.

Mr. Hume, the General Manager of the Company, makes the following explanation.

"The exchange, in addition to being under the general supervision of a district superintendent, has its local manager, its general foreman of plant or construction, its chief electrician, its chief operator, and the employes that work in these respective departments, and what is there is what would be found in the same size exchange, approximately the same size exchanges as at Nashville and Memphis, no more and no less. As to Mr. Settle's charge that there were men there who were giving one-fourth of their time or any other material part of their time to outside matters, he has made the charge without personal knowledge and without fact. The matter that he has gotten on his mind in a twisted manner is simply this: that in the development of the business around what we term the metropolitan district of Louisville, we have put in a number of small switching exchanges in various sections of the country, both in Kentucky and in Indiana, within a radius of twenty or twenty-five miles of the City of Louisville itself, and at each of these small exchanges we have employes to take care of the exchange and to give the service from the switchboard. In other words, at each of those switchboards we have exactly the force we would be compelled to have and that would be found in other small exchanges, even though they might be a hundred miles from any large exchange; but, on account of the fact that to all those exchanges and from all those exchanges there are certain subscribers who have arranged for Louisville service, and the further fact that all the subscribers of Louisville are given access to all these special subscribers in all these exchanges referred to, and given this service without any extra charge whatever in the way of tolls or additional monthly rate in their exchange, in the interest of their exchange, in the interest of the Louisville service, we allow the manager and the other supervising officers of the Louisville exchange to do whatever may be necessary in the way of supervising; in watching over the service at these smaller exchanges; but whenever it comes to any actual work, the employment of any of our linemen or troublemen or electrical men, or plant men, or material shipped to Louisville for the use of Louisville, every item and every minute of time employed by such employes is reported and the proper credit given on the Louisville account and proper charge made against these smaller exchanges that are not in every respect, and, in fact, a part and parcel of the Louisville plant."

Hume's dep., Trans., pp. 674–5.

Mr. Hume then shows how impossible it is for Mr. Settle to have been able to determine what portion of time any of these employes spent in or outside the Louisville Exchange.

Notwithstanding these facts, the accountants, who are merely bookkeepers, and did not know anything about the reasons actuating appellee's officers in charging up the expenses of Louisville Exchange as they did, have seen fit to deduct several thousand dollars each year from the expenses of the exchange which properly belonged thereto.

In this way the Master has by oversight understated the expenses for 1908 by $ 6,302.70

The actual expenses were $ 223,788.32

The gross earnings were found by the Master to have been $ 325,838.30

But the Master *increased* these gross earnings to 369,087.00

This difference, $43,248.70, is accounted for in this way:

Appellee is engaged in two kinds of telephone business. It has 517 exchanges. Each exchange is separate and distinct. Each is in a separate city or town. The patrons to any one of these exchanges have no concern with any of the other exchanges. The patrons to each exchange are charged a certain amount each month for the privilege of conversing with the other patrons to that exchange. His payment covers service to that particular exchange, and that particular exchange only undertakes to furnish service among the patrons paying for service to that exchange.

Appellee also operates a system of toll lines which extend from each of these cities and towns to many other cities and towns in the territory where appellee conducts its business.

The charge for the use of these toll lines does not depend upon whether the customer is a subscriber to an exchange or not. The charge for the use of the toll lines is the same for subscribers and

non-subscribers to the various exchanges. The *charge* for toll line use is for each time the toll line is used, and the *amount* of the charge is based upon the distance and the length of time the toll line is used.

To illustrate: Appellee has an exchange in Louisville and one in New Orleans. The Louisville patrons are charged so much per month for the privilege of conversation as often and as long as they may desire with any one or more of the other patrons of the Louisville Exchange. In like manner each patron to the New Orleans exchange pays so much per month for the privilege of conversing as often and as long as he may desire with any one or more of the other patrons of the New Orleans Exchange. The Louisville patrons have no concern with the New Orleans patrons, and the New Orleans patrons have no concern with the Louisville patrons.

There is a toll line from Louisville to New Orleans. Each subscriber in Louisville, and all other patrons in Louisville, equally and alike, may talk from Louisville to New Orleans to any patron or other person in New Orleans, and the charge for thus talking is the *same* to each person, whether they be exchange patrons or not.

In practice it has been found that exchange patrons in Louisville desire to talk over their lines from their residences or places of business, instead of going to a central station and waiting until they can be put into communication with the person desired at New Orleans. But the charge for talking to New Orleans is the same, whether the Louisville patron talks from his residence or place of business, or from the central office.

It is thus seen that the charge for exchange service is one thing, and the charge for toll line service is a wholly different thing. Exchange earnings belong to the exchange, and toll line earnings belong to the toll lines.

The construction of toll lines is kept separate and distinct from exchange construction. They are separate and distinct properties.

If this were all there could be no confusion; the *earnings* of the exchange and the toll lines are separate and distinct, and the one bears no relation to the other.

However, the separation of exchange and toll line *expenses* is not so distinct, for these reasons:

The Louisville patrons to the exchange service not only desire to converse with each other, but they desire to use the toll lines from their residence or places of business, hence the exchange is connected with the toll lines, so that patrons may talk over the toll lines without leaving their places of business or their residences. This is a very great convenience to the exchange patrons, since they may notify the operator of the exchange whom they wish to talk with in New Orleans, and while the New Orleans party is being looked up, the Louisville subscriber goes ahead with his business, and when the New Orleans party has been located, the Louisville patron converses with him, and has lost neither time nor effort in going to the central office. But the *charge* for the talk is distinct from the charge for the exchange service.

The exchange employes have done two things. They have answered the exchange patron, and have also helped to operate the toll line from Louisville to New Orleans. How then shall this expense be divided? Every one agrees that some of this expense should be borne by the toll line, and some by the exchange. Since the same employes perform both kinds of service, it has been found impracticable to accurately separate this expense. There is no difficulty in separating the *receipts*, but to separate the *expense* of operating has been found to be impracticable.

Experience has shown that if 15 per cent of the toll line receipts are given to the exchange, for the service performed by the exchange, the exchange will be sufficiently compensated for its services to the toll lines. This 15 per cent is the amount appellee receives at *its* exchanges for handling toll line messages for *other* companies, and is for the amount the owners of exchanges handle toll line messages *for* appellees.

This being the amount agreed upon by parties dealing at arms' length, establishes the justness of the division. Therefore, when it becomes necessary for appellee to separate the operations of one of its exchanges from the operations of its toll lines, it makes the division on the *same* basis as is made between it and other companies in these contracts.

All this is made clear in the record, and is fully discussed in our exceptions to the Master's report. (Supplement to brief, p. 90.)

The Master did not think 15 per cent of the toll earnings sufficient compensation to allow the exchange, and he thereupon gave the exchange 100 per cent of the toll line earnings, thus destroying *all the benefits of owning toll lines.*

It must be noted that this a theory of the Master's alone. No witness makes any such claim, and there is nothing in the record from which such a conclusion can be drawn.

The Master seems to think that it really makes no difference to complainant since it owns both the exchanges and the toll lines. It might as well be said that since appellee owns both the Louisville Exchange and the New Orleans Exchange, that it makes no difference to appellee if the receipts of the New Orleans Exchange be credited to the Louisville Exchange. And so it would not in one sense. But it makes a very *vital* difference when the inquiry is, What are the earnings of the Louisville Exchange?

In any inquiry as to what are the receipts and disbursements of the Louisville Exchange, receipts from other exchanges, toll lines, stocks, bonds, and *all other* sources must be excluded, *although* all these other properties may belong to the owner of the Louisville Exchange.

It thus appears that the Master has by an obviously erroneous theory of his own, *increased* gross earnings by $43,248.70. This one error was sufficient to change the Master's report in favor of the ordinance rates.

The result is, that for the year 1908, the gross earnings of the Louisville Exchange were		$ 325,838.30
Expenses actually paid		223,788.32
Leaving *apparent* net earnings of		$ 102,049.98
It is conceded by every one in the record that the ordinance rates would have reduced earnings	$ 49,721.76	
This would leave net earnings for 1908, if the ordinance rates had been in effect		52,328.22

As will be pointed out hereafter, the Master allows for depreciation, maintenance and repairs, for the year 1908 — 92,449.45

There was actually expended in 1908, the sum of — 86,155.98
a margin of $6,293.47, which must be added to expense, and which reduces net earnings to — 46,034.75

His Honor, the trial Judge, out of an abundance of caution, allowed 25 per cent of tolls as exchange earnings, instead of 15 per cent. The trial Judge also allowed the item of $6,392.79 discussed *supra* p. 29 and in this way ascertained net earnings for 1908 to have been — 96,262.11

If from these net earnings, as found by the Court, there is deducted the reduction that would result if the ordinance rates had been in force, $49,721.76, the real net earnings as found by the Court for 1908, are — 46,540.35

The Master found net earnings for 1908 to have been — $ 150,673.19

From this must be deducted

85 per cent of tolls	$	43,248.70
As shown on p. 29 supra, the item of		6,293.47
Total	$	49,542.17

Leaving the Master's net earnings — 101,131.02

From this must be deducted the reduction under the ordinance rates — 49,721.76

The Master's net earnings for 1908 are — 51,409.26

It thus appears that when the obvious errors of the Master's report are corrected, his finding as to net earnings for 1908, under the ordinance rates, corresponds very nearly with the findings of the trial Judge, and with the insistance of appellee.

Net earnings for 1908 on appellee's insistance, are — $ 46,034.75

The finding of trial Judge — 46,540.35

The Master's finding after correcting manifest errors, are ..... $ 51,409.26

No one will insist upon a valuation of *less* than $1,200,000.00. It is thus seen that the ordinance rates will not permit a return of even 5 per cent upon the lowest valuation that can even be contended for.

As was said above, the valuation of the plant is of no importance because of the very meager earnings allowed under the ordinance rates.

The Master was directed to report what amount should be set aside for:

VII.

DEPRECIATION.

The Master finds that seven per cent per annum upon the value of the plant (excluding cash working capital and supplies) is a proper amount to set aside each year for depreciation.

But when the Master comes to apply this depreciation fund, he erroneously includes as depreciation, all current repairs, which is not depreciation in any sense; current repairs adds nothing whatever to value of the property, and does not renew or reconstruct any part of the property.

That depreciation and current repairs are separate and distinct things, is shown in *Knoxville* vs. *Knoxville Water Works Co.*, 212 U. S. 13, where it is said:

> "Before coming to the question of profit at all, the company is entitled to earn a sufficient sum annually to provide, not only for current repairs, but for making good the depreciation and replacing the parts of the property when they come to the end of their life."

Two things are apparent from this quotation. The first is, that current repairs is one thing and depreciation another thing, and the second is, that depreciation is an expense of conducting the business as much so as operating expenses, and whatever depreciation is allowed, must be added as expenses of the business.

Depreciation is not repairing or maintaining the property or plant in an operating condition. Depreciation is intended to care for silent decay, changes in the art brought about by the evolution in the business, changes required in shifting parts of the plant, owing to action of the municipal authorities, and unknown but certain disasters which come in a cycle of time.

There is another expense of operating a telephone plant which is not connected with in any way the *depreciation* of the plant, and that is *maintaining* the property in an operating condition, and called "current repairs," "operating maintenance," "maintenance repairs," or merely "maintenance."

Depreciation does include reconstruction, and, in addition, embraces evolutions in the art requiring the replacement of parts of the plant that have not worn out, but are replaced because of the discovery of newer and better apparatus and appliances; and, also, as stated, shifting of plant on account of the necessities of the city, and unknown disasters, or losses, that always come within a cycle of time, and must be provided for out of earnings.

There is no confusion in the record among the witnesses as to "maintenance" and "depreciation."

Mr. Caldwell, appellee's President, states:

> "Depreciation covers — in other words, when I am considering depreciation and when I am discussing it, it covers quite a wide field. Not only is contemplated the wear and tear that is not observable, or that does not require immediate attention, but it also contemplates the changes in the art, the evolution that has gone on and is going on continually, and the unknown dangers and hazards that are likely to come up and are sure to arise in some form, not at stated intervals, and not, perhaps, frequently, but will arise in some form or other and call for extraordinary expenditures. That, I say, is the field that I have before me when I am considering the question of depreciation, and the necessity to provide therefor is imperative. As to how it may be treated, or how it may be kept, it is a subject that will vary and has varied with different people in different lines of business, but whether it is reckoned within the accounts or not, does not alter the fact that the force is working its way all the time, and that it will have to be reck-

oned with inevitably. In other words, it is a force that is not dependent upon the whims or idiosyncrasies or opinions of individuals. They are entirely above and beyond any such influences."

Caldwell's dep., Trans., vol. 1, p. 838.

And again, in reply to a question by the Master, he explains the difference between depreciation and maintenance as follows:

"If a brick—if something should fall off of this house, a brick or something, and break our route in two there, men would go there to repair that. The cost of doing that would be Incidental Repairs, and it would go into Maintenance, but it would not be that class of expenditure which would be counted as a thing to perpetuate and renew the property. Now, then, all that class of expenses, if it had gone into Maintenance, would have to be taken out and excluded before you made up the amount that would represent what you term the equivalent of seven and a half per cent. (Depreciation.)"

Caldwell's dep., Trans., Vol. 1, p. 841.

Mr. Crumb, one of the city's expert engineers, says:

"Assuming there are ten thousand telephones and operating, general and maintenance expense of $150,000, *there should be added to those expenses the sum of money based upon the actual cash investment in the plant sufficient to cover the depreciation.* Taking the actual cash investment in the plant at approximately one million dollars, and figuring depreciation at seven per cent would be $70,000, which should be added to the $150,000, making $220,000, which it would be necessary for the telephone company to earn to cover the actual cost of operation, maintenance, general expense and depreciation."

Crumb's dep., Trans., vol. II, p. 904.

Mr. Levings states that:

"In figuring the expense of operating a telephone plant, you must allow for depreciation, operating, maintenance and general."

Leving's dep., Trans., vol. II, p. 1534.

Mr. Polk says that:

> "In operating a telephone plant, you must allow for general expenses, operating expenses, maintenance expenses, and, in addition, depreciation."
>
> Polk's dep., Trans., vol. II, p. 1418.

It thus appears that the treatment by the Master of depreciation is erroneous, and his findings as to any return for the year 1908, are based upon an erroneous conclusion.

That depreciation is necessary is shown.

First—By the decision of this Court.

Second—By the treatment of the matter by the experts and scientific writers on the subject as revealed in this record;

Third—By every witness who speaks of the matter in this record.

While the Master says that he allows seven per cent for depreciation, and at the same time includes all current repairs as a part of his allowance for depreciation, yet, when he comes to apply even this principle to the operation of complainant's plant, he does not allow, in the expenses for 1908, the amount he says is proper, *including all current repairs.*

The Master allows for current repairs and depreciation for the year 1908, the sum of $94,606.83; he then states the amount actually expended by appellee for maintenance and reconstruction for 1908 to have been only $86,155.98, which makes a difference between the amount allowed by the Master, and the actual amount expended by appellee on reconstruction and maintenance during 1908, $8,450.85. The Master then does allow $2,050.74 in addition to the amount actually expended by complainant, whereas, he should have allowed the difference between the amount stated by him to be a proper amount for depreciation, and the amount actually expended, which was $8,450.85. The difference between the amount allowed, $2,050.74 and $8,450.85 is $6,400.11. So that really, upon the Master's own theory, his net earnings for 1908 should be reduced by $6,400.11.

It must be apparent then that the only inquiry in this case is as to what amount should be allowed for depreciation. All the witnesses agree that there should be *some* amount set aside for depreciation. The Master also finds that there should be some amount, and he fixed it at seven per cent, but the Master misapplies the entire principle of depreciation by including as a part thereof the amount expended on current repairs.

The three witnesses of the defendant allow for depreciation, as follows: Mr. Polk, $50,000 per annum; Mr. Levings, $50,000 per annum; and Mr. Crumb, seven per cent upon the cost of the plant, which on his basis would be about $70,000. The Chicago Commission allows 8.03 per cent upon the value of the plant, including buildings. Appellee's witnesses place the amount at from seven to seven and one-half per cent upon the cost of the plant, excluding real estate. So that it appears that the lowest *amount* allowed by any witness for depreciation on this plant is $50,000 per annum.

It appears that for the year 1908 appellee expended on reconstruction $31,000, so that the net amount to be set aside for incomplete depreciation is $19,000, assuming that $50,000 is the proper amount. If this should be applied to the Master's net earnings for 1908, they would be further reduced by this $19,000.00.

But the fallacy of the Master's application of depreciation may be shown in another way. The purpose of ascertaining what amount is necessary to be set aside for depreciation is predicated upon the assumption that *all* depreciation is not cared for as it occurs, and *some* amount must be set aside out of earnings each year, to be expended in future years, when the time for renewal arrives. If depreciation could be cared for each year, there would be no necessity to inquire into the question of depreciation at all; the only inquiry would be to ascertain what amount had actually been expended each year, just as operating expenses are ascertained.

The Master finds 7 per cent on the value of the plant is the proper amount to allow for depreciation. On this basis, he finds that the amount for depreciation is:

1905	$ 86,818.77
1906	93,457.53

1907	$94,914.66
1908	94,606.83

The Master also finds that the amounts *actually expended* on maintenance and reconstruction (both of which he says is depreciation) were:

1905	$ 90,870.36
1906	93,423.00
1907	107,511.41
1908	86,155.98

It thus appears that in four years appellee actually expended on manitenance and reconstruction $ 377,960.75

While the Master only allows for depreciation and maintenance during these same years 369,797.79

It is thus seen that the Master allows 8,162.96 *less* for depreciation than was *actually expended* during the same four years.

The Master not only does this, but says that the plant has depreciated 10 per cent in value beyond what has been expended in caring for depreciation. The result is: A plant has had expended on it $8,162.96 *more* in four years than was necessary to care for all depreciation, and yet has depreciated 10 per cent in value. The two propositions cannot stand. One or the other is *wrong*. The Master must either allow *more* for depreciation, or find that the property has *not* depreciated at all.

While the Master states that the plant has depreciated 10 per cent, after having had spent on it *more* than he finds necessary to care for *all* depreciation, he says:

> "The witnesses for complainant all agree that the plant has been kept up in excellent condition."
>
> "It (the plant) is in excellent condition."
>
> "The service rendered by complainant is good, and the physical condition of its plant is excellent."

That the two propositions of the Master cannot stand together is certain. Which shall yield? Shall the $138,112.44 deducted from the value of the plant for depreciation in value be restored, or shall there be allowed a *larger* amount from earnings from a depreciation fund?

Having discussed depreciation and its treatment by the Master, we will now show the results, if the Master be correct in his treatment of this subject.

The Master states net earnings for the year 1908 to be	$	150,673.19
In this is included all toll earnings. The ordinance rates would reduce this amount	$	49,721.76
Real net earnings, under the ordinance rates, including all toll receipts		100,951.43

But the Master says the property has depreciated 10 per cent. This depreciation is an expense of conducting the business, as every one agrees.

Therefore, this expense must be taken out of earnings before net profit is ascertained. The amount of depreciation found by the Master is $138,112.44 for the nine years from 1900 to 1908, inclusive. The same amount must not be taken out of each year's earnings, because there was three times as much property depreciation in 1908 as there was in 1900. The Master states there was only $457,579.07 in 1900 and that in 1908 there was $1,381,124.41 of property. So that the proportion of this $138,112.44 to be taken out of 1908 earnings is at least	$	20,000.00
This deducted from net earnings for 1908 reduced by the ordinance rates, and including all tolls, leaves real net earnings for 1908		80,951.43
The Master allowed for depreciation, including all current repairs, for 1908, $94,606.83; but when he comes to state net earnings, he only allows $86,155.98 actually expended that year, plus $2,050.74, or $88,206.72; or a difference of		6,400.11

On the Master's own theory, this was a part of the expenses for the year 1908, and must *reduce* the Master's net earnings, on his own theory, to.....$ 74,551.32

This amount is only 6 per cent on a valuation of..... 1,242,522.00

The depreciated value of the plant by the Master is.. 1,243,011.97

This valuation excluded franchise, working capital and "going concern" value.

If the Master is correct in his allowance for depreciation, his valuation must be increased..... 138,112.00

If the depreciation found to be necessary by the Master is properly applied, the earnings for 1908 will be reduced to practically nothing.

SUMMARY ON EARNINGS FOR 1908.

Mr. Farnham, appellant's expert accountant, found net earnings for 1908 to have been 151,612.74
but he concedes that he has not included in expenses $31,450.07 actually expended that year, under the specious plea that this amount should be charged to "reserve," and yet he nowhere creates any reserve out of earnings to which this expense, actually occurred, could be charged. So that Mr Farnham's net earnings for 1908 are 120,162.67

The earnings also include the item of $6,293.47, expense actually incurred in 1908, but which was taken out of the expenses under the advice of Mr. Settle, as shown supra p. 29. So that Mr. Farnham's *actual* net earnings for 1908 are 113,869.20

This does not allow *any amount for depreciation.*

The Master found net earnings for 1908 to have been. 150,6[illegible]19

But the Master includes *all* toll receipts, when he should have included only 15 per cent, as has been shown supra, p. 31. The excess amount of tolls included by the Master is ..... $ 43,248.70

His findings also includes the item of $6,293.47, which is erroneous, as shown supra, p. 29.

The Master's *real* net earnings for 1908 are 101,131.02

This does not *allow any amount for depreciation.*

The real net earnings, as stated by appellee's auditor, for 1908, were 100,719.03

This does not allow *any amount for depreciation.*

The record clearly shows that 7 per cent per annum on the value of the plant, excluding real estate, supplies and working capital, is the proper amount to set aside from earnings for depreciation, and the Master so reported, and no exception was taken thereto by appellant.

If we adopt, for the argument, the Master's valuation of $1,243,011.97, the amount to be allowed for depreciation, would be $87,010.83. The actual amount expended on depreciation in 1908, according to the joint report of the accountants, was $31,450.07. The net amount to be set aside out of earnings for 1908 was, therefore ..... $ 55,560.76

This amount, taken from the *apparent* net earnings as shown above, leaves

Mr. Farnham's net earnings ..... $	58,308.44
The Master's net earnings	45,570.26
Appellee's Auditor's net earnings	45,158.27

The reduction in the rate ordinance would have been $49,731.76. If, therefore, the ordinance rates had been in effect in 1908, the greatest net earnings reported by any one would have been only ..... $ 8,576.68

VIII.

THE FAIR VALUE OF THE SERVICE

In the leading case on rate regulation, the Supreme Court says, that two things must be considered, the rights of the owner of the property, and the rights of its patrons. The owner's rights require a reasonable return on "the fair value of the property used for the public," and the partons' rights require that the charge be for "the fair value of the services rendered."

Smyth vs. *Ames*, 169 U. S., 466.

This principle runs through all the cases reported since that decision was made.

The practical way of guarding the rights of the owner to a reasonable return, and the rights of the patrons to be only charged for the fair value of the service, has been to ascertain "the fair value of the property used for the public," and then to require the patrons to pay such charges as may be necessary to pay all expenses of conducting the business, and in addition whatever may be necessary to preserve the integrity of the property, and then a reasonable profit to the owner of the property. It has been justly said that usually this test demonstrates that the patrons are only charged for "the fair value of the services rendered." Sometimes it happens that a property is so situated that the charges are more than "the fair value of the services rendered," *although* the charges do not yield to the owner a reasonable profit, as was shown in the case of

Covington Turnpike Co. vs. *Sanford*, 164 U. S., 596.

The converse of the proposition must also be true. We submit that the case at bar is clearly one of that character.

The evidence shows that the Louisville Exchange subscribers have the use, without additional charge, of the exchanges at Jeffersonville and New Albany, Ind. They also have free service to certain subscribers to the following exchanges located in Jefferson County:

	Number of Subscribers.
Anchorage	42
St. Matthew's	63
Jeffersontown	36
Harrods Creek	42
Pleasure Ridge Park	41

No part of the "fair value" of any of these exchanges is included in the valuation of the Louisville Exchange, and no part of the expenses of operating these exchanges is charged against the Louisville Exchange.

Trans., p. 226.

The Master has *even* charged against these exchanges a *part* of the expenses of the Louisville Exchange. So that the Louisville Exchange patrons get free service to these outside exchanges, and pay not one cent for the service, and *yet* these exchanges are made to bear a *part* of the Louisville expenses.

Supra, p. 29, Supplement to brief, p. 103.

The contention of the Master is inconsistent. If the Louisville patrons receive free service to these other exchanges, they should bear a part of the expenses of these other exchanges, and it would be proper to include a part of the value of these other exchanges. But the Master not only does not include any part of the value of these exchanges, nor any part of the expenses of these exchanges, *but* actually makes these other exchanges bear a part of the Louisville Exchange expenses.

If we concede, as we do, that no part of the value, and no part of the expenses of these other exchanges, shall be included in the value of the Louisville Exchange, we clearly have the right to insist, as we do, that the Master should *not* have taken $6,392.79 of expenses for 1908 from the Louisville Exchange, and thereby *increased* the apparent net earnings that amount.

Appellant insists that the patrons at these five exchanges in Jefferson County pay a higher price for Louisville service, but the Louisville patrons do *not* pay anything additional, and the inquiry is whether the Louisville patrons are charged a reasonable amount

for the service rendered *them*. The questions of what other patrons, *somewhere else* pay, is not involved. It is a question of what the patrons inside the *corporate limits of Louisville pay*.

Under any view of this matter, the facts disclosed should resolve all doubts as to value and earnings of the Louisville Exchange in favor of appellee.

IX.

EXPERIENCE UNDER EXISTING RATES ACCURATELY FORECASTS THE FUTURE, UNDER LOWER RATES.

A reduction in rates does not reduce expenses. This is self evident, and is conceded to be true by all the writers on the subject, by all the witnesses in this case, and is recognized as true by this Court

The only possible way in which net earnings are ever increased in any kind of business, under reduced rates, is that the larger volume of business yields a larger aggregate net profit.

A gas company may charge $1.00 per thousand for gas, and if the rate is reduced to 80 cents, there may be an *increased* consumption by the same and new patrons. But for such *increased* consumption, the patrons pay an *increased* sum. In this way the net profits to the company *may* be increased, on account of the *increased* volume of business.

But with the telephone exchange operating on "flat rates," the patrons *pay less* and certainly use *no less* service. If the gas company charged $5.00 per month for whatever gas a patron desired to consume, a reduction to $4.00 per month could not possibly *increase* the net profit to the company. It would be certain that the company, while possibly not supplying *more* gas, would receive *less* for what it did supply. The company would only receive $4.00 instead of $5.00 even though the patron used the same amount of gas as he did when he was charged $5.00. But even in *this* case, the *new* patrons at $4.00 per month *might* increase the volume of business to where the *increased* volume of business, even at $4.00 per patron, would yield a larger aggregate net profit.

With the telephone exchange, if the patrons are charged in the aggregate $100,000 for service, a reduction to $50,000.00 could not possibly *increase* the profit. The patrons would receive the *same* service, and pay one-half the price; and if the patrons to the telephone exchange *increase*, two things happen, the old patrons use *more* service and pay *less*, and the expense of serving the *old* patrons *increases*. This is true because the telephone exchange is not *selling* a *commodity*, but is *furnishing facilities*. When *new* patrons are obtained, *new* facilities must be furnished, and the old patrons *retain* the *same* facilities they had before the new patrons were obtained with an *added expense* of re-arranging the facilities of the *old* patrons so they may be put into connection with the *new* patrons, and in like manner, the facilities furnished the *new* patrons costs more, because they must be arranged so the new patrons may be put into connection with the *old* patrons; and when all this has been done, each patron, both the old and the new, use *more* service, and pays *less*. See Trans., p. 552.

And so it is, if the charge to existing patrons under the new rates, is not remunerative, the *same* charge for an *increased* number of patrons, cannot *possibly* be remunerative.

This has been the experience of the entire country. In New York, the largest telephone exchange exists. The price for service was $20.00 per month. It had to be abolished, and measured service established, that is, a charge for each time a patron uses the telephone. As the size of the exchange decreases in small cities, the charge *decreases*, until we find the *smallest* charge for exchange service in the *smallest* towns and cities.

This results from the fact that *each* patron is charged a fixed sum per month for all the service he desires.

When we look at the experience of other public service concerns such as gas, water and electricity, we find the very reverse to be true. Leaving out of mind abnormal conditions, which exists here and there throughout the country, we find that the charge for gas, water and electricity is *higher* in the smaller cities and towns, and *lower* in the largest cities and towns.

This subject has been fully discussed in our exceptions to the report of the Master (supplement to brief, p. 156.) But we submit the following as being sufficient, in view of the fact that there is no conflict in the record and *all* the witnesses agree that this principle is sound and undisputed:

In *Louisiana R. R. Commission* vs. *Telephone Co.*, 212 U. S., 426, the Court says:

> "We say this because the evidence shows that in case of telephone companies the general result of a reduction in rates in some other kinds of business does not follow, namely, that there would be an increased demand, which could be supplied at a proportionately less cost than the original business. Such, it is admitted, would be the case generally in regard to water companies, gas companies, railroad companies, and perhaps some others, where the rate is a reasonable one. For example, it is said that it would cost no more, or certainly scarcely an appreciable amount more, to haul a train of two cars both filled than it would to haul the same train with both cars half filled, and if the reduction in rates should result in filling the cars where previously they had not been half filled, there might be an increased carriage at a cost very little more than before, and probably an increased profit. So, in the case of a water company, the reduced rate might result in furnishing more water to consumers already existing, and the increased cost of furnishing same would be infinitesimal, where there was a supply sufficiently large to fill the demand. So, also, in furnishing gas at reduced rates, the reduction in the rate would very probably result in increased consumption, not only in increased demands from more consumers, but also an increased consumption by consumers already existing, and the increased cost of furnishing the gas would be nothing like in proportion to the increase in consumption. In these cases increased profits might be the result of decreased rates. But with telephone companies, as shown by the testimony of the president of complainant, the reduction in toll rates does not bring an increased demand, except upon the condition of corresponding increase in expenses."

In the report of the Committee to the City Council of Chicago, September 3, 1907, it is said:

> "The average person does not understand why it costs more per telephone to supply telephone service in a large city than in a small city. The assertion of this principle to many seems a

paradox. It is regarded as contrary to the ordinary principle of business—that is, that the unit cost becomes less as the volume of business done increases. It is but natural to think that the wholesale principle ought to apply in the telephone business as in other lines. The idea prevails because the ordinary individual does not understand the peculiar features of the telephone business, and does not look beyond the telephone on the wall or on the desk. He does not take into consideration that the real business of a telephone is to furnish service, transmit messages, and not merely to rent instruments. This prevailing idea has constantly been brought home to the members of this committee by having their attention called by people thus uninformed to the lower rates existing in other cities; cities between which and Chicago there can be no common basis of comparison. Attention is called to some of the reasons for this exception to that rule of business, so well established."

Mr. Polk, appellant's main witness, says that an increase in the number of subscribers to the exchange would result in an increased capital account, and that it would result in an increase in all expenses of conducting the business; *that a reduction in rates would not reduce the expenses at all*, but that an increase in patronage would increase the expenses per station to a certain point.

Polk's dep., Trans., vol. II, p. 1439.

The Chicago Telephone Commission says:

"It is tradition in telephone circles that the service per telephone costs more as the number of telephones connected with the plant increases. As the number of telephones increases, each subscriber has the opportunity to call upon more people by telephone, and the law of averages would indicate that the number of calls per day from each telephone should increase, thus making the service more expensive to the operating company, provided the service is flat rate service and unnecessary use of the telehpone is not deterred by a measured rate charge. This condition seems to have worked out in practice, according to the statements of telephone companies at Cleveland, Indianapolis, and elsewhere, and flat rate service seems to increase in cost per telephone as the number of telephones attached to a system increases."

Trans., Vol. 1 p. 826.

And, finally, the sworn answer of the defendant avers:

> "Defendant admits that the value of the service increases as the number of subscribers increase; admits that as the service increases, the expense of conducting the business increases, but denies that each additional telephone involves additional capital."

There is one witness in the record, who has had actual experience in dealing with telephone rates in the City of Louisville, whose testimony is of more service in solving this problem than the theories and opinions of witnesses who have not had experience, however skilled they may be.

Mr. Caldwell, appellee's President, says:

> "We have tried and experimented with every conceivable class and kind of rates and every theory of rating that those that were best qualified to talk on the subject, have suggested, we have tried, and our experience there was that every one of them proved disastrous, disappointing and a failure. In other words, we had poorer results, until this last series of rates which we inaugurated some two years ago—they show a betterment of conditions, the others all showed worse, so that it was not a matter of theory, but it has been a matter of actual experience with us in the City of Louisville."

Caldwell's dep., Trans., Vol. 1, p. 513.

Mr. Polk states that is a *mere gamble* as to whether the rates prescribed in the ordinance are remunerative, *even* in a plant *only* costing $1,300,000, including real estate.

Polk's dep., Trans., Vol. II, p. 1440.

The Master was directed to report:

X.

A FAIR RETURN TO THE OWNER OF THE PROPERTY.

What return is the proprietor of a telephone exchange entitled to receive for the use of his property by the public?

This question can be answered but one way on this record: the amount is 10 per cent upon "the fair value of the property devoted to the public use."

The Master in his report says:

> "But it is insisted that unusual risk and hazards attend the telephone business, and that on account of these hazards a greater return on the money invested should be permitted by the rate-regulating powers. It is urged that new capital must be continually put into this business, so that its lines and operations may be commensurate with the growth of the cities where they are located; that otherwise, the business must come to a standstill, and new companies will enter the field and take the new business offered and perhaps the old business. It is urged that eight per cent or perhaps ten per cent on the money invested would, therefore, be a fair return."

Mr. Caldwell, the President of the company, says:

> "The whole question comes right there. Unless the company is on a profitable basis, and is doing business that is profitable, it has no credit, and it is necessary for it to have credit. Therefore, in order to attract new capital it must present sufficiently attractive profits to cause people to put their investments in the telephone business rather than in some other line of business, and, of course, unless it can show a profit in the business, it cannot possibly influence or attract capital to it. That is the key to the whole financial problem."
>
> Caldwell's dep., Vol. I., p. 514.

Mr. Polk, the defendant's expert witness, says that a telephone property is entitled to *at least* 10 per cent net profit.

Polk's dep., Vol. II., p. 1436.

The Chicago Committee recommended, and the Council approved, a net return to the Chicago Telephone Company of 10 per cent.

A committee of the New Orleans Board of Trade, who are shown to be business men of the highest character, after investigating telephone conditions in that City, approved a net return of 10 per

cent, and in their report they quote with approval the following taken from the telephone report of the Merchants Association of New York:

> "The telephone business demands a continuous accession of fresh capital to satisfactorily serve the public. Having in view the importance to the public of constant improvement and expansion and the greatest possible efficiency of telephone service, as well as the necessity of offering an attractive investment to new capital actually and necessarily invested and a proper allowance for contingencies, 10 per cent margin above operating outlays is a reasonable and proper margin in the telephone business. In the various movements hitherto made for the limitations by law of telephone profits, wherever the permissible percentage of profit has been dealt with, this margin has been accepted as a proper one. It has also been specified by law in the case of some other public service corporations."
>
> Trans., Vol. I., p. 495.

This question is fully considered in our exceptions to the Master's report (Supplement to brief p. 162).

The Master does not appear to think that unforeseen and unknown contingencies will ever arise in operating appellee's plant in Louisville. It is a well known fact that no corporation or individual can afford to live up to the last cent of income; *something* must be set aside for contingencies, and even though a company be allowed to pay in dividends 8 per cent, it must be allowed to earn at least 2 per cent additional, because, as time goes on, it is certain that expenses of an extraordinary nature will arise that must be met; so that, unless provision is made each year out of the earnings to provide for these contingencies, disaster is certain to follow.

In the case of *Wilcox* vs. *Consolidated Gas Co.*, 212 U. S., 49, this Court said that the most favorably situated Gas Company in America, entirely freed from all risk of competition, with a *certain* patronage, and a business as stable as can be conceived of, was entitled to a net return of 6 per cent *in order to escape the charge of confiscation*. That is to say, any regulation of its rates, which did not allow a profit of 6 per cent would be confiscation.

We quote from an opinion of the Wisconsin Railroad Commission, delivered in 1910, in which a gas plant was allowed 7½ per cent net return, and an electric light plant 8 per cent.

The Commission says:

> "In passing upon these matters, however, it should be borne in mind that under present industrial conditions the best interests of society, as a whole, are subserved when the share of each factor of production is high enough to cause a free and unrestricted flow of labor, capital and business ability into the various utilities. If wages, interest and profits are not high enough to attract the factors which they represent, then these factors will not enter the utility business. The result of this is clear. If either or all of the factors refuse to enter this field, then no service of the kind these utilities render will be furnished, and the people may have to forego what may have become necessities to them. In order to obtain such service, therefore, it is absolutely necessary that the wages paid should be high enough to attract competent workmen, superintendence and management; that the interest paid on the capital legitimately invested should be sufficient to attract the necessary capital into these enterprises; and that the speculative and other gains should be high enough to induce employers to enter these industries as co-ordinators of the other factors of production therein, and as assumers of all risks and responsibilities that are involved in their operation. From these facts there is no escape. From this it also follows that the rates fixed for the services rendered by such utilities must, in the long run, be high enough to attract the various factors of production, or to induce the employer to enter upon such enterprises and to become responsible for the risks that are involved."

In the report of the Railroad Securities Commission to the President, dated December 11, 1911, the Commission, in speaking of what constitutes a reasonable return, says:

> "We hear much about a reasonable return on capital. A reasonable return is one which under honest accounting and responsible management will attract the amount of investors' money needed for the development of our railroad facilities. More than this is an unnecessary public burden. Less than this means a check to railroad construction and to the development of traffic. Where the investment is secure,

a reasonable return is a rate which approximates the rate of interest which prevails in other lines of industry. Where the future is uncertain the investor demands, and is justified in demanding, a chance of added profit to compensate for his risk. We cannot secure the immense amount of capital needed unless we make profits and risks commensurate. If rates are going to be reduced whenever dividends exceed current rates of interest, investors will seek other fields where the hazard is less or the opportunity greater. In no event can we expect railroads to be developed merely to pay their owners such a return as they could have obtained by the purchase of investment securities which do not involve the hazards of construction or the risks of operation."

Surely, in a hazardous business, with active competition, subject to so many more risks than a gas property, 10 per cent should be allowed, in order to escape the charge of confiscation.

We therefore confidently submit that 10 per cent net earnings is not only not unreasonable, but is necessary in a business of this kind.

XI.

APPELLANT'S EXCEPTIONS TO THE MASTER'S REPORT.

Appellant excepted to the Master's report in four respects only. Trans., vol. I, pp. 198-203.

First—The expenses for the year 1908 (omitting other years) were reported by the Master $11,883.76 more than should have been reported.

Second—That all free telephones and reduced price telephones for charity and other public causes, should have been charged at the regular rate and the difference added as additional earnings, amounting to $9,900.00.

Third—That the Master should have found and reported that instead of there being a loss in the year 1908 of $49,731.36 if the ordinance rates had been in force, he should have reported that if the ordinance rates had been in force, the earnings of the company for 1908 would have been $5,793.00 *more* than the earnings were under the higher rates which were in force.

Fourth—That if the *lower* ordinance rates had been in force during the year 1911 the net earnings of the company would have been probably $30,000.00 *in excess* of what they were under the *higher* rates in force during that year.

In no other respect did appellant except to the Master's report.

Appellant appears from these exceptions to believe that lower rates will yield a larger proportionate net revenue than higher rates. This is only a theory advanced by appellant, and is not only not sustained by any witness in this record, or any writer upon the subject, but is disproved not only by appellee's witnesses, but by appellant's witnesses as well as the scientific writers on the subject.

This question has been fully discussed, supra, p. 47, and in our exceptions to the Master's report (supplement to brief, p. 156.)

With respect to the contention of appellant that all telephones furnished at a reduced price should have been reported as earning the full price charged patrons generally, we can only say that a statement of the facts is sufficient refutation of this contention. (1) It appears that certain of the employes of appellee in Louisville are furnished telephones without charge, or, at a reduced price. This, of course, is not only customary, but is necessary to enable the employes to render an efficient service to appellee's patrons in the city. (2) Certain charitable institutions and ministers of the gospel are furnished telephones at a reduced price. It is inconceivable that any public service corporation can conduct its business in any civilized community and not yield more or less to the demands of the public for some aid in caring for the charities of that community. Indeed, the failure to yield to this demand would very speedily entail upon the public service company a far greater loss in the animosities that would be engendered in such harsh and uncivilized conduct. Among other charities involved in this criticism of appellant is a free telephone in the newsboys' home. While it would be illegal for appellee to subscribe to a fund for the uplifting of this class of boys in the city, yet it is not illegal, and ought not to subject appellee to criticism, to furnish free telephone facilities to this charity. Congress and most of the States have recognized that public service corporations must of necessity allow their facilities to be used more or less in charitable

educational and benevolent undertakings. The Interstate Commerce Act, in prohibiting the issuance of free transportation, expressly excepts the classes to which free or reduced service has been rendered by appellee in the City of Louisville; and we submit that this criticism of the Master's report by appellant is unjust, and ought not to be sustained.

The remaining items of expense for the year 1908 to which appellant excepted amount to $11,883.76. They are all based upon the testimony of Mr. Warren, Mr. Farnham's clerk, who not only never had any experience in the telephone business, but never before examined telephone accounts; and this witness, who was himself a defaulting bookkeeper (Trans., vol. II, pp. 1119-20), has undertaken to criticise expenses which are shown by appellee's Auditor and General Manager to have been incurred in the conduct of its business. And, in addition to this, even Mr. Warren's criticism of these items is based largely upon assumptions in the questions asked him by counsel for appellant.

But if each and every item should be allowed in accordance with appellant's contention, the result of this case would not be affected in the slightest degree.

With respect to the contention of appellant that the ordinance rates would have produced a larger net revenue than the rates charged by appellee, the contention of appellant seems to be based upon the theory that if appellee had charged the large, heavy users of telephone service a *less* price, this would have justified appellee in charging the small users a *larger* price, so that the average price charged would have been higher, and consequently yielded a larger net revenue. It is sufficient to say that no witness has undertaken to point out how this could have been done, and, indeed, it is difficult to understand how charging larger users *less* would induce smaller users to pay *more*. It seems to us that the reverse is bound to be true. Charging the larger users less would, of necessity, cause the smaller users to insist upon less; and it is inconceivable that an argument to the small user to pay *more* because the larger user was paying *less*, would prevail.

CONCLUSION.

In the preparation of this brief we have not been unmindful of o
duty to enlighten the Court as to what the record contains, witho
burdening Your Honors with details as to facts or deductions fr
facts. At the same time, we could not overlook the importance
the questions involved to our client.

The taking of testimony in this cause was begun in April, 19
and therefore, the financial operations of appellee were of necessi
confined to that time, but on March 18, 1910, the following occurr
in the presence of counsel for both sides and the Master:

Counsel for appellee said:

"Now, one other thing; this case has been pending now for a year. The financial statement of receipts and disbursements was only up to the first of January, 1909. If you wish to take proof and show the result of the operations in the City of Louisville or the Louisville plant for 1909, I am prepared to do it and go into it, if you wish it done, and I tender that if the Master wishes it, or the representative of the city wishes it."

The Master:

"Right now I am not able to say whether that would be important or not. When we get through with the proof, if we want it, I will take it myself. I will just order that myself."

Mr. Granbery, for appellee:

"I merely make the tender, so it cannot be said later that we did not bring these things down to date."

Trans., vol. I, p. 691.

The Court in the opinion delivered in this cause, said:

"Of course, we are left to conjecture and guess work as to what would in fact occur under the ordinance rates, and the Court at the final hearing, submitted in writing to the counsel for the respective parties a suggestion in this language:

" 'Does the record furnish the Court with the means of estimating the earnings and expenses of the Company for the years 1909 and 1910, and, if not, would it not be well for a disinterested expert bookkeeper, not in the spirit of controversy, but with the view to ascertaining the figures, to make an examination of the books of the company in that connection and report the facts to the Court?'

"To this, the complainant's counsel in open Court agreed, but the defendant's counsel declined to do so for the reason then stated by him that it would further delay the final decision of the case."

Trans., vol. II, p. 1641.

In addition to the fact that the rates charged by appellee for service in Louisville have been reasonable because of the keen, active and actual competition with another company since 1902; and,

In addition to the fact that the President of appellee says: 'We have tried and experimented with every conceivable class and kind of rates and every theory of rating that those that were best qualified to talk on the subject have suggested we have tried, and our experience there was that every one of them proved disastrous, disappointing and a failure. In other words, we had poor results, until this last series of rates which we inaugurated some two years ago (1907). They show a betterment of conditions; the others all show worse. So that it was not a matter of theory, but it has been a matter of actual experience with us in the City of Louisville:" and

In addition to the fact that the officers of appellee's rival, the Home Telephone Company of Louisville, "have publicly stated that its rates are ruinously low, and stated that said company is unable to care for its plant and operate the same upon the rates fixed in its contract with the city:"

Answer of appellant, Trans., p. 35.

There is still another convincing reason why the rates charged by appellee should be sustained as reasonable.

The question of rates for telephone service charged by appellee in the City of Louisville was taken up by the Board of Trade of the City of Louisville, and in April, 1907, appellee agreed that the Board of Trade might appoint a committee of five citizens of Louisville who should investigate telephone conditions and fix reasonable rates for

telephone service in that city for a period of three years; and appellee further agreed that in the event the Board of Trade committee should find that the rates being charged for service were excessive or unreasonable, it would refund to every patron the difference between what appellee was charging and the rates found by the Board of Trade committee to be reasonable and fair. This committee was appointed from among the best known citizens of Louisville, and they made a report, which is as follows:

"LOUISVILLE, KY., Aug. 16, 1907.

"*To the President and Directors, Louisville Board of Trade:*

"Gentlemen: The undersigned, a special committee appointed by the Board of Trade and accepted by the Cumberland Telephone & Telegraph Company as a committee to investigate as to what constituted a fair and reasonable rate for the Cumberland Telephone & Telegraph Company to charge for its service in the City of Louisville, now beg to report:

"1st. After considering the subject carefully and ascertaining all the facts bearing on it which could be ascertained from trustworthy sources, notably by sixteen meetings held at Board of Trade rooms, beginning April 3, by frequent personal conferences with the officers and more expert employes of the Cumberland Telephone & Telegraph Company, and by a thorough examination of the books and accounts of said Cumberland Telephone & Telegraph Company, at the hands of an expert accountant, selected by the committee, viz.: W. J. Munster, of Cincinnati, we find that the average net yield to said Cumberland Telephone & Telegraph Company from its investment in the City of Louisville, since it acquired ownership of the Louisville property seven years ago, has been but 4.14 per cent per annum.

"2nd. That the rates for telephone service in the City of Louisville proposed to—put into effect by said Cumberland Telephone & Telegraph Company March 1, 1907—are proper and reasonable, because they will not yield to said Cumberland Telephone & Telegraph Company more than a fair and equitable return on its investment in the City of Louisville.

"3rd. The Committee further declares that the rate or rates for the various classes of telephone service in the City of Louisville put into effect by said Cumberland Tele-

phone & Telegraph Company, March 1, 1907, should be maintained as a rate for such service for the three years beginning July 1, 1907."

"This report is predicated upon the promise and agreement of the company to give the best possible service to its subscribers and to furnish them at all times with most approved devices and appliances for the transmission of messages.

"Respectfully submitted,

"MARION E. TAYLOR, *Chairman.*
"WILLIAM R. BELKNAP.
"ATTILLA COX.
"GEORGE GAULBERT.
"LOGAN C. MURRAY."

Thereafter, in December, 1908, another committee made a further investigation, and they reported:

"LOUISVILLE, KY., Dec. 16, 1908.

"*President and Directors Louisville Board of Trade.*

"Gentlemen: The special committee provided for by resolution of the Board of Directors, August 26, 1908, to make investigation as to the complaint of Mr. C. M. Bullitt that the Cumberland Telephone & Telegraph Company was unfairly raising its rates for service in this city, and was discriminating in its rates amongst its patrons, etc., have to report that they have carefully made inquiry as to the facts and have failed to find a single instance in which said telephone company has charged a rate for any of the various classes of telephone service other than was determined by the old committee of the Board of Trade (which agreement was to determine the rate for a term of three years), in its report submitted to the Board of Directors of the Board of Trade, September 4, 1907, nor have we found any discrimination as between patrons, except that the increase in rates allowed by the old committee was not made by the telephone company to all patrons at the same time, for the reason, as stated by the company, that there were outstanding contracts between the company and its patrons which expired at different times, and for the further reason that it was not feasible for the company to at once so alter its rules as to make the new rates apply to all patrons at the same time.

"In regard to whether the rates determined upon by the old committee, under the agreement between the Board of Directors and the Cumberland Telephone & Telegraph Company in April, 1907, are fair and reasonable, your committee have only to say that the old committee appears to have made a most thorough investigation of the whole subject, their inquiry extending through five months, during which time they held sixteen meetings; had before them for interrogation officers and employes of the telephone company, and others, and the assistance of a high-grade expert accountant employed by the committee, and we have nothing before us on which we can base an opinion that the old committee erred in its conclusion.

"Your committee desires to call your attention to the fact that under the agreement with the Telephone Company, the rates fixed by the old committee were to stand for three years from July 1, 1907, and that about one-half of that time has now expired. If at the expiration of the full period of three years it is found that the profits of the Telephone Company, after careful and economical conducting of its business, have been greater than should be allowed, the rates and charges for the future can be intelligently adjusted.

"We ask that this report be received and filed and that the committee be discharged.

"Respectfully submitted

"MARION E. TAYLOR, *Chairman.*
"WILLIAM R. BELKNAP.
"LOGAN C. MURRAY.
"HARDY BURTON.
"CHARLES EARL CURRIE."

Contrasted with this action of two committees of well-known citizens of Louisville in making a thorough investigation of telephone conditions in that city, is the action of the City Council in arbitrarily adopting a schedule of rates without any investigation and without any knowledge whatever of what were reasonable and fair rates.

The voluminous record in this case was, in our opinion, wholly unnecessary. It is the result of suspicion and an unwillingness on the part of the city authorities to concede to the management of appellee, and its employes, any presumption of fair dealing, integrity or veracity. The answer of the city in this cause discloses that this was the attitude of the city officials towards appellee.

In taking evidence in this cause Appellant's counsel endeavored to show the Appellee's president had *stolen* $20,000.00 of his Company's funds, when the facts disclosed that Appellee's president had loaned his personal credit to his Company, and the $20,000.00 item was an endorsement by Appellee's president of his Company's note.

Counsel for Appellant also asked Appellee's president numerous questions intimating that he had *wilfully* and *intentionally* misrepresented material facts to the Board of Trade Committee, when the facts in the record clearly showed that there had been *no* misstatement of facts to the Board of Trade Committee by any one.

And this feeling was increased by the action of the witnesses employed by the city. The Mutual Audit Company, of which Mr. Farnham was General Manager, was employed by the city to furnish expert accountants. Mr. Farnham and four assistants spent more than two months examining the records, vouchers, payrolls, and other books and papers of appellee touching its Louisville business.

It developed later that daring the progress of this investigation Mr. Farnham had in his employ a discharged local cashier of appellee who had embezzled the funds of appellee in Louisville; the accounts and expenses of appellee in conducting its Louisville business were re-arranged in accordance with the statements of this discharged employee, who was not brought to appellee's offices where its records are kept and were being examined, but was secreted in a boarding house, and from that point gave information from day to day to Mr. Farnham and his assistants. After the examination was completed Mr. Farnham dared not take the witness stand and subject himself to a cross-examination on the work done by him and his assistants on the books and records of appellee; but one of his clerks, a Mr. Warren, was placed on the witness stand to prove the result of the investigation by Mr. Farnham and his assistants, and it developed that this clerk had himself been a defaulter, and had been driven from his place of trust because of his defalcation.

In addition to this, the first telephone engineer employed by the city to give evidence as to the value of appellee's plant came to Louisville for the first time in his life, and after talking to the City Attorney and a traveling salesman for a manufacturer of telephone equipment, without the slightest examination or knowledge of appellee's plant in Louisville, gave an affidavit, stating that he could duplicate appellee's

plant in the City of Louisville for $1,000,000.00. For these services he collected $100.00 and his expenses and took the train back to Chicago.

It is, therefore, not surprising that the city officials should labor under erroneous impressions in regard to appellee's business in Louisville, and view with suspicion even the plainest and most obvious things in the business.

This expert accountant, Mr. Farnham, in making up a statement as to earnings for 1908, declined to allow the amount actually expended by appellee on reconstructing its plant in the year 1908, under the specious plea that all such expenses should be charged to reserve, and yet he did not create any reserve out of earnings to which this expense actually incurred during 1908 could be charged.

Under these conditions this record has been made up, when a fractional part of it contains all of the facts material to this inquiry.

As was said by the Supreme Court in *Knoxville* vs. *Knoxville Water Co.*, 212 U. S., 18:

> "Our social system rests largely upon the sanctity of private property, and that State or community which seeks to invade it will soon discover the error in the disaster which follows. The slight gain to the consumer, which he would gain from a reduction in the rates charged by public service corporations, is as nothing compared with his share in the ruin which would be brought about by denying to private property its just reward, thus unsettling values and destroying confidence."

The importance of this case is far reaching to appellee. Its exchange in Louisville is not alone involved. Its entire system will be affected. If Louisville can, without investigation, adopt arbitrary rates, then other cities will do the same, until the integrity of appellee's property is destroyed. Each city will enter upon a contest with the others to secure lower proportionate rates, until the life of the business has been taken.

We respectfully ask an affirmance of the decree.

Respectfully submitted,

ALEXANDER POPE HUMPHREY,
ALEXANDER POPE HUMPHREY, JR.,
WILLIAM L. GRANBERY,
Solicitors for Appellee.

February, 1912.

APPENDIX.

Since the preparation of our brief we have received the brief of appellant. Only a few suggestions in reply are deemed necessary in view of our exceptions to the Master's report and our brief.

Many matters are now criticised by appellant, although *no exceptions* on these matters were filed to the Master's report.

The only suggestions we have to offer are these:

VALUE OF PLANT.

The conflict in the evidence as to the value of the plant is not nearly so serious as is contended in appellant's brief. The conflict is more apparent than real. It may be stated that an examination of the depositions of two of appellant's expert engineers—Messrs. Crumb and Levings—is sufficient to show that they have no knowledge of the plant in Louisville, and have never had experience sufficient to justify them in valuing the plant, even though they had carefully inspected it. The only other witness introduced by appellant is Mr. Polk, who is a telephone engineer, and his difference with witnesses for appellee grows out of a difference in knowledge and experience with the Louisville plant. Only a few differences need be noted to show that the valuation of Mr. Polk is unreliable.

He values the apparatus in the Louisville plant about $100,000.00 less than the undisputed proof shows that it cost, upon the idea that there are *other* types of apparatus which he thinks *equally* as good and which cost *less* money. That is to say, appellee's officers, exercising their judgment and spending their company's money in the purchase of apparatus, are not to be trusted; but the judgment of Mr. Polk must be accepted as to the make of apparatus which should have been purchased.

Mr. Polk *estimated* the number of poles in the plant at 11,000 (Trans., p. 1401); the actual count of the poles showed the number to be 13,870. (Trans., p. 625.)

Mr. Polk *estimated* the private branch exchanges in the plant at 75 (Trans., pp. 1408-9); the actual count showed there were 112. (Trans. p. 650.)

In one deposition Mr. Polk values the private branch exchanges and sub-station equipment at $128,775.00, or an average of $13.70 per station (Trans., p. 1408), and in his second deposition he states they are worth $25.00 per station (Trans., p. 1449); thus making a clear error against appellee of more than $106,000.00 in the valuation of this part of the plant.

Mr. Polk's valuation is a theoretical valuation of a supposed plant in the City of Louisville serving a certain number of subscribers; whereas, appellee's witnesses are valuing the actual plant in Louisville, after taking an inventory of actual quantities of each class of material in the plant.

A great deal is said about certain equipment being purchased for the main exchange and then taken away without crediting the main exchange. The facts are very simple. Appellee has four exchange offices in the Louisville plant. Certain equipment was purchased for the main exhange, but before it was erected it was taken from the "Main" exchange building and erected in the "West" exchange. This equipment was a part of the Louisville exchange, whether erected in the "Main" or "West" exchange building.

Jagoe's dep., Trans., p. 648.
Crumb's dep., Trans., p. 879.

TOLL EQUIPMENT.

Appellant insists that a large part of the toll equipment in the Louisville Exchange should not be considered a part of the Louisville Exchange in fixing rates for exchange service. There is no confusion in the record on this point.

In order that each subscriber may, from his individual station, have access to and use the toll lines, it is necessary for appellee to install equipment which will enable this to be done. This equipment is installed solely and alone for the convenience and benefit of the subscribers to the Louisville Exchange, and it is considered a part of the Louisville Exchange; it is necessary only to enable the

local subscribers to have access to the toll lines from their individual stations. It is taken into consideration in fixing the exchange rates (Trans., p. 677). There is no dispute whatever about this in the record, and the only place it is contested is in appellant's brief. A mere statement of the facts, we submit, is a sufficient answer to the contention of appellant on this point. This equipment would not be there *except* to accommodate the Louisville Exchange subscribers.

SURPLUS OF FACILITIES.

Criticism is *now* made by appellant to the surplus of facilities in the plant, *although* the Master reported that this was proper, *and there was no exception filed by* appellant.

A surplus of facilities is necessary in a telephone plant. The Master reported:

> "These figures include a large amount of what the witnesses denominate 'surplus equipment.' This surplus is found in the aerial system, in the conduit system, and in the exchange switchboards.
>
> "The evidence shows, and I so find, that it is not prudent or wise for a telephone plant like the one in Louisville, to be constructed merely to meet the immediate demands of the public; that such a plant should be built with an eye to the future, and that there should be a surplus equipment in every department sufficient to meet the demands of a period of several years, so that the wants of the new subscribers may be supplied on short notice. The evidence shows that there are more poles in the county outside of Louisville connected with the exchange or intended for the Louisville Exchange, than the present business of complainant demands; but, as stated above, I am unwilling to condemn or to eliminate from the Company's plant this surplus equipment."
>
> Supplement to brief, p. 44.

Appellant, in its answer, "admits that it is impossible to conduct the telephone business in a city the size of Louisville without making provisions for the future growth of the business . . . . . admits that it is proper and prudent that appellee should provide in advance for anticipated patronage."

Trans. p. 36.

A surplus of facilities is necessary for two reasons. The President of appellee says:

"Q. I will ask you to state whether or not it is necessary or proper that future business be anticipated and facilities provided prior to the offering of the new business?

"A. Yes, for the reason that it requires quite a length of time to provide additional facilities on an exchange and the customers could not be expected to wait so long a time for the service; hence, it is not only necessary but it is practiced in all companies which expect to meet the public requirements, to keep a certain surplus reserve of facilities always on hand, and as they are used up, to provide others, so that they will be able to meet the demands promptly, and any other method would leave the service open to very grave criticism and reflection, for the old customers have an interest in having new ones connected, have an interest quite as important as the new customer, for every new customer gives an additional value and opportunity to all the old subscribers.

"Q. What would be the result, practically, if the company should not provide facilities for future growth before such new business was offered, but should wait until the new business was offered before undertaking to provide facilities necessary to serve the new patrons?

"A. Well, as it would often require a year in which to provide additional facilities, it is quite plain what a disappointment it would be and how far short a company would fail of meeting the public requirements, for the customers usually desire the service at once, and certainly could not be expected to wait longer than a very few days. They rather expect to have the facilities supplied to them within twenty-four or thirty-six hours, and they have been accustomed to that so long, that it is now recognized as a fixed condition. If, therefore, conditions should arise that would make delay in providing service longer than this, the company would be considered as wholly inadequate, and indeed, open to the criticism of being a rather poor affair."

Dep. of Caldwell, Trans., pp. 506-7.

In the second place, after poles, wires and cables are run to each subscriber's place of business or residence, it often happens that the telephone company looses subscribers in one locality and gains subscribers in another locality in the city. Two things then happen, the company must erect *new* poles, wires and cables to reach the *new* subscribers, and the *old* poles, wires and cables which have served *old* subscribers, must remain idle until new subscribers are found to use these old facilities. In this way, after a plant has been in operation

any length of time, there is of necessity in the plant, facilities which are, for the time being, idle. This is all clear in the record, and as stated, appellant made no exception to the Master so reporting.

In addition to this, it appears in the record that while appellee had a surplus of cable in *some* parts of the city, it was at the time this record was being made, preparing to erect new cable in other parts of the city.

Appellee's President says:

"Q. Mr. Polk has stated that the company had excess cable facilities in the Louisville plant, sufficient to accommodate 8,000 additional subscribers. Do you know whether that is true or not?

"A. I don't know that fact. It is new to me, and I don't think it is true. We carry and aim to carry a certain excess service to take care of customers, as they come in the ordinary growth, and I do know that we have some surplus here. It might be that we would have that amount of surplus in some conduit space. We might have it in buildings. We might have adequate space in our buildings, and as I say, in the conduits, but to say that we have that as a complete equipment, ready to take on those customers, that would not be true.

"Q. Is the company contemplating at the present time any extension of the cable system in the City of Louisville?

"A. Yes, sir; we have under consideration, right at once, an extension which is estimated to be something like $20,000, that is to take on customers in a part of the city where the facilities are already exhausted and the growth is increasing."

Dep. of Caldwell, Trans., pp. 836-7.

It must be apparent that these conditions are inherent in the business. If these surplus facilities are not to be treated as properly a part of the plant, then the expenses must be increased to pay for facilities erected for customers, and then taken down whenever they happen to become idle on account of the shifting of patrons from one locality to another in the exchange area.

It must, also, be apparent that in constructing buildings and an underground system, the future must be provided for. Additions to buildings cannot be made as new subscribers are obtained, and the streets cannot be torn up to lay conduits as needed. These things must be anticipated when the original construction is undertaken.

RECEIPTS AND DISBURSEMENTS.

It would serve no useful purpose to undertake a reply to appellant's argument on this question. It is sufficient to say that appellant has, in discussing this matter, abandoned its answer, its expert accountants and engineers, the Master's report and the opinion of the trial Judge. Appellant has constructed a theory of its own assuming facts which are refuted by every witness in the record. That theory is that increased patronage will not increase expenses, although the answer admits that it does; that charging the large users *less* will enable appellee to charge small users *more;* that the rate ordinance compels every patron to pay the ordinance rates, and that no other rates for other classes of service can be offered by appellee. Under these assumptions, certain results are claimed by appellant. Since no witness undertakes to sustain these assumptions, and *all* the witnesses refute them, it can serve no useful purpose to undertake to reply to the argument of appellant.

The Auditor of appellee stated the receipts and disbursements. The accountants stated them substantially as the Auditor. The Master reported them as found by the accountants, and the trial Judge practically sustained the Master. Under these conditions, what we have said in our own brief and in our exceptions to the Master's report is deemed a sufficient reply to appellant's argument.

DEPRECIATION.

There were no exceptions filed by appellant to the report of the Master in stating that seven per cent per annum upon the value of the plant, exclusive of supplies and real estate, was the proper amount to set aside for depreciation; yet, much is said in appellant's brief against the allowance of this, or any other amount, for depreciation. The contention by appellant is the result of a misunderstanding of depreciation. The entire argument on this point is based upon the erroneous assumption that a telephone plant is a completed property as soon as it is built and ready to give service, and that depreciation sets up evenly in all parts of the plant and continues throughout the life of the plant. Indeed, the illustration used in appellant's brief

shows the error of the argument. Depreciation in a telephone plant is likened to an engine in a waterworks plant, which is one single piece of machinery and is operated for twenty years and then renewed in *toto*. The telephone plant, on the contrary, is never a completed property, and the life of the component parts of the plant varies. Some parts of the plant are renewed annually. Other parts are not renewed for years.

In addition to this, a telephone plant begins with a certain number of subscribers and as new subscribers are added the plant is enlarged and added to so that the new customers may be served in connection with the old customers. In this way the telephone plant continues to grow larger, and, therefore, at no given time is it a completed plant.

Various parts of the plant have different periods of life, and the same kind of material in the plant is added at different times. That is to say, poles, wires and cables erected to serve new subscribers are added to the plant later than poles, wires and cables that were put in at the time the plant was first erected. Depreciation is being cared for on some parts of the plant yearly; and, therefore, the problem of depreciation in a telephone plant is by no means a simple one.

If depreciation could be cared for year by year there would be no necessity for an inquiry into what is a proper amount to allow for depreciation. All that would be necessary would be to ascertain what had been spent year by year on depreciation.

Appellant's counsel undertakes to draw conclusions from the experience of appellee over a period of 25 years in caring for depreciation of its plants. But the fallacy of the argument is seen when it is stated that the 517 exchanges owned by appellee were not built in 1883 and operated continuously to the present time, but they have been built from time to time. Some are new; some are old. Parts of some are new; and parts of some are old. The construction of these plants has been gradual, and therefore, the conclusion sought to be drawn by appellant's counsel from appellee's experience in caring for depreciation is wholly inapplicable. The Louisville plant is a good illustration. When appellee bought this plant in 1900 it was serving only about 3,000 subscribers. It is to-day serving

about 10,000 subscribers. In other words, the plant has been enlarged from year to year as new subscribers were added, so that in this way more than $1,000,000 has been added, year by year, in additions to the plant from 1900 to 1908. Therefore, it will not do to say that the same amount was required for depreciation in 1900 as is required in 1908. In other words in 1900 there was a plant worth less than $700,000 on which depreciation was accruing, and in 1908 there was a plant worth $1,700,000 upon which depreciation was accruing.

Therefore, it is submitted that the argument of appellant's counsel is based upon an erroneous assumption of facts. This question of depreciation is, we submit, sufficiently considered in our brief, page 36, and in our supplement to the brief, page 110.

It is worthy of note, however, that each and every witness in the record (both for appellee and appellant), the Master and the trial judge, all disagree with appellant's theory, which is only a theory.

REDUCTION IN EARNINGS UNDER ORDINANCE RATES.

Counsel for appellant insists that the Master was in error in finding that if the ordinance rates had been in effect during 1908 the receipts of appellee would have been reduced $49,721.76.

It is submitted that, in view of the agreement entered into between counsel representing appellant and appellee in the presence of the Master, and approved by him, this item of what would have been the reduction under the ordinance rates should not be contested in this Court.

It appears in the record that by agreement each side selected an expert accountant to examine the books and records of appellee and to make a report to the Master upon all points upon which they could agree; and it was stated by the Master in the presence of counsel for both sides that whatever these expert accountants agreed upon and jointly reported would be accepted by him as final, and no proof should be permitted to vary or contradict such joint findings of fact, and to this both sides agreed.

Supplement to brief, pp. 189–190.

On June 7, 1909, during the investigation of the books by the accountants, at a conference at which were present counsel representing both litigants and representatives of both accountants, the Master stated:

> "Here are two auditors, by agreement of parties, allowed access to the books of the complainant Company; and it is agreed that these auditors, after a thorough examination of all the papers connected with the case, shall make a joint report, so far as they may be able to agree, upon any and every proposition. The report, so far as it is the joint report of the two auditors, must be accepted by both litigants, by the Special Master and by the Court, as true; and I take it that no proof ought to be allowed from any extraneous source as to the correctness of that joint report."
>
> Supplement to brief, p. 190.

And when the evidence was nearly completed, at another conference with the Master, at which counsel for both sides were present, he stated:

> "It was my distinct understanding when that agreement was made that whatever the two experts reported jointly, should be accepted as a finality by the Commissioner."
>
> Supplement to brief, p. 191.

The joint accountants reported that the reduction that would have been brought about in the receipts of appellee for 1908 if the ordinance rates had been in effect, was $49,721.76, and the Master accepted this joint report and so reported to the Court.

But what is said by counsel for appellant shows that the joint finding of the accountants is fully sustained.

The only witness who speaks upon the subject is Mr. Warren, introduced by appellant, and he says the method of ascertaining what would have been the reduction, was:

> "By taking each telephone subscriber as it was listed on said exhibit (Smith's Exhibit No. 6), and taking the revenue that would be derived from the rental rate as indicated by the exhibit, and also taking the rental that would be derived if the rental charged were at the rate as fixed by the ordinance for the same classification of telephones, except in cases where the rate

for services were less than the regular rates for such service, in which case the revenue remained in both places and in both statements the same as that charged by the Cumberland Telephone Company."

Trans., p. 1110.

This, we submit, is an accurate and the proper way to ascertain what would have been the reduction; it could not have been ascertained in any other way.

The real insistence of appellant in its brief is, that because of discrimination in the rates, and because appellee was charging some patrons less than was prescribed in the rate ordinance, the accountants in determining the reduction should have assumed that each and every patron in Louisville would be charged the rates prescribed in the ordinance, whereas many classes of service were not affected by the rate ordinance, and therefore, these prices could not be increased. Indeed, appellant seems to think that because the City has prescribed maximum rates for certain classes of service, each and every patron must pay these particular rates, and that no other rates for any other class of service can be established.

There is nothing in the rate ordinance requiring patrons to pay as much as the rates prescribed in the ordinance, nor is there anything in the rate ordinance undertaking to fix a price for all kinds of service furnished by appellee to its patrons in the Louisville exchange.

In addition to this it must be borne in mind that appellee was not in the situation where it could *force* patrons to pay any price it demanded, because it was operating its plant in Louisville under keen, active and actual competition, and therefore, what it did had to be done in view of this competition.

While it is stated that there was discrimination between patrons to the Louisville exchange, yet the record does not sustain this contention. The record does show that many patrons are paying different prices, but the record does not show that it is the same class of service that is received by patrons paying different rates.

The question of discrimination was carefully investigated in December, 1908, by a committee of the Louisville Board of Trade, and this committee reported that there was no discrimination.

Trans., p. 61.

The fixing of a schedule of telephone rates for a large city like Louisville is a very complex and technical matter, as was said by the Chicago Commission:

"A telephone company in a large city must face a problem in many respects more complex than that of any other public utility corporation. The water department is called upon to sell a single commodity, namely, water, and at prices which are fixed with comparative readiness. The gas company also is called upon to sell a single commodity, metered for nearly every customer, and its conditions in dealing with customers are relatively simple. It may sell some additional by-products, as coke, tar and ammonia, but the quantities and market values of these are readily arrived at. The traction company has a more complex problem than some of the other purveyors of public utilities, but even here the price paid by the several patrons is uniform and the substantial difference between patrons lies only in the lengths of the rides which they may choose to take.

"The telephone problem, on the contrary, involves many complexities, partially caused by the relatively large number of classes of service which the telephone company must offer its patrons for the prupose of fully developing the telephone service of the city, and partially by the intangible character of the electric medium with which the telephone business is carried on, the delicacy of the apparatus used, and the wide difference in the manner and extent of the use of the apparatus by the various subscribers.

"If a telephone company properly extends the telephone service in the city, it must be prepared to take care of the requirements of a range of patrons as wide as the interests of the city itself, including the largest business organizations, the hotels, the newspapers, the professional men, the small business houses, and residences of all classes. It must provide apparatus for the service of each class of patrons which will enable it to furnish the service to each subscriber at an appropriate price within his means. It is desirable for the prices to be graded so that the largest user shall not pay less than his fair share of the expense of maintaining the traffic and the remuneration to the company for its investment, and equally so that the smallest user may get his telephone service at a price which is within his means and yet is reasonably remunerative to the company for its outlay."

Trans., p. 824.

CONCEALING FACTS.

It is stated in appellant's brief that appellee should be repelled from this Court because it has sought to conceal facts with respect to its business in the City of Louisville.

The record discloses that instead of there being any concealment, or effort to conceal the facts, there was the greatest latitude accorded to appellant in preparing this case. Appellee permitted four experts employed by appellant to spend more than two months in examining its records, and one of the witnesses states that there was no difficulty on the part of the experts in getting access to all the books, records, vouchers and papers of appellee during this investigation, and every facility was afforded the accountants to make the examination. (Trans., p. 706.) Blue prints, as near complete as appellee had, were furnished to the expert engineers employed by appellant so as to facilitate work in estimating the value of the Louisville plant. Employes of appellee not only carried these experts into the different buildings so that they might inspect the apparatus used in the Louisville plant, but furnished vehicles and went with one of these experts to such parts of the city as he indicated.

Appellant bases a criticism on this: During the cross-examination of appellee's auditor counsel for appellant asked the witness to produce records from a different department with which the witness had nothing whatever to do. The name of the employe having charge of these records was furnished to appellant's counsel, but appellee's counsel declined to make the witness furnish records he himself knew nothing about and which were not under his control or in his department. The following questions and answers are pertinent:

Counsel for appellant:

> "Can you produce anybody connected with the supply department, and will you produce a witness who will testify that the poles represented on that paper I have read you, were used in constructing the Louisville Exchange?"

Counsel for appellee:

> "I object to the question, because the witness is not supposed to be furnishing other witnesses. He is here to testify as to what he knows, and not to produce witnesses for examination."
>
> Trans., p. 280.

There was no application to the Master to compel this witness to furnish other witnesses.

A great deal of criticism is made as to the lack of knowledge of appellee's auditor on cross-examination, but it is submitted that a perusal of this cross-examination will show that it would have been utterly impossible for any one to have known about as many different things and as much about all things as it was sought to obtain from this one witness; and it is submitted that this witness' deposition shows that he was frank, and gave to appellant's counsel all the information that it was possible for him to give.

Appellee did object to accountants selected by appellant examining its records and making a secret report to appellant, but it volunteered to allow the Master to select an accountant who would report to the Master, and when this was declined by appellant, volunteered to allow a joint examination by accountants to be selected by each side. This, we submit, was fair and ought not to subject appellee to criticism.

Supra, p. 26.

The fact that appellee has been paying dividends upon its stock seems to have been puzzling to the Master and is commented upon in appellant's brief. The entire business of appellee is not under consideration. Only one of its 517 exchanges is involved in this suit. Its system of toll lines linking its exchanges together is not involved. Whether appellee is prosperous or not is not material. Whether its toll business is its best property is not pertinent.

However, as we said in our exceptions to the Master's report:

> "From the Annual Report of Complainant for the year ending December 31, 1908, which is in evidence in this case, it will be seen that complainant has outstanding only $19,680,150.00 of stock upon which it pays dividends, and that it has invested in plant..... $24,381,297.64

"That it has invested in real estate and buildings	790,163.23
Material on hand	640,861.40
Stocks and bonds	435,599.04
Cash	457,546.49
Or a total of	$26,705,467.80

"It appears in the record that Complainant has a comprehensive system of toll-lines uniting its 517 exchanges, and from all these sources it derives a sufficient amount to pay a dividend upon stock of only 10,680,150.00
And five per cent bonds of only 1,000,000.00."
Supplement to brief, p. 187.

Finally, appellant asserts that if the ordinance rates had been in effect, appellee's gross receipts and its net profits would have been greater than they were under the rates that were in effect. If this be true, it is difficult to understand why the City ever adopted the rate ordinance. If the rates being charged will yield *less* gross earnings and *less* net profits than the ordinance rates, then the Louisville patrons, *as a whole*, would be required to pay *more* under the ordinance rates. This position of appellant is the more remarkable when it is remembered that the *heavy* reduction in the rates prescribed in the ordinance is in the rates charged the *larger* users, and the *slight* reduction is on the classes of service furnished the *smaller* users. It is not possible to assume that the city officials intended any increase in profits to follow the adoption of the rate ordinance.

Appellant, in its answer, "admits that the value of the service increases as the number of subscribers increases; admits that as the service increases, the expense of conducting the business increases."
Trans., p. 38.

The ordinance rates would reduce the gross earnings, would *not* reduce expenses, and *would* reduce net earnings to practically *no* return upon the value of the plant. The city officials *intended to reduce the earnings of appellee*, and this is what would happen if the ordinance rates should be put into effect.

Respectfully submitted,

ALEXANDER POPE HUMPHREY,
ALEXANDER POPE HUMPHREY, JR.,
WILLIAM L. GRANBERY,
Solicitors for Appellee.

Office Supreme Court, U. S.
FILED.
MAR 4 1912
JAMES H. McKENNEY,
CLERK.

No. 761.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1911.

CITY OF LOUISVILLE, - - - - - APPELLANT,

VS.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY, - - - - APPELLEE.

Appeal from the Circuit Court of the United States for the Western District of Kentucky.

INDEX TO RECORD.

PREPARED BY

COUNSEL FOR APPELLANT.

COURIER-JOURNAL JOB PRINTING CO., LOUISVILLE.

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INDEX TO RECORD.

NOTE—In connection with writing the brief for appellant I found it necessary to prepare an index to the record. I have caused that index to be printed and take the liberty of submitting it herewith, trusting it may save the Court some labor when it comes to consider the record.

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COST OF OHIO VALLEY PLANT.

$255,000.00 plus the earnings of the plant in excess of dividends, represented the entire cost of the Louisville plant together with eight other plants and all toll lines, up to the date of consolidation.

Gifford, pp. 956 to 958.

Plant account of The Ohio Valley Company at the date of the consolidation showed that its nine exchanges had cost $512,789.94.

Master, p. 66; Smith, p. 273, 277; Wilkinson, p. 721; Warren, p. 1031; Gifford, pp. 959-963.

Appellee did not purchase Ohio Valley plant. The two companies were consolidated.

Bill and Exhibits, Case 197, pp. 2, 58; Smith, p. 246; Wilkinson, pp. 727, 752, 756; Farnham, p. 1306.

The old Cumberland Telephone Company which consolidated with The Ohio Valley Telephone Company had no power to purchase stock in that company, and did not purchase any such stock.

Exhibits filed with Bill in No. 197, p. 36; Smith, p. 246.

Appellee contended that 80 per cent of the cost of the nine exchanges represented the cost of the Louisville exchange. (80 per cent of $512,789.00 is $410,000.00, which represents value of Louisville plant at date of consolidation.)

Master, p. 61; Smith, pp. 273, 277; Warren, p. 1035; Wilkinson, pp. 726, 727. (See also Brief for Appellee p.21.)

Appellee, however, placed on its books as the value of the Louisville plant alone the sum of $845,000.00.

Smith, p. 452; Webb, pp. 1573, 1580.

Between 1907 and 1909 appellee changed the above figures ($845,000.00) and placed on its books $678,000.00 as representing the value of the Louisville plant.

Master, p. 61; Smith, p. 218, 245.

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(See Appellant's Brief, pp. 67 to 82.)

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NOTE—Counsel for appellee again insists that the witness Jagoe appraised the property. This contention was exploded in the lower Court.

(See Jagoe's deposition, record, pp. 640, 641, 648, 653, 663.)

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(See Appellant's Brief, pp. 34, 38, 46, 155.)

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Office Supreme Court, U. S.
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MAR 4 1912
JAMES H. McKENNEY,
CLERK.

Supplement to Transcript of Record.

No. 761.

Supreme Court of the United States

OCTOBER TERM, 1911.

CITY OF LOUISVILLE, ... Appellant

vs.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, ... Appellee

JOINT REPORT OF ACCOUNTANTS.

BRANDON-NASHVILLE

Supreme Court of the United States

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY

vs.

CITY OF LOUISVILLE, KENTUCKY

To the Honorable Henry Burnett,
Special Master,
Louisville, Ky.

DEAR SIR:

Acting in accordance with your instructions to us, given in conformity with order dated April 2, 1909, by United States Circuit Court for the Western District of Kentucky, at Louisville (Honorable Walter Evans, Judge), we, the undersigned, Accountants for the Complainant and for the Defendant, respectively, have made an examination of the books of account and records of the

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY

kept at the principal offices of that company, at Nashville, Tennessee, for the purpose of determining the cost to the Complainant of its plant and property in the City of Louisville, Kentucky, to date of March 6, 1909, and the Income derived from the operation of said property for the years 1905, 1906, 1907 and 1908.

THE EXAMINATION

Said examination was begun on May 4, 1909, and has been in progress ever since that date. We now beg to report as follows:

Said examination involved a close inquiry into all matters relating to the business of the Complainant in the City of Louisville, including the books of account, vouchers, pay-rolls, agents' reports, and other original sources of information, kept at the principal office of the Complainant in the City of Nashville, Tennessee.

Answering each of the several paragraphs of the Order of Court, dated April 2, 1909, by a separate section, we beg to report as follows:

Section 1.—The Accountants have drawn off an abstract from a subsidiary book of account, kept for the purpose, which shows the cost to the Complainant of its telephone plant in Louisville, as of record and as indicated by the Vouchers and Pay-rolls. The total cost thus recorded, up to March 6, 1909, is the sum of $1,700,536.91; to this has been added the sum of $4,707.16 (Voucher No. 2588, April 17, 1902, for switchboard equipment, which should have been charged to Louisville, but was improperly charged to Nashville). From these amounts we have deducted a total of $2,852.39, in respect of certain items improperly distributed against "Construction Account—Louisville."

Synopsis of the Above

Shown by the books	$1,700,536.91
Add Equipment	4,707.16
	$1,705,244.07
Deduct Sundry Items	2,852.39
Corrected Total	$1,702,391.68

Expended on Construction, 1900 to 1908

The Accountants agree that the books of account of the Complainant show that the amount expended on Construction from 1900 to 1904, was the sum of ..... $ 857,310.39

and the amount similarly expended from 1905 to 1908, was the sum of 166,234.95

Making a Grand Total for the Nine Years, of .. $1,023,545.34

Stated by years, the amount so expended, was as follows:

Expended in 1900	$166,775.23	
Expended in 1901	178,549.14	
Expended in 1902	217,128.05	
Expended in 1903	163,486.84	
Expended in 1904	131,371.13	
Total 1900 to 1904		$ 857,310.39
Expended in 1905	$ 60,691.21	
Expended in 1906	80,125.15	
Expended in 1907	20,770.42	
Taken out during 1908 (net)	4,351.83	
Total 1905 to 1908		166,234.95
TOTAL		$1,023,545.34

Section 2.—We have discussed the method to be followed in arriving at an estimate of the present value of the telephone plant of the Complainant in the City of Louisville, and we find that we can not agree as to said method.

Section 3.—We agree that the Gross Earnings of the Complainant, during the four years 1905, 1906, 1907 and 1908, as shown by the books of the Complainant, and as classified therein, and placed to the credit of Louisville Exchange, including 15% of the Toll Earnings, were as follows:

1905	$ 269,823.38
1906	294,498.44
1907	319,758.51
1908	325,838.30

The Gross Earnings are classified as follows:

	1905	*1906*	*1907*	*1908*
1. Exchange Service	$264,675.13	$280,076.12	$297,501.14	$307,431.85
2. Proportion of Toll Earnings	6,530.92	7,064.91	8,030.15	7,632.11
3. From Telegraph Companies	983.88	1,018.12	939.48	761.79
4. From American Telephone & Telegraph Company	2,865.29	3,427.09	3,864.17	3,272.37
5. Private Line Rentals	1,342.01	1,079.92	1,153.91	*
6. Poll Service and Attachments	953.11	1,096.28	1,177.75	1,229.99
7. List Advertisements	751.83	2,497.25	2,984.22	3,151.59
8. Telegraph Drops	215.49	976.40	2,110.61	2,130.55
9. Messenger Fees.	862.02	812.40	769.15	658.30
10. Removals and Miscellaneous	1,001.12	680.53	3,278.70	2,682.97
Gross Total	$280,189.80	$298,729.02	$321,809.28	$328,951.52
Deduct Bad Debts	10,366.42	4,230.58	2,050.77	3,113.22

Total Gross Earnings of the complainant as placed to the credit of Louisville Exchange:				
Year 1905	$269,823.38			
Year 1906		$294,498.44		
Year 1907			$319,758.51	
Year 1908				$325,838.30

*In 1908 "Private Line Rentals" were reported from the Exchange and included in $307,431.85 "Exchange Service."

Operating Expenses of the Complainant in Conducting Its Business in the City of Louisville During 1905, 1906, 1907 and 1908.

	1905	*1906*	*1907*	*1908*
1. General Expenses (prorated)	$ 11,205.34	$ 11,270.15	$ 11,226.76	$ 9,531.29
2. General Expense (direct)	29,271.49	35,948.37	34,826.91	32,545.46
	$ 40,476.83	$ 47,218.52	$ 46,053.67	$ 42,076.75
3. Operating Expenses	84,264.54	80,738.06	79,661.04	75,440.28
4. Maintenance	49,819.14	52,796.93	65,616.31	54,705.91
5. Reconstruction	41,051.02	40,626.07	41,895.10	31,450.07
6. Instrument Expense	11,559.76	12,518.70	13,372.49	13,722.52

Total Operating Expenses.	
Year 1905	$227,171.29
Year 1906	$233,898.28
Year 1907	$246,598.61
Year 1908	$217,395.53

Section 4.—Probable Result for 1910.

We have made a calculation showing the amount in which the Complainant's Gross Earnings will probably be cut down by the enforcement of the rates fixed by the ordinance adopted by the Legislative body of the City of Louisville and approved by the Mayor March 6, 1909. We have used as the basis for this calculation a typewritten list of the names of the subscribers to the Louisville Exchange on April 1, 1909, copied from the records of the company kept at Louisville Exchange, the correct amount chargeable to subscribers for the month of April (face of contracts) is the sum of $27,270.31.

To this list we have applied the maximum rates fixed by the ordinance and we find that the total gross earnings on this same list of subscribers for the same month of April, 1909, at the ordinance rate, would be only $20,486.92, net.

The terms of all telephone rental contracts provide for an allowance in the form of cash discount of fifty cents a month on all rentals that are paid three months in advance.

The actual cash discounts allowed to the Louisville subscribers during the three months, March, April and May, 1909, in respect of quarterly payments made in advance, came to $7,919.74. One-third of this sum, $2,639.91, would be a fair deduction to make from the Gross Earnings for the one month of April (face of contracts).

This would leave the sum of $24,630.40 to represent the measure of the Earnings actually collectible for April, 1909, under the contracts in force on April 1, 1909.

Thus we have this calculation:

Gross Earnings for April, 1909

At Contract Rates (after deducting Discounts)	$	24,630.40
At Rates fixed by Ordinance (which are net)		20,486.92
Loss of Gross Earnings for one month	$	4,143.48

This is equal to a loss of $49,721.76 a year.

Against this probable loss of $49,721.76 a year, there will probably be an increase in gross earnings in respect of the natural growth of the business and the increased number of subscribers due to the lowering of the rates upon the enforcement of the ordinance. What this increase will amount to we can not definitely determine.

The foregoing joint report shows the money charged as the cost of the plant at Louisville; the Gross Amount credited to the Louisville Exchange as Earnings, and the Operating Expenses charged as appertaining thereto; as recorded on the books of the Cumberland Telephone and Telegraph Company. It is not an agreement that the said accounts are properly distributed or charged as we believe they should be; therefore, the right is reserved by each of the undersigned to make such individual report and the statements relative thereto, as each may feel justified in doing.

Section 5.—Charge for Depreciation.

Having discussed the matter of Depreciation, we find we cannot agree in regard thereto.

Section 6 to Section 11.—We agree that the remaining paragraphs, from No. 6 to No. 11, inclusive, of the Order of Court dated April 2, 1909, do not call for any report from us.

Respectfully submitted,

On behalf of the Complainant,

WILKINSON, RECKITT, WILLIAMS & CO.

Certified Public Accountants.

Witness,

A. D. HAMMOND.

On behalf of the Defendant,

E. W. FARNHAM.

Witness,

H. B. WARREN.

Dated at Nashville, Tenn., 7th July, 1909.

Marked Filed Nov. 17th, 1910.

A. G. RONALD, *Clerk.*

Office Supreme Court, U. S.
FILED.
OCT 9 1911
JAMES H. McKENNEY,

Supreme Court of the United States.

No. 761.

OCTOBER TERM, 1911.

CITY OF LOUISVILLE, KENTUCKY,

APPELLANT,

VS.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY,

APPELLEE.

Appeal from the Circuit Court of the United States for the Western District of Kentucky.

MOTION TO ADVANCE.

CLAYTON B. BLAKEY,
Counsel for Appellant,
City of Louisville.

HUSTON QUIN,
Of Counsel.

COURIER-JOURNAL JOB PRINT, LOUISVILLE

Supreme Court of the United States

OCTOBER TERM, 1911.

No. 761.

CITY OF LOUISVILLE, KENTUCKY, *Appellant*

vs.

CUMBERLAND TELEPHONE & TELEGRAPH COMPANY, *Appellee*

MOTION TO ADVANCE.

Comes now the Appellant, City of Louisville, by its City Attorney, and moves the Court for an order advancing the above entitled cause and consolidating same with the case of City of Louisville, Appellant, vs. Cumberland Telephone & Telegraph Company, Appellee, No. 197, on the docket for the October Term, 1911, of this Court, and ordering said two causes heard together; and shows to the Court the following reasons in support of its motion and application.

First: The Appellant and the Appellee are the same in both causes and the counsel for said parties are the same in both causes.

Second: The subject matter of the litigation in both causes is the same to the extent that both suits were filed to enjoin ordinances of the City of Louisville, which ordinances were enacted in an attempt by the General Council of the City of Louisville to bring about a reduction of the rates which the

Appellee was charging its subscribers in the City of Louisville and to prevent Appellee from discriminating among its subscribers. (See printed Record, case No. 197, pp. 95, 172, 173.)

One of the ordinances in question (namely, the one involved in the above styled appeal No. 761) established minimum rates which the Appellee might charge its subscribers in the City of Louisville. The enforcement of this ordinance was enjoined on the ground that the rates were so low that the enforcement of same would result in the confiscation of Appellee's property.

In the other ordinance (namely, the one referred to ~~above as~~ No. 197, October Term of this Court) the General Council repealed the franchise of the Appellee to operate a telephone exchange in the City of Louisville. This ordinance was passed after Appellee had refused to lower its rates, and the object of the ordinance was to force the Appellee to purchase a franchise from the City of Louisville, under which franchise the City could compel Appellee to charge rates lower than it was then charging, and also could force it to refrain from discriminating among its subscribers. This ordinance was declared void by the lower Court and its enforcement enjoined.

If either of the ordinances is declared valid by this Court then the object which the City of Louisville sought to accomplish in passing the two ordinances will have been accomplished.

Third: Both ordinances became laws early in 1909, and as the lower Court refused to require the Appellee to pay into Court the amounts collected by it in excess of the amounts it was entitled to collect under the rate ordinance (cause No. 761) or to give a bond to refund the amount so collected, it will result, unless this cause is advanced, that Appellee will have been permitted, if either ordinance is valid, to disregard the

rate ordinance for four or five years; will have been permitted to charge exorbitant and discriminatory rates to its subscribers in violation of law and of the rights of the Appellant and the subscribers to Appellee's service; the said subscribers being thereby left without a remedy for the wrong so perpetrated.

Fourth: As a further reason for the granting of this application, the attention of the Honorable Judges of this Court is respectfully called to Sections 7 and 8 of Rule 26 of this Court, and also to Sections 921 and 949 of the United States Compiled Statutes for the year 1901.

It is respectfully submitted that special and peculiar circumstances, such as are referred to in Section 7 of Rule 26, exist in the above styled cause.

It is further submitted that the two causes herein referred to involve the same question within the meaning of Section 8 of Rule 26.

Section 921 is as follows:

> "When causes of a like nature or relative to the same question are pending before a court of the United States, or of any Territory, the court may make such orders and rules concerning proceedings therein as may be conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice, and may consolidate said causes when it appears reasonable to do so."

Section 949 is as follows:

> "When a State is a party, or the execution of the revenue laws of a State is enjoined or stayed, in any suit in a court of the United States, such State or the party claiming under the revenue laws of a State, the execution whereof is enjoined or stayed, shall be entitled, on showing sufficient reason, to have the cause heard at any time after it is docketed, in preference to any civil cause pending in such court between private parties."

It is submitted that the two above entitled causes now pending in this Court relate to the same question, viz: the regulation of Appellee's rates, and the prevention of discrimination, and for that reason come within the terms of Section 921 of the Compiled Statutes, and that the two causes should be consolidated in order that delay in the administration of justice may be prevented and unnecessary cost avoided.

It is submitted further that the Appellee is an arm of the State of Kentucky, and should be on the same footing as a State, and as such should come within the meaning of Section 949 of the Compiled Statutes.

CLAYTON B. BLAKEY,
Counsel for Appellant,
City of Louisville.

HUSTON QUIN,
Of Counsel.

Office Supreme Court, U. S.
FILED.
OCT 10 1911
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 761.

CITY OF LOUISVILLE, KENTUCKY,
APPELLANT,

vs.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

ADDITIONAL SUGGESTIONS IN SUPPORT OF MOTION TO ADVANCE.

CLAYTON B. BLAKEY,
Counsel for Appellant, City of Louisville.

HUSTON QUIN,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 761.

CITY OF LOUISVILLE, KENTUCKY,
APPELLANT,

vs.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY, APPELLEE.

ADDITIONAL SUGGESTIONS IN SUPPORT OF MOTION TO ADVANCE.

The motion as made is primarily to advance the case.

Appellee does *not* object to the motion to advance.

Appellee *does* object to this case (#761) being consolidated with case #197, pending in this court between the same parties.

The reasons for the consolidation of the two cases are shown in the printed motion heretofore filed, and we think those reasons are sound.

But the position urged by appellant is that this is a rate case; that it is of great public interest, and that unless the case is advanced all of the subscribers to a telephone exchange in a large city will, under the ruling of the lower court, be compelled to pay exorbitant rates for several years without a right of recovery should the rate ordinance be held valid by this court.

Respectfully submitted,

CLAYTON B. BLAKEY,
Counsel for Appellant.

HUSTON QUIN,
Of Counsel.

Office Supreme Court, U. S.
FILED.
OCT 9 1911
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States

No. 761.

OCTOBER TERM, 1911.

City of Louisville, Kentucky, - - - - - - *Appellant*,

VERSUS

Cumberland Telephone and Telegraph Company - - - - - - - - - - - - *Appellee*.

Appeal from the Circuit Court of the United States for the Western District of Kentucky.

BRIEF FOR APPELLEE ON MOTION TO ADVANCE.

WM. L. GRANBERY,
ALEX P. HUMPHREY,
Counsel for Appellee.

John P. Morton & Company, Incorporated, Louisville, Ky.

Supreme Court of the United States

October Term, 1911.

No. 761.

CITY OF LOUISVILLE, ... *Appellant,*

vs. REPLY OF APPELLEE TO MOTION OF APPELLANT.

CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY, ... *Appellee.*

The appellee objects to the motion of the appellant to order a consolidation of this case with that of the City of Louisville, Appellant, v. Cumberland Telephone and Telegraph Company, Appellee, No. 197, or to any order hearing these two cases together.

It is true that the appellant and appellee in each case are the same, but beyond that there is no likeness between the two cases.

The Legislature of Kentucky granted a certain franchise to a company to whose rights the appellee has succeeded. This franchise was made dependent upon the assent to its operation by the City of Louisville. This assent was given, and thereupon the grantee of the franchise expended a very large sum of money in order to the employment of such franchise. The City of Louisville attempted to repeal this franchise. Thereupon the Cumberland Telephone and Telegraph Company, which, as above stated, had succeeded to the franchise, filed a bill in the Circuit Court of the United States for the

Western District of Kentucky, the sole object of which was to declare this ordinance void as impairing the obligation of the contract. This relief was granted and a decree entered perpetually enjoining the City from the enforcement of its repealing ordinance. The City has brought this case here and it is No. 197 on the docket of the present term.

After this effort to repeal absolutely the franchise the City of Louisville passed another ordinance, fixing the rates for service of the Cumberland Telephone and Telegraph Company. This company then filed another bill, setting out that these rates so fixed were confiscatory in their character and were therefore in violation of the Fourteenth Amendment of the Constitution of the United States. A very large volume of proof was taken upon the issues formed in this last case. The court below finding that the complainant (now appellee) was right in its contention and that the rates proposed to be enforced were confiscatory, perpetually enjoined the enforcement of this ordinance.

It is obvious from this statement that if these two cases are ordered to be consolidated or heard together, the argument in the one case would have no sort of relevancy to the argument in the other case.

The right of the City of Louisville absolutely to take away the franchise of the Cumberland Telephone and Telegraph Company is in no way illustrated by any discussion of the question as to whether the rates fixed by the City of Louisville in the second ordinance are or are not confiscatory in their character. And so the argument as to these rates—which is the question raised in

the second case—has no relevancy to the question as to whether the City had the right to take away absolutely the franchise of the Company.

For an orderly hearing of the matters in controversy it would seem to us that a course exactly contrary to that proposed should be pursued, and that the second case should not only not be heard with the first case but should not be heard until after the first case has been decided. If it be true that the City of Louisville had the right absolutely to take away from the Cumberland Telephone and Telegraph Company its franchise then necessarily the second case will fall under the weight of the decision in the first case.

It is difficult for us to conceive any reason for this court hearing a discussion upon the issues raised in the Rate case and assuming the burden of examining that record on its facts, until the court has determined, as it will in the first case, whether the Cumberland Telephone Company has any franchise at all.

We therefore submit that the cases should come up in their regular order.

Respectfully submitted,

WM. L. GRANBERY,
ALEX P. HUMPHREY,
Counsel for Appellee.

CITY OF LOUISVILLE *v.* CUMBERLAND TELEPHONE & TELEGRAPH COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

No. 761. Argued March 7, 8, 1912.—Decided June 7, 1912.

Quære, and not determined, whether an ordinance cutting the earnings of a telephone company down to six per cent per annum, would, under the circumstances of this case be confiscatory and unconstitutional under the Fourteenth Amendment.

This court requires clear evidence before it will declare legislation, otherwise valid, to be void as an unconstitutional taking of property by reason of establishing rates that are confiscatory.

In this case the evidence is not sufficient to justify enjoining enforcement of an ordinance fixing rates of a telephone company and the decree granting an injunction is reversed, but without prejudice.

THE facts, which involve the question of whether an ordinance of the City of Louisville fixing rates for telephone service in that city, was unconstitutional as confiscatory of the property of the companies, are stated in the opinion.

Mr. Clayton B. Blakey and *Mr. Huston Quinn*, with whom *Mr. Joseph S. Lawton* was on the brief, for appellant:

Questions referred to a master cannot in turn be referred to an accountant in such a manner that the report of the accountant will bind the parties, the master or the court. *Kimberly* v. *Arms*, 129 U. S. 512.

The court should assume that a telephone company will charge the same rates to all of its subscribers having the same class of service. *Knoxville* v. *Water Co.*, 212 U. S. 16.

A telephone company without a franchise or privilege to occupy the streets of a city is a trespasser and should not be permitted to question a rate regulating ordinance. *Rough River Tel. Co.* v. *Cumberland Tel. Co.*, 119 Kentucky, 470; *Rural Home Tel. Co.* v. *K. & I. Tel. Co.*, 32 Ky. Law Rep. 1072; *East Tenn. Tel. Co.* v. *Russellville*, 106 Kentucky, 669; *Bland* v. *Cumberland Tel. Co.*, 109 S. W. Rep. 1180; *Bridge Co.* v. *Prange*, 35 Michigan, 400; *Cincinnati Inclined Plane Railway Co.* v. *Cincinnati*, 44 N. E. Rep. 327.

A telephone company should not be granted relief against rates established by a city ordinance where such company refuses to make a frank disclosure of its books, and records and facts within its knowledge. *Knoxville* v. *Water Co.*, 212 U. S. 16.

A telephone company should not be permitted to earn a return on cables which it has installed and does not use

and will have no occasion to use for years to come. *Spring Valley Water Co.* v. *San Francisco*, 165 Fed. Rep. 697; *San Diego L. & T. Co.* v. *Jasper*, 189 U. S. 429; *Water District* v. *Water Co.*, 99 Maine, 376; *S. C.*, 59 Atl. Rep. 539.

In determining the value of a telephone plant when it charges that a rate ordinance confiscates its property the true method is to ascertain what it would cost to reproduce a plant, then deduct from the reproduction cost the amount the plant in question has depreciated. *Knoxville* v. *Water Co.*, 212 U. S. 1.

In determining the value of a telephone plant where it claims that a city rate ordinance confiscates its property the value of the franchise should not be considered. Beale and Wyman's Work on Railroad Rate Regulation, § 362; *Brunswick & T. Water District* v. *Maine Water Co.*, 99 Maine, 371.

Rates charged by telephone companies in other cities of substantially the same size and similarly located as the city in question are a fair criterion in determining the reasonableness of telephone rates. *Interstate Com. Comm.* v. *Southern Railway Co.*, 115 Fed. Rep. 741; *Interstate Com. Comm.* v. *East Tenn., Va. & Ga. Ry.*, 85 Fed. Rep. 107.

Mr. William L. Granbery and *Mr. Alexander Pope Humphrey*, with whom *Mr. Alexander Pope Humphrey, Jr.*, was on the brief, for appellee.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill to prevent the enforcement of an ordinance of the City of Louisville fixing telephone rates, passed in 1909, after the attempt of the city to deprive the appellee of its franchise, when that seemed likely to fail. See *Louisville* v. *Cumberland Telephone & Telegraph Co.*, 224 U. S. 649. The question raised is the usual one of con-

fiscation. In consequence of the conclusion to which we have come we shall make a much more summary statement of the facts than in other circumstances might be necessary. The case was referred to a Master and he reported in favor of the city. He was of opinion that in the first year after the ordinance should go into effect there would be a loss of $30,000, but that in another year or so, in view of the probable increase of subscribers, the company would get back to its former net revenue with a probable continuous increase thereafter, and would earn a sufficient return. The judge was of a different opinion, and for the purposes of the present decision only we shall adopt his figures subject to the changes that we shall state which leave us unprepared to sustain the decree without giving the ordinance a trial to show its actual effect.

The Judge's values were:	
Plant, including toll lines	$1575000.00
Real estate	162000.00
Supplies on hand	18000.00
Working capital	33000.00
	$1788000.00
Gross earnings for 1908, including 15% of receipts from toll lines. This was undisputed	$325838.30
The court added 10% more of the toll line receipts, making	330926.38
The Master was of opinion that the remaining 85% should be added, making the total gross earnings	369087.00

For the purpose of such an estimate as this we think that the toll lines should be either in or out, and if they are to be counted in the property upon which the appellee is not to be prevented by

law from earning a fair return, as they are above, and the expenses charged to the appellee, the whole return from them should be added to the gross earnings of the appellee. So we take the total gross earnings as.....		$369087.00
Expenses as found by the Master and accepted by the Judge.....	$216363.07	
But this includes amount charged to the Exchange for the use of real estate (less expenses for repairs), which, in view of the inclusion of real estate above, it should not....	11707.52	
	$204655.55	
Deduct corrected expenses from gross earnings.....		204655.55
Net earnings.....		$164431.45
Even if we deduct from the net earnings a sum estimated by the Judge as necessary above actual expenditures of 1908 to make good average depreciation..		24095.02
we have.....		$140336.43
which is nearly eight per cent. on the estimated value. The Master prophesies a falling off for the first year of.....		30000.00
which would leave.....		$110336.43
or over six per cent. on the valuation assumed.		

Suppose now that we leave out the toll lines.

Plant with real estate &c. as above. . . .		$1788000.00
Deduct toll lines estimated at		125000.00
		$1663000.00
Gross earnings.		325838.30
Less 15% from toll lines		7632.11
		$318206.19
Expenses	$216363.07	
Less amount charged for use of real estate as above. .	11707.52	
	$204655.55	
Less toll line expenses which if estimated (in the absence of satisfactory proof as to their amount) by dividing expenses in proportion to receipts would be approximately	30000.00	
	$174655.55	
Deduct corrected expenses from gross earnings		174655.55
		$143550.64
Additional deduction for depreciation as before		24095.02
		$119455.62
Which is nearly 7 per cent. or deducting for loss of custom the first year.		30000.00
		$89455.62

which is just above five per cent. on the Judge's valuation.

We express no opinion whether to cut this telephone company down to six per cent. by legislation would or would not be confiscatory. But when it is remembered what clear evidence the court requires before it declares legislation otherwise valid void on this ground, and when it is considered how speculative every figure is that we have set down with delusive exactness, we are of opinion that the result is too near the dividing line not to make actual experiment necessary. The Master thought that the probable net income for the year that would suffer the greatest decrease would be 8.60 per cent. on the values estimated by him. The Judge on assumptions to which we have stated our disagreement makes the present earnings $5^{10}/_{17}$ per cent. with a reduction by the ordinance to $3^{6}/_{17}$ per cent. The whole question is too much in the air for us to feel authorized to let the injunction stand.

Decree reversed without prejudice.